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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

(VENICE COMMISSION)

DRAFT REVISED CONSTITUTION OF THE REPUBLIC OF ARMENIA

AND

EXPLANATORY MEMORANDUM

CONSTITUTIONAL REFORMS

(working version – 21/6/2001)

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FOR OFFICIAL USE

THE CONCEPTUAL APPROACHES FOR REFORMS OF THE CONSTITUTION OF THE REPUBLIC OF ARMENIA[1[1]]

THE NECESSITY OF CONSTITUTIONAL REFORMS

The RA Constitution adopted in 1995 has played an essential role in the development of democracy and the ensuring of its irreversibility, in finding constitutional solutions in crises, in the gradual establishment of the institutions of state power, and in ensuring constitutional guarantees for the protection of human rights. The accession of the Republic of Armenia to the Council of Europe is also evidence of that.

At the same time, the current processes in the social domain, the experience of constitutional practice, the new problems relating to the development of social relations and the establishment of democracy, the legal obligations assumed in connection with joining the Council of Europe, also dictate certain constitutional reforms. The necessity of that has matured amongst professionals, as well as in social and political thought, and has become a subject for broad discussions.

The necessity of constitutional reforms is first of all explained by the presence of the following problems:

1. Armenia's current international integration processes evidence that it is necessary to more thoroughly consider those basic values that, especially in the area of the protection of human rights, are currently laid at the foundation of the intrastate and interstate legal relationships of the European countries in particular, and which many countries of classical democracy and also Eastern Europe have taken into consideration and, in so doing, have likewise made significant changes in their own constitutions in recent years.

2. The RA Constitution lacks a clearly defined attitude to the recognition of human rights as an ultimate value; besides, human dignity is fixed not as an object of constitutional law but as an object of criminal and civil law; the approach to this issue characteristic of the former Soviet legal system has not been overcome.

The state, with its three branches of power, as well as the local self-government, act as a mechanism for implementing human rights and freedoms. Hence, the main direction of constitutional reforms is viewed as the reinforcement of the constitutional guarantees for the protection of human rights and the clarification of the scopes of the possible limitation of

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[1[1]] Basic provisions of the concept paper have been approved by the Working Group of the Venice Commission during the discusssions held on April 25-26, 2000, Strasbourg. Later the general approaches and the specific recommendations were discussed with the Working Group during the meetings held on November 16-17, 2000, Yerevan, February 13-14, 2001, Paris and June 5-6, 2001 in Strasburg. The results of those discussions have been considered in the document presented.

those rights on the basis of the provisions of international law, particularly the European Convention for the Protection of Human Rights and Fundamental Freedoms.

3. The RA Constitution does not provide for the consistent realization of the principle of the separation of powers; the existence of separated, mutually checking and balancing legislative, executive and judicial powers is inadequately provided. In particular, the place of the RA President is not clear in the system of state power, including the President's scope of responsibility in the sphere of executive power. Also, there is a need to specify the place and role of the Prime Minister's institution within the system of executive power. There is a necessity to clarify more the functional authorities of the different institutions of power, to strengthen the balance sheet of checks and balances.

4. The efficiency of the lawmaking activity and the active oversight role of the RA National Assembly are not high. The problem of materially increasing it may be solved as a result of certain constitutional reforms, particularly, by granting the National Assembly greater independence in the fulfillment of its political responsibility, by strengthening its lawmaking role, by overruling the absolute abstract right of the RA President to dissolve the National Assembly, and by reinforcing the counterbalancing influence of the National Assembly when other branches of power perform their functional responsibilities.

5. The problems of securing constitutional guarantees for the independence and systemic completeness of the judicial power require a number of new approaches of principle. In this respect, Articles 91, 92, 94, 95, 100 and 103 in the Chapter on Judicial Power of the Constitution require review in particular. As a result of the reforms the Constitution must guarantee the real independence of the judicial power, resolve the problem of establishing administrative justice (since, at present, this system is almost lacking in Armenia), ensure clear-cut functional interrelationships among the institutions exercising judicial power. No less important is the clarification of the issues connected with the creation of specialized courts (economic, military, taxation, etc.).

The necessity for the formation of a representative body to guarantee the self-governance of the judicial power and an independently functioning magistrate (justice) council, consistent with the present criteria of international law, has emerged.

6. The system of constitutional justice must become more active and efficient by supplementing and completing the list of objects and subjects of constitutional oversight, by establishing a system for the settlement of disputes that have emerged on issues of constitutional authorities, and by strengthening the guarantees for the protection of human rights.

7. The methodological approaches of the Chapter on *Territorial Administration and Local Self-Government* of the Constitution must be fundamentally reviewed in order to overcome the confusion, and to consider the local self-government as an independent democratic institutional system of society, by fixing necessary and sufficient constitutional guarantees for ensuring the independence of local self-government for the purpose of overcoming the perception of regarding the local self-government not as a subordinate link of governance derived from state governance, but rather fixing it as an independent democratic sub-system of society.

8. There is also a need to introduce clarifications, editorial corrections, and overcome separate internal contradictions in a number of Articles.

THE BASIC PRINCIPLES UNDERLYING THE CONSTITUTIONAL REFORMS

The following approaches of principle underlie the concept of the RA constitutional reforms, taking into consideration also the results of the meetings with the working group of the Venice Commission of the Council of Europe held on April 25-26, 2000, in Strasbourg, November 16-17, 2000, in Yerevan, and February 13-14, 2001, in Paris:

1. The starting-point is the fundamental principle, according to which natural and inalienable human rights and freedoms must be recognized by the state as an ultimate value, must be protected in a guaranteed manner, and must prescribe the nature and limits of the exercise of power by the state and the people, having as their basis the need for establishing constitutional guarantees for human dignity.

2. Constitutional norms must declare not only the constitutional human right, but also to the extent of maximum clarity define the guarantees for their realization, the obligations of the state, the permissible limits for the restriction of separate rights. Human rights must be viewed as realizable rights, and their limitation must be based on the norms of international law, be unitary, must not distort the contents and meaning of the law, must be clearly defined by law.

3. It is necessary to provide unitary nature and clear harmony between the fundamental constitutional principles and the norms and mechanisms ensuring their realization.

4. The principles of the supremacy of right and the rule of law must be clearly fixed in the Constitution; the supreme role of the Constitution in the system of legal acts and the supreme role of law over other normative and sub-legislative acts must be specified.

5. During the Constitutional reforms it is necessary to comprehensively observe the requirements of the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 December 16 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and universal norms fixed in other documents on human rights.

6. It is necessary to overcome the drawbacks and shortcomings in the implementation of the principle of separation of powers by means of applying a systemic approach, in particular:

a) to clarify the place of the institution of the RA President in the system of state power;

b) to clarify the RA President-National Assembly-Government interrelationships, to complete and harmonize the framework of functions, authorities, checks and balances within these relationships;

c) to clarify the RA President-Judicial Power interrelationships, with the aim of reinforcing the constitutional guarantees for independence of the judicial power.

7. The Constitutional provisions concerning the judicial power require necessary reforms. They should be based on the requirements of defining such principles, jurisdictions and structural procedures which provide and guarantee:

a) the functional, institutional, material and social independence of the judicial power, which will ensure the smooth execution of the obligations of this branch of power;

b)securing the competence, independence and impartiality of judges, as a guarantee for efficient judicial protection of human and citizen rights;

c) the participation of an independent constitutional body in the selection and appointment of judges, in ensuring their independence in the performance of their duties and in disciplinary supervision and termination of their authorities;

d) the formation of a clear system of the authorizations for the institutions of the judicial system and their functional interrelationships;

e) the uninhibited realization of the citizens' constitutional right for justice, and the guaranteed provision of supremacy of the Constitution;

f) the creation of real guarantees for self-government of the judicial system.

8. The reform of Constitutional provisions concerning local self-government requires a clear methodological approach. The fundamentals of the European Charter of Local Self-Government shall serve as a basis for the latter, ensuring the formation of a clear democratic system of local self-government in the Republic of Armenia.

CONCEPTUAL APPROACHES ON THE ISSUE OF THE PROTECTION OF HUMAN AND CIVIL CONSTITUTIONAL RIGHTS AND FREEDOMS

The problem of human rights can become a subject for analysis and discussions from different angles. The methodological approach to this problem, and constitutionally fixing this approach, has exceptionally important significance. The thing is that the problem of the protection of human rights passes through constitutional practice like a red line, whereas the issue of the supremacy of the Constitution is eventually determined by the guarantee of the protection of human rights.

As correctly formulated in Article 2 of the 1789 French Declaration on Human Rights and Freedoms, "the aim of all political association is the preservation of the natural and inalienable rights of man." The latter is the basic contents of any Constitution and the supreme objective of the state system. To ensure that in real life it is necessary, first of all, to demonstrate a clear-cut methodological approach towards the concept of "Right", as well as the issues of the perception of the priority of natural human rights.

Without having any intention to restart the theoretical dispute with its deep historical roots over the concepts of "Right" and "Law", which form the core of the issues concerned, and

which in itself has importance as a starting point in giving an exhaustive answer to the problem raised, it is necessary nevertheless to make a short historical excursion.

One of the first biggest generalizations of the public thought of the pre-Christian era was the statement of Democritus (470-366 BC.) about the fact that the criterion of justice in politics, morality and legislation is its concordance with nature.[2[2]] He saw justice and truth in the natural and considered the law as artificial, while differentiating "truth" from "public opinion" and natural truth from the law.[3[3]]

If subsequently, Socrates related the reflection of truth in the law with knowledge, then with Plato's distinguishing between the "world of things" and the "world of ideas" and with the characterizing of truth in terms of everyone having the mission of doing his own job, the law was presented as born from reason[4[4]]. According to Plato, any state where the law has no force and is under the power of someone is condemned to collapse.

Aristotelian philosophical thought postulated that political justice is possible only between free and legally equal people belonging to the same society. Characterizing political justice as a political right, Aristotle distinguished political right from natural and conventional right by fixing those exceptionally important generalizations that, first of all, the law may not turn violence into a right, nor present power as a source of right, and next, that the conventional right must be in harmony with natural right. Political justice must lie at the basis of the Law. One should never forget that political justice or political right with Aristotle were represented as justice or right, in general. Aristotle very clearly and unequivocally stated that **the right should be the basis of every law, and that right should be protected via law**. Aristotle calls a legal state in our perception the one where the **legal** law prevails. The foundation for the foundations of democracy was considered only the fact that the people are equal (the slaves also have equal right), but also and, even more, the fact that they are legally capable. [5[5]]

It is well-known that that old Roman law was represented not only as an independent science, by clarifying the limits of public and private law, but also the natural right was represented in the wholeness of its natural origin.[6[6]]

Without referring to the details of the genius generalizations of the greatest figures of ancient Greek and Roman philosophical-legal thought, let us add that the 17th –18th century theorists John Locke, Montesquieu, Jean-Jacques Rousseau, and later also Kant and others distinctly specified not only the idea of the separation of powers, but also the perception of the supremacy of right, the substance of the natural right acquired a new quality**, by retaining the red line according to which the law should be the embodiment of the right.**

2[2] Materialists of Ancient Greece Ì., 1955.p. 53-178.

3[3] V.S. Nersisyants, Philosophy of law, Ì., 1997. P.. 404.

4[4] Plato, Republic, Laws, Politics. Ì., 1998.p. 171.

5[5]Aristotle, Ethics, Politics, Rhetoric, Poetics, Categories. Ì., 1998. p. 616, 623, 624.

6[6] J. Harold Berman, Western tradition of the law, epoch of formation, Ì., 1998. p. 28-34.

Whatever legal philosophical characterization we give to the concept of right, it is, in reality, a **social phenomenon, [7][7] has a natural base, and is the condition and means for the self-determination of the social nature of the rational creature.**

Besides, in Christian thought the human being is created in the image of God (Bible, Old Testament, Genesis, Chapter 1) and deserves respect. In the introduction to the book of Leviticus it is stated: "the God of holiness, the God of love and life wants to turn this people into participants in his holiness, so that they in their turn will turn into the bearer of life, love and holiness."[8]

It is for that purpose that the Bible reminds and teaches the rules for living correctly, living human-like and with dignity. One of the best lessons learned from it is that the state must exist for the human being and not the human being for the state.

The main issue of the relationship between law and right has become a subject for examination under the legal-philosophical thought also in terms of morality. The thing is that a **legal l**aw "…increases the moral significance of the power"[9], harmonizes and brings to a common denominator the mutually recognized and publicly acceptable interests of individuals, **becomes a criterion for justice and a ground for the execution of justice**.

As precisely formulated by B. Chicherin, the whole moral significance of the power is based on the fact that it holds in its hand the sword of justice, and justice consists in the fact that to each is reserved what belongs to him/her.

And if that sword, called for the protection of the right, turns into a weapon for the violation of the right, it thereby loses its moral power in the eyes of the people, which has a destructive significance for both the powerless and the power itself.[10]
This short historical background intended to precisely record the following irrefutable truths formulated by legal-philosophical thought:

-A human being, as a social phenomenon, enters into public relationships with his/her natural and inalienable rights and his/her human dignity.

-The state is bound to recognize the human rights as an ultimate and inalienable value, as a constitutionally fixed directly applicable right.

-Every law derives from those rights, protects those rights, may limit them solely and only to the extent it is necessary for the recognition and safeguarding of the rights of others in a democratic society, for the purpose of harmonious social co-existence.

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[7][7] S.S. Alexseev, Philosophy of the law, Ì., 1999.p. 2.

[8] Bible, Saint Echmiadzin, 1994, p.117, editor's introductory note to Leviticus.

[9] B. N, Chicherin, A course in the science of state, Part. 3. Ì., 1898. p. 401

[10] Ibid, pp.133-134.

-Those rights are universal and have not only intrastate but also international guarantees for their protection.

By fixing a certain methodological position towards the recognition and protection of human rights, the Constitution predetermines legislatively the nature of its materialization, institutional ensuring and systemic guaranteeing. The Constitution itself must not turn into an obstacle to the complete and full-value effectiveness of the principle of the supremacy of right. Hence, the purely constitutional position on human rights and freedoms is exceptionally important.

As was mentioned, the principle of legal equality receives flesh and blood when combined with legal capacity. In democratic and legal systems we are speaking about the legal equality of legally capable entities, i.e., with recognized rights, respected and guaranteed with protection. While the law is not only the recognition of the right, but also the rational limitation of that, to not violate the rights of others. The question of questions is the recognition of the natural rights of the human being, their fixing by legislation and their guaranteed protection.

An example of the best, justified and complete constitutional formulation may perhaps be "…the state recognizes and guarantees the principle of supremacy of right and rule of law." Such a formulation guarantees an appropriate methodological approach, acceptance of the priority of natural rights, recognition of the right as the substance of the law, underlining of the public consensus on the limitation of that, fixing of a clear-cut concept for the freedom of rights and limitation of power. The law becomes the defender of the individual's freedom, safety and property, the guarantor of the realization of his/her rights.[11]

The main constitutional requirement is the recognition and fixing of the supremacy, priority, starting-point nature and inalienability of those rights. If such a recognition is missing then the role of power as dictating rights may be unavoidably pushed forward to the first plane, and the Constitution, in this case, will "put a limit" not on the rights of power but on the freedoms of people, thereby fixing principles of dictatorship.

Under such a circumstance the state will likewise involuntarily play the role not of a regulatory tool dictated by society's general requirements, but rather an abstract self-reproducing requirement, which has started to act with the logic of self-preservation and the unrestrained strengthening of influence.[12] This will lead to the fact that the law will simply become a tool for the compulsion of the right. And the illustrated historical-logical analysis shows that the law should be the guarantor of freedom, rather than its restriction and compulsion.

This problem is more actual and acutely stated in the continental legal systems. In the precedential Anglo-Saxon systems justice precedent lies at the basis of the materialization of the right; in the continental systems, the positive right fixed through mutual political

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[11] V.A. Chetvernin, Concept of law and state. Introduction to the theoretical course of law and state, M., 1997.P.

[12] The state may not be created for making a few individuals happy . The goal of that is to make the society happy (Plato, Republic, Collection of works v. 3. M., 1994, p. 189).

consensus. Under such a circumstance, the clarity, completeness and internal systematization of constitutional principles and norms acquire an exceptionally important significance.

The etymological analysis of the concept of "Constitution" represents also a separate interest. The "Constitution" in Russian, English and other languages carries the direct meaning of the Latin word "constitutio=definition" , i.e., define the fundamental rules for social existence. In addition to that, this word in Armenian also displays other exceptionally interesting nuances. To the first plane is pushed not only the idea of defining, but also the idea of setting a limit. But to set a limit to what? This is a question that is raised naturally and unavoidably. The answer to that is brilliantly given by Shahamir and Hakob Shahamiryan still in 1773-1788, which is, in fact, the first written Constitution in the world, named "Vorogayt Parats (trap of glory)."[13] A trap for whom and why?[14] For the limitation of power and restraining of glory. This was the formulation when familiarized with which Dominique Rousseau, the French famous constitutional expert, considered a whole legal theory. Fortunately, in this context as well, the essence of the concept and the word that utters that concept in Armenian are in total harmony with each other. In such a circumstance, the conclusion is also unequivocal: if it is the glory and power that are trapped, then we are dealing with a Constitution that is built on accurate methodology. If it is the natural and inalienable freedoms that are trapped, then the given society is endangered in general.

What does the international experience show? The comparative analysis of the constitutions of more than 100 countries evidences that in the constitutions or declarations on human rights having the nature of constitutional norms, the conceptual approach to the human rights is fixed in almost all countries. And in the constitutions of more than 65 countries there is also a clear-cut approach demonstrated towards the constitutional principle of personal dignity. One or more articles are devoted to the latter, the immunity of personal dignity as an indivisible right, its inalienability, the obligation of the state for its respect and protection, as well as the relations to human rights and freedoms are emphasized.

In the first place, it is worth separating examples from those countries where there is a constitutional clear-cut position about the priority and supremacy of the right in terms of the connection between right and law.

Point1 of Article 1 of the Constitution of the German Federation fixes that human dignity is immune. Its protection and respect is the obligation of every public authority. Under point2 of the same Article it is defined that the German people accept the human immune and inalienable rights as a basis of every human society, peace and justice in the world. Point3 completes the conceptual approach, by fixing that the fundamental rights presented are mandatory for the legislative, executive and judicial powers as a directly effective right.

Such an approach, perhaps, is a classical, complete, consistent and exemplary approach. A similar approach is also reflected in Articles 2, 17,18 and 21 of the Constitution of the Russian Federation, Article 10 –Spain, Articles 1-3 –Czech Republic, Article 7-Georgia, Article 8-Ukraine, Article 30 – Poland, Article 1 –Romania, Article 15- Slovenia, Articles 1, 18 –Portugal. As an example of clear and complete wording may be presented also Article 7

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[13] *Book titled "Vorogait Parats" , Tbilisi, 1913.*

[14] *Ibid pp. 17, 29-30, 32, 47, 51, 63 and other pages , through the complete and conceptual coverage is provided the organic linkage between the law and justice, the ideology of the supremacy of natural right.*

of the Constitution of Georgia, in which it is stated that Georgia shall acknowledge and protect the universal human rights and freedoms as an ultimate human value. Afterwards it is added: "The people and the state are bound by these rights and freedoms, as a directly operating right, in the exercise of state power." Everything is clear and unequivocal. It is worth emphasizing the following, conceptually very important, considerations:

1. The country acknowledges the fundamental human rights and freedoms;

2. It accepts it as an ultimate and inalienable value;

3. Those rights and freedoms are the limitations of the exercise of power not only by the state, but also by the people.

It is evident that **it is the power which is limited by right rather than the right limited by the power.** Those constitutions which have not adopted this methodological approach with such certainty are deficient, essentially imperfect and also contain a huge potential danger for the establishment of dictatorship.

It is appropriate to also refer to international legal documents:

In the preamble of the Universal Declaration of Human Rights it is stated: ".. the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world." Further it is also added: "…human rights should be protected by the rule of law." Particularly, Articles 1, 6, 8, and 29 of the Declaration not only clearly fix the principles of the inalienability, freedom and legal equality of the human natural rights, but also the obligations towards the society and the status of the legal subject. And Article 8 unequivocally defines the right to human justice, i.e., to restore his violated rights defined by the Constitution or law through the authorized courts.

The same methodological approach is reflected in the UN Charter, in the Preamble of which is also shown the devotion to the fundamental human rights, his /her dignity. In the International Covenant on Civil and Political Rights as well (16.12.1966) it is likewise fixed that the acknowledgment of the human dignity and equal and inalienable human rights is the foundation for freedom, justice and universal peace, that those rights derive from the dignity characteristic for the human being. Article 16 of the same Covenant identifies the principle for the human legal subject. The Covenant, based on the fundamental provision that "…in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights," provides also the permissible limits for the possible restriction of those rights by law.

By becoming a member of the Council of Europe Armenia joined the Statute of this organization signed in London on May 5, 1949, Article 3 of which clearly states that: "Every member of the Council of Europe must accept the principles of **the rule of law** and of the enjoyment by all persons within its jurisdiction of human rights and fundamental freedoms."

Perhaps it is necessary to specially emphasize also the Convention for the Protection of Human Rights and Fundamental Freedoms (4.11. 1950), the Preamble of which not only fixed the above mentioned provisions, but also emphasizes such concepts and formulations as

"universal and effective recognition and observance of … Rights", "fundamental freedoms… are best maintained … by an effective political democracy", "freedom and the **rule of law**"[15], etc. The last wording is especially worthy of attention. It is used in the preamble of the Convention as an expression of the political traditions and ideals, uniform value-perception of the European countries. This convention is specific also for the fact that the latter's norms are norms of direct effectiveness and are protected by the European Court of Human Rights. By fixing the fundamental human rights and freedoms, the Convention also defines the permissible limits for their restriction and deviation from obligations under extraordinary situations. Moreover, **those restrictions must be defined by law, must be proportional and not distort the essence of the right**. A requirement of the Convention is also the distinction of the fundamental rights and the social-economic and cultural rights, by demonstrating towards each of them a corresponding approach defined by the norms and principles of international law. The convention and the protocols appended to it contain such norms on the fundamental human rights and freedoms the direct application of which must be guaranteed in every member state of the Council of Europe. Consequently those norms must have constitutional stipulation and protection with depth and clarity.

Of special attention is worthy also the Charter of Paris for a New Europe (21.11.1990.). The new democratic processes have made it necessary to fix in the Charter of Paris on the level of international legal norms that "Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace."

Let us also add that in the French Declaration of the Rights of Man of 1789, it is clearly specified that "... the ignorance, neglect, or contempt of the rights of man are the sole cause of public calamities and of the corruption of governments ."[16]

All the mentioned examples unequivocally evidence that the problem of ensuring the supremacy of the constitution, in the final analysis, leads to the guaranteed protection of human rights and freedoms, through the harmonized cooperation of the separated powers. And since those rights are "… directly effective rights", the chief guarantees for their protection are their constitutional fixing through an appropriate methodological approach and a viable justice system.

In particular, the experience of recent decades in the European countries irrefutably shows that the protection of human rights is more guaranteed, if the human being has the constitutional right to judicial protection of his violated rights. That is, the right to justice becomes the important guarantee for the protection of human rights.[17] However, such a formulation is incomplete and defective, if it is anchored on the discretionary perception of human rights. The thing is that human and civil rights, even if they have not found their

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[15] Collection of documents of the Council of Europe in the protection of human rights and struggle against crime, Moscow, 1998. p. 34.

[16] All the international documents were studied with the help of the "search" computer software.

[17] Justice is the right in effect, during the process of implementation – S.S. Alekseev, Law:alphabet –theory – philosophy. Experience of Complex Research Ì., 1999. v 50.

complete reflection in the Constitution (RA Constitution, Article 43), may not, by being alienated from it, become a function of public administration. If those rights are recognized and fixed in the Constitution, if the frames of their restriction are defined by the Constitution, and if these rights can also be violated not only by multifarious actions and inaction, but also by laws or other normative acts that are "the result of political consensus", the protection of those rights will be guaranteed solely and only in the case when the human being is endowed also with the right to constitutional justice. This problem has acquired a more complete solution in the international constitutional practice during the last 40-50 years.

Based on the above-mentioned conceptual approaches, let us try to present in general terms the picture within the frame of the Republic of Armenia constitutional solutions. In methodological aspects the problems of human rights are directly reflected in the following Articles of the Republic of Armenia Constitution:

Article 4.

The state guarantees protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law.

Article 5.

State power stall be exercised in accordance with the Constitution and the laws, based on the principle of the separation of the legislative, executive and judicial powers.
State bodies and public officials may execute only such acts as authorized by legislation.

Article 6.

The supremacy of the law shall be guaranteed in the Republic of Armenia.
The Constitution of the Republic has supreme juridical force, and its norms are applicable directly.
Laws found to contradict the Constitution as well as other juridical acts found to contradict the Constitution and the laws shall have no juridical force.
Laws shall be applied only after official promulgation. Unpromulgated legal acts relating to human rights, freedoms and obligations have no juridical force… .

Article 19.

No one may be subjected to torture and to treatment and punishment that are cruel or degrading to the individual's dignity.
No one may be subjected to medical or scientific experimentation without his or her consent.

Article 38.

Everyone has the right to defend his or her rights and freedoms by all means not prohibited by Law.
Everyone has the right to defend in court his rights and freedoms fixed in the Constitution and the laws.

Article 43.

The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms.

Which are the main deviations from the above-mentioned internationally established criteria?

1. There is no clear attitude to the recognition of the human rights as an ultimate and inalienable value.

2. The human dignity is fixed as an object of criminal-civil law rather than as that of constitutional law. That approach typical for the former Soviet legal system has not been overcome in Armenia yet.

3. There is no clear distinction between the right and the law, moreover, the danger to subordinate the right to the law is considerable.

4. The concepts of "supremacy of the right" and the "rule of Law" are presented in the form of the concept of "supremacy of Law," which may serve as a dangerous prerequisite for the so-called absolutism of the "right of power."

5. The constitutional-legal nature of the fundamental human rights as a directly effective right is not clarified.

6. The human right of constitutional justice is rejected.

In addition to the above-mentioned, the classification of the rights in Chapter 2 of the Constitution is not clear, the restrictions that are provided in both general and extraordinary situations are not in harmony with the principles of international law, many fundamental human rights are only reserved to citizens, etc. (the detailed description will follow below).

All these are essential gaps, which seriously weaken the constitutional guarantees for the protection of fundamental human rights and freedoms. Hence it is not accidental either that the legislative and institutional systems in our country are not only the reflection of this situation, but also its irrational reproducer.

The solution is to clarify and make certain the constitutional methodology about human rights, to consider the current international criteria on the constitutional guarantees for human rights in the second chapter of the Constitution, as well as for the human right to constitutional justice to become a fundamental guarantee for the protection of his/her rights and freedoms.

CONCEPTUAL APPROACHES TO THE PRINCIPLE OF SEPARATION OF POWERS TO BE FIXED AND CARRIED OUT THROUGH THE CONSTITUTION

One of the core issues of the Constitution is the clear-cut separation of powers and the ensuring of functional balance. It is not a secret that this problem is more difficult to resolve

in the so-called semi-presidential systems of government. At the same time, the experience of international constitutional developments evidences that even in such systems there have likewise been found efficient solutions that have withstood the test of social practice. The point here is to first of all have the problem of harmony of the "function-institution-jurisdiction" system resolved. Second, it is necessary to adjust and harmonize the scopes of the functional, checking and balancing authorities of each branch of power, to ensure the relatively independent and complete activity of each branch of power without disrupting the balance in the system of "function-institution-jurisdiction" on the one hand, and to retain that harmony in dynamics through the necessary and sufficient checks and balances, on the other hand.

It is necessary to take into consideration the fact that, at present, in the theory of constitutional law the following basic criteria for the separation of powers are more acceptable: a) the relative independence of the branches of power, b) the existence of the necessary constitutional institutions, the completeness of their authorities and their equivalence with their functions, c) the guarantee of the interruptedness of the balanced activity of the state power, which in its turn assumes the establishment of such intra-constitutional guarantees, with the help of which it will be possible to reveal, evaluate and restore the disrupted functional balance. Only under this circumstance will it be possible to provide for the dynamic and harmonious development, avoid political and social "explosive" resolutions.

The RA Constitution has three major "weak links" with regard to the resolution of the mentioned problem. First, the place of the presidential institution in the system of state power is not specified, second, the legislative, executive and judicial powers, from the viewpoint of all the presented criteria, do not have the necessary functional independence and the dynamic balanced condition, and third, the mechanisms for the revelation, evaluation and restoration of the distorted balance are imperfect.

In systems of semi-presidential government a contradiction often occurs between the President and Government, when they do not represent the same political power (it is typical not only for Armenia but also for France). In such systems, it is very difficult to give a precise answer to the question for which layer of the executive power activities the Republic of Armenia President bears responsibility, and for which part of that power are the Government and the Prime Minister responsible.

Under the circumstance when the President has a clear majority in the Parliament, naturally there is no problem like that, since the political responsibility is integrated. At the same time, the system assumes that the President may be obliged to appoint a prime minister acceptable for the National Assembly or, in fact, yield the initiative to the Parliament by accommodating the latter. Such a situation assumes the existence of a strong and viable parliament, which is able to assume political responsibility for the activities of the Government, as well as the existence of such checks, which, in the event of not displaying the necessary and sufficient capacity by the National Assembly and the Government, will help to recover the distorted balance. Under this circumstance the essential emphasis is that in the semi-presidential government system the President of the country first of all has the function of ensuring the natural and balanced activity of the branches of power, which characterizes his/her place and role as **Head of State.**

The President of the country as Head of State is distinctly prescribed as such in the Constitutions of a number of countries. For example, in the Constitutions of Italy- Article 87, Russia - 80, Estonia - 77, Croatia- 94, Georgia - 69, Azerbaijan - 7, Bulgaria - 92, Kirgizstan - 42, Belarus - 79, Ukraine- 102, Nicaragua- 184, Czech Republic - 54, Slovakia- 101, etc. Besides, in the last two countries the President is elected by the parliament.

The principle of the separation of powers is also considered to be one of the fundamental principles of the fundamentals of the constitutional order of the Republic of Armenia fixed by the Constitution. This is expressed in Article 5 of the RA Constitution, according to which state power is exercised on the basis of the principle of the separation of the legislative, executive and judicial powers.

However, the perception of the separation of powers as a principle of the RA Constitution requires to withdraw from the discretionary idea, according to which the separation of powers is viewed as a distribution of integrated state power between different institutions. That principle must be interpreted as the limitation, balancing, co-operation and interrelation of the real factors of the state power. It is not accidental that the majority of the countries emphasize by the Constitution ensuring the real separation and co-operation between powers and the fixing of that conceptual approach in the Basic law rather than the principle. For example, in Article 10 of the Constitution of the Russian Federation it is defined: "State power in the Russian Federation shall be exercised on the basis of the separation of the legislative, executive and judiciary branches. The bodies of legislative, executive and judiciary powers shall be independent." Moreover, in the Constitutions of many countries the emphasis is also put on the interdependence of the powers (Portugal, Article 114), co-operation (Moldova - 6), mutually agreed activities and co-operation (Kirgizstan- 7), balance (Poland - 10), balanced power (Estonia - 4) etc. Such multifarious approaches are determined also by various concepts of the theoretical interpretation and practical application of the criteria of the separation of powers and those important constitutional principles.

In the opinion of many theoretical experts of modern constitutional law (particularly, German statehood expert K. Hesse) the main characteristics of that principle are the regulation and discipline of the joint activities undertaken by people, the identification of the separate branches of power, the determination and limitation of their competence, the regulation of the common work, the balancing of the competence of the state bodies and as a result the integrity of the limited state power.[18] The thing is that the circumstance of the separation of powers is not absolutized. This principle assumes also the cooperation and balance between the various branches of the integrated power endowed with functionally distinguished and independently implemented authorities. In this respect the Constitution attempts to define the limitations of the power, create system of correlation between the powers, "forced" consensus for actions (approval of the Government plan by the Parliament, the right of the President to veto, the right to overrule the veto of the President by the Parliament, the right of the President to release the parliament, the right of the parliament to declare no confidence in the Government, etc.). In its turn, a critical condition for the preservation of the balance of power is the existence of an effective system for the revelation, evaluation and restoration of the balance of the constitutional authorities of the state power through the constitutional jurisdiction.

[18] See, K. Hesse, *Basics of Constitutional Law* GFR. Ì., 1981, p. 237

By one other approach (for example, according to the English political scientist M. Vile), the matter is not limited to the formal-legal study of the interrelationships of the legislative, executive and judicial bodies, rather it is viewed in the context of the interaction of the whole legal, social and political system in terms of the establishment of the "balance " between the state and society.[19]

In general terms, one may state that, at present, two models for the application of the principle under consideration have been established in the international constitutional practice: "flexible" and "coarse" separation of powers, depending on the nature of the system of state power. The first of them is based on John Locke's ideas on the interaction between the powers with legislative power supremacy, and the second one derives from Charles Montesquieu's considerations on the balance of powers with the considerably clear-cut separation between them. The European constitutional and political experience is relying on both of the models, while the rather classical example of the second model may be found in the USA.

Each of the mentioned models functions under certain conditions. Those conditions are: the society's political culture, legal traditions and thinking, psychology, level of legal awareness and the development trends of the various branches of power, the dialectics of their functional and structural developments etc.

One of the marked tendencies of the recent decades in separate countries is the relative strengthening of the executive power. That process in Britain is characterized as a transition from the "system of cabinet governance" to the "system of the Prime-Minister's governance", a fact which is particularly characteristic for contemporary Great Britain[20].

In Britain, the distortion of the balance between the legislative and executive powers is stated in many studies.[21] At the same time, the dominant role of the Government towards the Parliament does not evidence a refusal of parliamentarism. The Parliament retains the functions of overseeing, adjusting and ratifying the Government policy. The political responsibility of the Government before the parliament is retained.

The strengthening of the vertical function of the executive power is noticeable also in the constitutional practice of non-parliamentary or monarchical countries. The gradual expansion of the nature and scope of Presidential authorities in the USA is viewed by American constitutional law and political science as one of the main characteristic traits of American constitutional practice and the Constitution itself, when the process of expansion of Presidential authorities is carried out without constitutional amendments. A number of American scholars certify that the expansion of that power may endanger freedom and democracy.[22]

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[19] See Vile M. G. *Constitutionalism and Separation of Powers.* Oxford, 1967, p. 1-10.

[20] See Rush M. *Parliamentary government in Britain*. N. Y., 1981. The Political System of Great Britain, pp. 111, 147-153.

[21] See, e.g. Beloff M., Peel G. *The Government of the United Kingdom. Political authority in a changing society*. L., 1980, 1981:

A. Sampson, *The New Anatomy of Britain*, M., 1975.

[22] See Cass Sunstein. *Changing Constitutional Powers of the American President.*

Noteworthy are also other trends in the West-European countries. For example, Finland, as a result of the 1992-95 constitutional reforms, made a transition from the semi-presidential system to the parliamentary form of republican government. At the same time, serious approaches have emerged in Italy towards the opposite process, i.e., a transition from a parliamentary system to a semi-presidential republic.

It is obvious that such trends are determined not only by the multifarious interpretation of the principle of the separation of the powers, but also and moreover, by the problems faced by the state power system of the given country. However, regardless of which model of the state system has been chosen, whether presidential, semi-presidential, parliamentary or other, any way the general provision is that the separation of powers and the ensuring of their harmonized interaction is an unavoidable necessity, and that must be carried out within the scopes of the unreserved preservation and constitutional guarantees of the fundamental principles of democracy and the supremacy of right. In their turn, the clear-cut separation of powers by the Constitution, the dynamic balance and the guaranteed protection of the latter is the most important prerequisite for the development and acceleration of democracy.

Naturally, in this particular matter, for the adjustment of the conceptual approaches, the study of the international practice of constitutional amendments of various countries also acquires extreme importance. From the study of the recent 20 years of constitutional amendments and constitutional laws of Austria, USA, Belgium, Germany, Denmark, Spain, Italy, Greece, Portugal, France, Finland and a number of other countries, as well as the new constitutions of many East-European and former USSR countries (Poland, Slovenia, Czech Republic, Slovakia, Bulgaria, Russian Federation, Lithuania, Estonia, Georgia, Kirgizstan etc.) it became clear, that there are a number of steady trends regarding the subject matter under examination:

1. A universal common desire on the issues of the gradual limitation of the power, the dispersion of force (political, administrative, economic) and the broadening of the possibilities for self-government and strengthening of guarantees is noticeable.

2. The functional authorities of the branches of power are made more precise, they are harmonized with the functions of the given branch of power, and the guarantees for the independent possession of these authorities are strengthened.

3. The checking and restraining authorities are made more precise and strengthened.

4. The guarantees for intra-constitutional stability are strengthened.

5. The interaction of the powers is to a greater extent anchored on the principle of cooperation and on solutions ensuring dynamic balance.

6. The legal system for the restoration, evaluation and recovery of the distortions in the constitutional guarantees of human rights and the constitutional balance of the authorities of powers is strengthened.

EECR, Vd 2, N4. Fall 1993, Vol 3. N1 Winter, 1994, p. 99.

7. The active interaction of the branches of power in the normative–juridical activities based on the principle of the supremacy of right.

Alongside with the mentioned general trends also of importance are the issues of the development of the institutions of the branches of power, the clarification of their functional role and endowing them with necessary and sufficient authorities.

Given also the exceptionally important role of the stable power in transitional regimes, one may undoubtedly accept that these mentioned general trends are extremely actual in terms of the conceptual approaches pertaining to the constitutional reforms of our country, and new solutions may be sought in this context.

CONCEPTUAL APPROACHES IN THE ISSUE OF STRENGTHENING THE CONSTITUTIONAL GUARANTEES FOR LOCAL SELF-GOVERNMENT

In international constitutional practice, a special importance is given to the issue of fixing the constitutional principles of and ensuring the guarantee for local self-government, as one of the most important grounds of a democratic society. As a rule, they are presented in a separate section and are clearly distinguished from state government (e.g., Constitution of the Russian Federation, Chapter 8, Estonia-Chapter 14, Ukraine-section 11, Slovenia –section 5, Bulgaria-Chapter 7, Lithuania-Chapter 10, Poland- section , etc.).

It also has methodologically important significance when in the fundamentals of the constitutional order of any country's Basic law a provision is fixed about the recognition and guarantee of local-self-government by the state (e.g., Article 12 of the Constitution of the Russian Federation, Article 7 of the Constitution of Ukraine, Article 9 of the Constitution of Slovenia etc.).

The European Charter of Local Self-Government adopted on October 15, 1985 is based on the following fundamental approaches, according to which:

a) local self-government is an independent and effective means for the people's power,

b) it is an extremely important tool for the decentralization of power,

c) the principle of local self-government must be fixed by legislation and, within the limits of possibility, by the Constitution.

The same Charter characterizes local self-government as a right and ability of local self-government bodies based on their own responsibility and the local population's interests to resolve problems of community importance. Naturally, it is assumed that the authorities of the community may be its own or delegated, the procedure for the implementation and oversight over each of which must legislatively be clearly distinguished and defined. The objective here is to ensure the completeness, independence, full-value and uninterruptedness of local self-government.

One of the important guarantees for the independence of local self-government bodies is the clear stipulation by the Constitution of the functional and institutional interrelationships with other institutions of state power and the existence of a clear legal procedure for recovery of the distorted balance.

It is also necessary to clearly define Constitutionally the concept of the community as the main link of local self-government, its legal status, and the circumstances under which:

a) the community, while performing local self-government, shall be considered an individual branch of public power,

b) the community, as a link of local self-government, shall derive its sources from civil rather than political society,

c) the community interrelationships with the state power shall be built on the basis of the principle of co-operation.

From the above mentioned obviously derives one of the key directions of the reforms in Chapter 7 of the RA acting Constitution, according to which it is necessary to clearly distinguish between the local self-government and regional administration functionally, institutionally, and with regard to the establishment and implementation of their authorities. The latter is a function of state governance and should be regulated under the relevant sections of Constitution.

It is also necessary to ensure consistency in the constitutional approach. That is particularly lacking in the case of Yerevan city. The Republic of Armenia's local self-government is recognised only on the level of settlements with the rejection of that on the regional level. However, according to the previous conceptual item an exception has been made for the city of Yerevan, which has hindered the creation of a uniform framework for the local self-government on the level of settlements. The new conceptual approach is that local self-government is carried out in all the communities, however, they may have various delegated authorities. At the same time, the formation of the local self-government bodies in all the communities must be carried out through a uniform procedure and on the same principles. Consequently, without the formation of local self-government elected bodies and an independent budget in the city of Yerevan it is impossible to guarantee a complete self-government, and naturally, the law shall provide for the specific circumstances, as well as the status and the specifications of the self-government on the level of district communities.

There is also a necessity to clarify the system of the bodies that implement the right to local self-government of the community, the main directions of activity of the representative body of local self-government and the legal status of its acts.

A clear and consistent approach is also required for the basic issue of material guarantees for local self-government. First, the institution of the property of local self-government must have a specified legal status. In addition to that, Article 9 of the above-mentioned European Charter defines that "Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers." Besides, "local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law."

It is also extremely important that the state benefits provided to the local self-government bodies, to the extent possible, must not be foreseen for the funding of specific projects. The state benefits must not endanger the basic freedom of the selection of policy by the local self-government bodies within the area of their own jurisdiction.

As has been mentioned, when drafting the conceptual approaches about the local self-government, it is exceptionally important, on the one hand, the clear identification of the interrelationships ensuring the independence of local self-government, and the guarantee of the lawfulness of local self-government, on the other hand. Article 8 of the European Charter of Local Self-Government considers administrative oversight over the activities of local self-government bodies possible. Such oversight is mandatory, so that local self-government bodies do not come out of the framework of the authorities outlined for them by law and act in harmony within the state. The problem here is that local self-government is independent of state power, but not from the state. However, the above mentioned Article of the European Charter defines such limits of oversight, which will prevent the abuse of the latter and the impact of that on the independence of local self-government. This matter may acquire its clear resolution by the fixing of a norm in the Constitution about the fact that the procedure for the state oversight over the implementation of the authorities delegated to the community shall be defined by law, and to ensure the lawfulness of the general activities of the community it is subject to oversight in the manner defined by law.

Article 10 of the European Charter of Local Self-Government also prescribes that the bodies of local self-government, while performing their authorities, have the right to operate and, within the frames defined by law, be consolidated with other bodies of self-government for the purpose of resolving problems of mutual interest. Hence, every state must recognize the right of local self-government bodies to form unions, for the purpose of ensuring the protection and progress of common interests, as well as the right of local self-government bodies to join international associations. All this ensures the possibility of uniting for the protection and development of common interests, the creation of larger communities. However, in some cases such a consolidation is also required by the general interest of the state, which must not pressure, but which the community interests should be harmonized.

This frame of issues, which directly relates to the interrelationships between state power and local self-government, is again clearly regulated under the acting Constitution.

With regard to the strengthening of the constitutional guarantees for local self-government an especially important factor is turning local self-government bodies into a subject of constitutional justice and the existence of a system of judicial constitutional oversight for the adjudication of disputes deriving from the problem of the constitutional authorities relating to the bodies of the state power and local self-government. At present, such systems effectively operate in Austria, Czech Republic, Germany, Hungary, Italy, Russian Federation, Slovenia, Spain and in more than 35 other countries.

RECOMMENDATIONS AND RATIONALE FOR CONSTITUTIONAL REFORMS

Given the mentioned conceptual approaches the following main amendments and supplements are required to be made in the RA Constitution.

CHAPTER 1. The Foundations of Constitutional Order[2]

Article 1. The Republic of Armenia is a sovereign, democratic state, based on social justice and rule of law.

Article 2. In the Republic of Armenia power lies with the people. The people exercise their power through free elections and referenda, as well as through state and local self-governing bodies and public officials as provided by the Constitution. The usurpation of power by any organization or individual constitutes a crime.

Article 3. The elections of the President, the National Assembly and local self-governing bodies of the Republic of Armenia, as well as referenda, are held based on the right to universal, equal and direct suffrage by secret ballot.

Article 4.

The Republic of Armenia recognizes the fundamental human rights and freedoms as an inalienable and ultimate value. In the exercise of power the people and the state shall be limited by those rights stipulated by the Constitution , as a directly functioning right.[3]

~~The state guarantees the protection of human rights and freedoms based on the Constitution and the laws, in accordance with the principles and norms of international law.~~[4]

Article 5. State power shall be exercised in accordance with the Constitution and the laws based on the principle of the separation *and balancing* of the legislative, executive and judicial powers.

State *and local self-government* bodies and public officials are competent to perform only such acts, for which they are authorized by legislation.

Article 6. The ~~supremacy of the law~~ *supremacy of right and the rule of law* shall be guaranteed in the Republic of Armenia.

The Constitution of the Republic has supreme juridical force, and its norms are applicable directly~~, *unless otherwise provided by the Constitution.*~~

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[2] *Chapters 1-7 of the Constitution have been edited with a new wording, taking into consideration:*

a) *a) the recommendations made by the Constitutional Reforms Commission under the RA President,*

b) *b) the recommendations made during the discussions held with the experts of the Venice Commission of the Council of Europe on November 16-17 in Yerevan, on February 13-14 in Paris and on June 5-6, 2001 in Strasburg*

c) *c) the requirements of the Universal Declaration of Human Rights, European Convention for the Protection of Human Rights and Fundamental Freedoms, the 1966 December 16 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights and universal norms fixed in other documents on human rights,*

d) *d) the experience of the international constitutional practice,*

e) *e) the conclusions of various experts (particularly, those of Professors H.Schwartz, Otto Luchterhandt, W.Shults, R.Rubell, members of the Venice Commission Mr. M.Hertzog and Mr. H. Torfason).*

[3] *Supplements and amendments are presented in such an underlined italic shift.*

[4] *The provisions presented in this gray shade have been either deleted or moved (in this case it has been moved to Article 14).*

~~Laws found to contradict the Constitution as well as other legal acts found to contradict the Constitution and the laws shall have no juridical force.~~

Laws of the Republic of Armenia shall comply with the Constitution. Other normative and individual legal acts shall be consistent with the Constitution, Laws and international treaties ratified by the Republic of Armenia.

~~Laws shall be applied only after official publication~~. *Laws and other normative legal acts that contain universally mandatory rules of conduct shall take effect only after official publication.* ~~Unpublished legal acts pertaining to human rights, freedoms and duties shall have no juridical force.~~

International treaties shall take effect for the Republic of Armenia *only after they have been ratified or approved.* ~~International treaties signed on behalf of the Republic of Armenia shall be applied only after ratification.~~ International treaties of the Republic *of Armenia* ~~that have been ratified~~ are a constituent part of the legal system of the Republic *of Armenia*. If other norms are provided in ~~these treaties~~ *ratified international treaties* other than those provided by the laws, then the norms provided in the treaty shall prevail.

International treaties that contradict the Constitution may be ratified only after making a corresponding amendment to the Constitution.

The procedure for concluding international treaties shall be defined by law.

Article 7. The ~~multiparty system~~ *ideological pluralism and the multipartyism* ~~*system*~~ is recognized in the Republic of Armenia.

Parties are formed freely and promote the formulation and expression of the political will of the people. Their activities may not contravene the Constitution and the laws, nor may their ~~structure and~~ practice contravene the principles of democracy. Parties shall ensure the openness of their financial activities.

7.1 The church in the Republic of Armenia shall be separate from the state. The Republic of Armenia recognizes the historically exceptional role of the Armenian ~~national~~ Apostolic Church in the spiritual life of the Armenian people, in the work of developing national culture and ~~preserving the nation~~ preserving national identity. ~~At the same time~~ The freedom of activities of all the religious organisations operating in the manner defined by law shall be guaranteed in the Republic of Armenia.

7.2 The armed forces of the Republic of Armenia are called upon to ensure the security, defence and territorial integrity of the Republic of Armenia, the inviolability of its borders. The armed forces shall maintain neutrality in political matters and shall remain under civil supervision.

Article 8. The right to property is recognized and protected in the Republic of Armenia.

~~The owner of property may dispose of, use and manage the property at his or her discretion, *the results of his/her intellectual property.* The right to property may not be exercised so as to cause damage to the environment or infringe on the rights and lawful interests of other persons, society or the state.~~

~~The state shall guarantee the free development and equal legal protection of all forms of property, the freedom of economic activity and free economic competition.~~

Economic freedom, free economic competition based on the principles of market economic relationships are guaranteed in the Republic of Armenia.

Abuse of monopoly status, illegal restriction of competition and bad faith competition in the market are prohibited.

In the interests of the state and society, the possible forms of monopoly and their permissible limits may be defined by law.

Article 9. The foreign policy of the Republic of Armenia shall be conducted in accordance with the norms of international law, with the aim of establishing good neighborly and mutually beneficial relations with all states.

Article 10. The state shall ensure the protection and reproduction of the environment and the rational utilization of natural resources.

Article 11. Historical and cultural monuments and other cultural values are under the care and protection of the state. *The state shall contribute to the free access to the national and world cultural heritage.*

Within the framework of principles and norms of international law, the Republic of Armenia shall promote the protection of Armenian historical and cultural values located in other countries, and shall support the development of Armenian educational and cultural life.

Article 11.1 The marzes (provinces) and communities shall be the administrative-territorial units of the Republic of Armenia.

The names and borders of the administrative-territorial units shall be defined by law.

Article 11.2 The Republic of Armenia shall recognize and guarantee the local self-governance ~~as an independent democratic system of public self-governance.~~

Article 11.3 The procedure for the acquisition and termination of citizenship of the Republic of Armenia shall be defined by law. Armenians by ethnicity shall acquire citizenship of the Republic of Armenia through a simplified procedure. ~~A citizen of the Republic of Armenia may not be a citizen of another state simultaneously.~~

No person may be deprived of citizenship of the Republic of Armenia, or the right to change citizenship.

A citizen of the Republic of Armenia may not be handed over to a foreign state, except for the cases prescribed by international treaties of the Republic of Armenia. The decision on the handing over may be appealed to the court.

The citizens of the Republic of Armenia shall be under the protection of the Republic of Armenia within the territory of the Republic of Armenia and beyond its borders.

Article 12. The state language of the Republic of Armenia is Armenian.

Article 13. The flag of the Republic of Armenia is tricolor made of three horizontal and equal strips of red, blue and orange. The coat of arms of the Republic of Armenia depicts, in the center on a shield, Mount Ararat with Noah's ark and the coats of arms of the four kingdoms of historical Armenia. The shield is supported by a lion and an eagle while a sword, a branch, a sheaf, a chain and a ribbon are portrayed under the shield. The national anthem of the Republic of Armenia is the "Our Fatherland." The capital of the Republic of Armenia is Yerevan.

CHAPTER 2. Fundamental Human and Civil Rights and Freedoms

~~Article 14~~[6].

Article ~~15~~ 14. The natural and inalienable dignity of the human being, as an indissoluble basis of his freedoms and rights, shall be respected and protected by the state.

The Republic of Armenia shall secure the protection of the human and civil rights and freedoms fixed by the Constitution, in accordance with the principles and norms of international law~~, on the basis of the Constitution and the laws.~~

Article 14.1. ~~Citizens~~ *People,* regardless of race, sex, language, creed, political or other persuasion, *national or* social origin, wealth or other status, are *legally equal,* have all

[6] *See Chapter 1, Article 11.3*

the rights, freedoms and obligations defined by the Constitution and laws *and shall be given equal protection of the law without discrimination.*

~~Article 16. All are equal before the law *and the court* and shall be given equal protection of the law without discrimination.~~[7]

Article ~~17~~ 15. Everyone has the right to life.

~~Until such time as it is abolished, the death penalty may be prescribed by law for particular capital crimes, as an exceptional punishment.~~

The death penalty is prohibited in the Republic of Armenia, except in time of war or in the event of an unavoidable threat of war, on the basis of law.

Article ~~18~~ 16. Everyone has the right to freedom and immunity. ~~No one may be arrested or searched except as prescribed by law. A person may be detained only by court order and in accordance with legally prescribed procedures.~~

~~*Everyone has the right to apply to a superior court with a request to check the legality and justified nature of his/her detention.*~~

~~*Everyone has the right, pursuant to the bases and procedure defined by law, to indemnification of damage caused by his/her illegal arrest or detention.*~~

No one may be deprived of freedom otherwise than in the following cases and by the procedure defined by law:

1) *1) when a person is convicted to deprivation of freedom by a competent court,*
2) *2) for not executing the lawful verdict of the court or for the purpose of ensuring the performance of any obligation provided by law,*
3) *3) in the event there is a substantiated suspicion of having committed a crime or if it is necessary to prevent the commission of a crime by him or his flight after its commission,*
4) *4) to supervise the education of a minor,*
5) *5) to prevent the spread of infectious diseases, as well as other dangers to the public,*
6) *6) to prevent the illegal entry of a person into the country, to deport him or to hand him over to another state.*

Every arrested person shall, in a language understandable to him, be immediately informed about the reasons for his arrest and any charge presented against him.

In accordance with the provisions of sub-point (3) of this Article every person arrested ~~or detained~~ shall, within 48 hours, be subject to be brought to the court, which shall, not later than within 24 hours, make a decision on his detention or choosing other precautionary measures. The free release of the person may be conditioned upon guarantees to be present at the trial.

Every person has the right to appeal the legality and justification of his/her detention through judicial procedure.

Every person has the right to compensation on the grounds and by the procedure defined by law against the damage caused for having been kept under illegal arrest or detention.

~~*Every person who is deprived of freedom because of detention has the right to appeal the legality of his detention.*~~

~~*Every person who, in violation of the provisions of this Article, has become a victim of arrest or detention, has the right to compensation endowed with the power of claim.*~~

No one may be arrested, put into detention or be deprived of freedom solely for the non-performance of his contractual obligations.

A person may not be searched otherwise than according to the procedure defined by law.

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[7] *See Article 14.1 with new wording.*

Article 19 17. No one may be subjected to torture and to treatment and punishment that are cruel or degrading to the individual's dignity. *All persons that are arrested, detained or deprived of freedom have the right to humane treatment and respect towards their dignity.*

No one may be subjected to *scientific, including* medical experimentation without his or her consent.

Article 38 18. Everyone has the right to defend his or her rights and freedoms by all means not forbidden by law. *If the constitutional rights and freedoms of a person have been violated, then he has the right to effective means of legal protection before state bodies.*

~~Everyone has the right to defend in court the rights and freedoms fixed in the Constitution and the laws.~~

Everyone has the right to receive, on the grounds and in the manner defined by law, the support of the Defender of Human Rights for the protection of his rights and freedoms.

Everyone has the right in accordance with the international treaties of the Republic of Armenia to apply to interstate bodies of protection of human rights and freedoms for the protection of his rights and freedoms, if all the intrastate legal protection means have been exhausted.

Article 39 19. Everyone has the right to restore any rights which may have been violated, as well as to a public hearing by an independent and impartial court *within a reasonable period*, under the equal protection of the law and fulfilling all the demands of justice, to clear himself or herself of any accusations. The presence of the news media and representatives of the public at a judicial hearing may be prohibited by law wholly or in part, for the purpose of safeguarding public morality, the social order, national security, the safety of the parties, and the interests of justice, *however, the final judicial acts are subject to promulgation in an open-door court session.*

Article 40 20. Everyone has the right to receive legal assistance. ~~Legal assistance is provided free of charge *at the expense of state resources* in cases prescribed by law~~. Proceeding from the interests of justice, legal assistance is provided free of charge to an accused not having sufficient resources to pay for the services of a defender, as well as in other cases prescribed by law.

Everyone has the right, from the moment he or she is arrested, detained or charged, *to be informed about his or her rights, as well as the causes for arrest or detention, and* to have a defender.

Every convicted person has the right to have his or her conviction reviewed by a higher court, in a manner prescribed by law. Every convicted person has the right to request a pardon or mitigation of any given punishment.

Compensation for the harm caused to the wronged party shall be provided in a manner prescribed by law.

Article 41 21. A person accused of a crime shall be presumed innocent until proven guilty in a manner prescribed by law, and by a court sentence properly entered into force.

The defendant does not have the burden to prove his or her innocence. Accusations not proven beyond a doubt shall be resolved in favor of the defendant.

Article 42 22. A person shall not be compelled to be a witness against himself or herself, or be a witness against his or her spouse or against a close relative. The law may foresee other circumstances relieving a person from the obligation to testify.

Illegally obtained evidence shall not be used.

A punishment may not exceed that which could have been meted by the law in effect when the crime was committed.

A person may not be considered guilty of a crime if at the time of its commission the act was not legally considered a crime.

A law eliminating the punishability of an act ~~and~~ or mitigating the punishment has retroactive effect.

A law prescribing or increasing liability does not have retroactive effect.

No one can be convicted a second time for the same act.

Article ~~20~~ 23. ~~Everyone has the right to defend his or her private and family life from unlawful interference and defend his or her honor and reputation from attack.~~ *Everyone has the right for his personal and family life to be respected.*

~~The gathering, maintenance, use and dissemination of illegally obtained information about a person's private and family life are prohibited.~~

The bodies of state power cannot gather, keep, and provide other information about a person than prescribed by law.

Each citizen, except in cases prescribed by law, has the right to become acquainted with official information and documents about him and can demand their correction or elimination, if they are not reliable or have been obtained by illegal means.

Everyone has the right to confidentiality in his or her correspondence, telephone conversations, mail, telegraph and other communications, which may be restricted only *in the manner prescribed by law*, by court decision*, and, in urgent cases prescribed by law, prior to the court order.*

Article ~~21~~ 24. Everyone has the right to immunity of his or her own dwelling. It is prohibited to enter a person's dwelling against his or her own will except under cases prescribed by law.

A dwelling may be searched only in the manner prescribed by law by court decision *and, in ~~individual~~ urgent cases provided by law, prior to the court decision.*

Article ~~22~~ 25. Every ~~citizen~~ *person* has the right to freedom of movement and residence within the territory of the Republic.

Everyone has the right to leave the Republic.

Everyone residing in the Republic of Armenia legally and every citizen has the right to return to the Republic.

Article ~~23~~ 26. Everyone has the right to freedom of thought, conscience, and creed. The freedom to exercise one's religion and beliefs may be restricted only by law on the grounds prescribed in *Articles 43 and 44 of* the Constitution.

Article ~~24~~ 27. Everyone has the right *to freely assert* his or her opinion. It is prohibited to force a person to retract or change his or her opinion.

Everyone has the right to freedom of speech, including the freedom to seek, receive and disseminate information and ideas through any medium of information, regardless of state borders.

The freedom of the media and other means of information is guaranteed.

Article ~~24.1~~ 27.1 Everyone has the right to submit applications or proposals to competent state and local self-government bodies with respect to the protection of his/her individual or social interests and to receive adequate answers.

Article ~~25~~ 28. Everyone has the right to form associations with other persons, including the right to form and join trade unions.

Every citizen has the right to form political parties with other citizens and join such parties.

The rights to create and become members of parties and trade unions may, in the manner defined by law, be limited for individual groups of servants of the armed forces and public servants.

~~These rights may, *in the manner provided by law,* be restricted *for persons* in the armed forces *and state service*.~~

No one shall be forced to join a political party or association.

The activities of associations, including parties, may be suspended or prohibited only in cases prescribed by law, by ~~court decision.~~ court procedure.

Article ~~26~~ 29. ~~Citizens have~~ *Everyone* has the right to hold peaceful and unarmed meetings, rallies, demonstrations and processions.

This Article does not prohibit prescribing limitations by law on the exercise of those rights by persons in the armed forces and state service.

Article ~~27~~ 30. Citizens *of the Republic of Armenia who have attained the age of eighteen years* have the right to participate in the government of the state directly or through their freely elected representatives.

The law may provide for suffrage in elections of local self-government bodies for persons who are not citizens of the Republic of Armenia.

Citizens found to be incompetent by a court ruling, or duly convicted of a crime and serving a sentence may not vote or be elected. *The law may define additional limitations on suffrage in elections of local self-government bodies.*

Article 30.1 Citizens have the right to be accepted into state service on general terms stipulated by law.

The principles and the procedure for organization of state service shall be defined by law.

Article ~~28~~ 31. Everyone has the right to private property and inheritance.

The owner, at his/her discretion, may possess, use and dispose of the property belonging to him, the results of his intellectual activity. No one may be deprived of property, except ~~by~~ the court, by court procedure in cases prescribed by law.

~~Foreign citizens and persons without citizenship shall not have the right to own land, except in cases prescribed by law.~~

The law may provide limitations on land ownership for foreign citizens and persons without citizenship.

Private property may be alienated for the needs of society and the state only under exceptional circumstances, on the basis of law, and with prior equivalent compensation.

The implementation of the right to property shall not cause harm to the environment, violate other persons', the public's and the state's rights and legal interests.

Article ~~29~~ 32. Every ~~citizen~~ *one* has the right to freedom of choice in employment.

Everyone has the right to wages that are fair and that are no lower than the minimum established by *law* ~~the state~~, *as well as* to working conditions which meet sanitary and safety requirements.

Everyone has the right to get involved in entrepreneurial activity not forbidden by law. The limitations relating to the execution of this right shall be defined by law.

~~Citizens~~ *Employees* have the right to strike in the defense of their economic, social and work interests. The procedures and restrictions applicable to the exercise of this right shall be prescribed by law.

The state carries out effective employment and unemployment reduction programs. The hiring of children under 16 on a permanent job shall be prohibited. The procedure and conditions for their hiring to a temporary job shall be defined by law.

Compulsory labor is forbidden, except in cases prescribed by law.

Article ~~30~~ 33. Everyone has the right to rest.

The maximum work period, rest days, and minimum duration of annual paid vacation shall be prescribed by law.

Article 33.1 Everyone has the right to live in an environment favourable for his or her health and well-being and is obliged personally as well as together with others to preserve and improve the environment.

The state shall conduct policies ensuring environmental security for the present and future generations.

Public officials shall be held responsible for concealing environmental information ~~and~~ or refusing to provide it.

Article ~~31~~ 34. Every ~~citizen~~ *one* has the right to an adequate standard of living for himself or herself and his or her family, including to adequate housing, as well as to the improvement of living conditions. The state shall undertake necessary measures to enable the exercise of these rights *of citizens*.

Article ~~32~~ 35. The family is the natural and fundamental cell of society. Family, motherhood, and childhood are placed under the care and protection of society and the state.

Women and men *of marital age have the right to marry and create a family*, they enjoy equal rights when marrying, during marriage, and in divorcing.

All the legal relationships related to marriage and family are regulated by law.

Article 36. Parents shall have the right to and shall carry an obligation to care for the upbringing, health, full and harmonious development and education of their children.

Depriving of parental rights or limiting thereof may be implemented only by a court decision in a procedure defined by law.

Adult capable persons are obliged to take care of their incapable and needy parents.

Article ~~33~~ 37. Every ~~citizen~~ *one* has the right to social security during old age, disability, sickness, loss of an income earner, unemployment and in other cases *and procedure* prescribed by law.

Article ~~34~~ 38. Everyone has the right to the preservation of health. The provision of medical care and services shall be prescribed by law. The state shall put into effect health care protection programs for the population and promote the development of sports and physical education.

Article ~~35~~ 39. Every ~~citizen~~ *one* has the right to education.

Basic general education is mandatory ~~for citizens~~ in the Republic of Armenia, with the exception of cases provided by law. The law may define a higher level of mandatory education.

Secondary education shall be free of charge in state *and community* educational institutions. ~~Every citizen is entitled to receive higher education and other professional education free of charge and on a competitive basis, in state educational institutions. The establishment and operation of private educational institutions shall be prescribed by law.~~

In the cases and by the procedure defined by law the state shall provide financial and other assistance to educational institutions implementing professional educational programs and to students therein.

The limits and the principles of the autonomy of higher educational institutions shall be determined by law. Higher educational institutions may not be for profit.

The procedure for the creation and operation of educational institutions shall be defined by law.

Article ~~36~~ 40. Everyone has the right to freedom of literary, artistic, scientific and technical creation, to benefit from the achievements of scientific progress and to participate in the cultural life of society.

Intellectual property shall be protected by law.

Article ~~37~~ 41. *Persons* ~~Citizens~~ belonging to national minorities have the right to the preservation of their traditions, *to freely express, preserve and develop their ethnic, linguistic, cultural and religious identity* ~~and the development of their language and culture.~~

Article ~~43~~ 42. ~~The rights and freedoms set forth in the Constitution are not exhaustive and shall not be construed to exclude other universally accepted human and civil rights and freedoms.~~

The rights and freedoms set forth in the Constitution ~~are not exhaustive and~~ do not exclude other fundamental human and civil rights and freedoms stipulated by law or by the international treaties of the Republic of Armenia.

Everyone is free to do what is not prohibited by law and does not violate the rights and freedoms of others. No one may bear obligations that are not defined by law or on the basis of law.

Laws and other normative acts that worsen the legal status of an individual~~s~~ shall not have retroactive effect.

Legal acts that improve the legal status of an individual~~s~~, remove or mitigate ~~their~~ his/her liability shall have retroactive effect, if that is provided by those acts.

Article ~~44~~ 43. The fundamental human and civil rights and freedoms established under Articles ~~23–27~~ *23-30 and part four of Article 32* of the Constitution may be restricted only by law, if necessary for ~~state and public security~~ *state security ~~and public tranquility~~*, the preservation of public order, *the prevention of crime*, the protection of public health and morality, the *constitutional* rights, freedoms, honor and reputation of others *in democratic society*. ~~*The limitations of human rights and freedoms may not exceed the scopes defined by the effective norms of international law.*~~

Article ~~45~~ 44. Some human and civil rights and freedoms, except for those provided under Articles ~~17, 19, 20, 39, 41 – 43~~ *15, 17-22, 26 and 42* of the Constitution, *within the scopes of international obligations assumed in respect of derogating from the obligations in emergency situations*, may *to the extent equivalent to the situation* be temporarily limited in a manner prescribed by law, in the event of martial law, or in cases prescribed under paragraph 14 of Article 55 of the Constitution.

Article 44.1. The limitations of human and civil rights and freedoms may not exceed the scopes defined by the effective norms of international law or shall not violate the essence of freedoms and rights.

Article ~~46~~ 45. Everyone is obliged to pay taxes, duties, and make other mandatory payments in the amounts and manner prescribed by law.

Article ~~47~~ 46. Every citizen is obliged to participate in the defense of the Republic of Armenia in the manner prescribed by law.

Article ~~48~~ 47. Everyone is obliged to uphold the Constitution and the laws, and respect the rights, freedoms and dignity of others.

The exercise of rights and freedoms for the purpose of the violent overthrow of the Constitutional order, for the instigation of national, racial, or religious hatred or for the incitement to violence and war is forbidden.

Article 48. Legal persons are also endowed with fundamental human and civil rights and freedoms insofar as such rights and freedoms are applicable to them by their essence.

CHAPTER 3. The President of the Republic

Article 49. *The President of the Republic is the head of state.*

The President of the Republic of Armenia shall uphold the Constitution, and ensure the normal functioning of the legislative, executive and judicial authorities.

The President of the Republic shall be the guarantor of the independence, territorial integrity, security *and the succession of state power* of the Republic.

Article 50. The President of the Republic shall be elected by the citizens of the Republic of Armenia for a five year term of office.

Every person having attained the age of thirty five, having been a citizen of the Republic of Armenia for the preceding ten years, having permanently resided in the Republic for the preceding ten years, and having the right to vote is eligible for the Presidency.

The same person may not be elected for the post of the President of the Republic for more than two consecutive terms.

Article 5l. Elections for the post of President of the Republic shall be held fifty days prior to the expiration of the term of office of the President in office and in accordance with procedures set by the Constitution and the laws.

The candidate who received more than half of the *valid* votes ~~cast for the presidential candidates~~ shall be considered as having been elected President of the Republic. If the election involved more than two candidates and none received the necessary votes, a second round of elections shall be held on the fourteenth day following the first round of the election, at which time the two candidates having received the highest number of votes in the first round shall participate. The candidate who receives the highest number of votes during this second round shall be considered to have been elected.

In the event only one candidate is presented, the candidate shall be considered as having been elected if he or she has received more than half of the *valid* votes ~~cast~~.

If the Constitutional Court accepts for hearing a case on the results of the elections of the President of the Republic, it must make a decision within ten days following the recording of the receipt of the application, and the time-frames defined by this Article shall be calculated from the moment the decision of the court enters into effect.

If a President of the Republic is not elected, there shall be new elections on the fortieth day after the first round of elections.

The President of the Republic shall assume office on the day when the term of the previous President of the Republic expires.

A President of the Republic who shall be elected by new or extraordinary elections shall assume office within ten days of such elections.

Article 52. In the event that one of the presidential candidates faces insurmountable obstacles, the presidential elections shall be postponed by two weeks. If during this period the obstacles recognized as insurmountable are not removed, then *on the fortieth day after the expiry of the mentioned two-week period* ~~or in the event of the passing of one of the candidates prior to election day,~~ new elections shall be held.

~~These new elections shall be held on the fortieth day following the determination of these obstacles to be insurmountable.~~

In the event of the passing of one of the candidates prior to the election day new elections shall be held on the fortieth day.

Article 53. In the event of the resignation of the President of the Republic, his or her passing, incapacity to perform his or her functions, or removal from office in accordance with Article 57 of the Constitution, extraordinary presidential elections shall be held on the fortieth day following the vacancy of the office.

Article 54. The President of the Republic shall assume office *in a procedure defined by law* by pledging *the following* oath to the people during a special sitting of the National Assembly, *with the participation of the members of the Constitutional Court*: "*Assuming the office of the President of the Republic of Armenia I swear: to fulfill the requirements of the Constitution in an unreserved manner; to respect human and civil rights and fundamental freedoms; to ensure the independence, territorial integrity and security of the Republic to the glory of our fatherland and to the prosperity of our people."*

Article 55. The President of the Republic:

1) shall address the people and the National Assembly;

2) shall sign and promulgate, within twenty one days of receipt, laws passed by the National Assembly;

During this period, the President may remand a law to the National Assembly with objections and recommendations requesting new deliberations. ~~The President shall sign and publish the law within five days of the second passing of such law by the National Assembly:~~

The President of the Republic shall sign and promulgate within a period of five days a law that has again been adopted by the National Assembly or shall apply to the Constitutional Court with a request to obtain a conclusion as to its compliance with the Constitution. If the Constitutional Court issues a conclusion on the provisions of the law being in contradiction with the Constitution, the President of the Republic shall not sign the law.

3) may ~~dissolve the National Assembly~~ *reduce the term of the authorities of the National Assembly* and designate extraordinary elections *in the cases and by the procedure stipulated by the Constitution* after consulting with the President of the National Assembly and the Prime Minister. Extraordinary elections shall be held no sooner than thirty and no later than forty days after the ~~dissolution~~ *reduction of the term of the authorities* of the National Assembly[8].

~~The President may not dissolve the National Assembly during the last six months of his or her term of office.~~

~~4)~~ *In the manner prescribed by the Constitution shall appoint and dismiss the Prime Minister. Upon the recommendation of the Prime Minister shall appoint and dismiss the members of the Government.*

In the event of a vote of no confidence in the Government by the National Assembly, the resignation of the Prime Minister or the office of the Prime Minister remaining vacant, shall accept the resignation of the Government, shall appoint a Prime Minister and form the Government.

~~Shall appoint and remove the Prime Minister. The President shall appoint and remove the members of the Government upon the recommendation of the Prime Minister.~~

~~In the event that the National Assembly adopts a vote of no confidence against the Government, the President shall, within twenty days, accept the resignation of the Government, appoint a Prime Minister and form a Government.~~

5) shall make appointments to ~~civilian~~ *state office* positions in cases prescribed by law;

6) *shall establish and preside over a National Security Council,* may establish *other* advisory bodies;

7) shall represent the Republic of Armenia in international relations, conduct and oversee foreign policy, make international treaties, *submit international treaties to the ratification of the National Assembly and* sign ~~international treaties that are ratified by the National Assembly, ratify intergovernmental agreements~~ *their ratification instruments, approve or annul the international treaties that do not require ratification*;

8) shall appoint and recall the diplomatic representatives of the Republic of Armenia to foreign countries and international organizations, and receive the credentials and letters of recall of diplomatic representatives of foreign countries *and international organisations*;

9) shall appoint and remove the Prosecutor General, *shall appoint and remove the deputy Prosecutors General upon the recommendation of the Prosecutor General* ~~upon the recommendation of the Prime Minister.~~

10) shall appoint members ~~and the President~~ of the Constitutional Court.

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[8] *In the opinion of the Venice Commission experts the specific issues relating to the ~~dissolution~~ reduction of the authorities of the National Assembly shall be regulated in the chapter on the National Assembly.*

He may, on the basis of a determination by the Constitutional Court, remove from office any of his or her appointees to the Constitutional Court or agree *to involve him as an accused or initiate an administrative responsibility case against him through the judicial procedure* ~~the arrest of such a member of the Court, and through the judicial process authorize the initiation of administrative or criminal proceedings against that member;~~

~~11)~~ shall appoint, in accordance with the procedure provided in Article 95 of the Constitution, the president and judges of the Court of Cassation and its chambers, the courts of appeals, the courts of first instance, economic, ~~administrative~~ and other courts, ~~the deputy prosecutors general and prosecutors heading the organizational subdivisions of the office of the Prosecutor General; may remove from office any judge,~~ *agree to involve the judge as an accused in court, initiate an administrative responsibility case against him through the judicial procedure* ~~sanction the arrest of a judge and through the judicial process, authorize the initiation of administrative or criminal proceedings against a judge and remove the prosecutors that he or she has appointed.~~

12) is the *supreme* Commander in Chief of the armed forces, *shall coordinate the activities of the state bodies in the field of defense*, shall appoint *and remove* the staff of the highest command of the armed forces *and other troops*;

l3) shall decide on the use of the armed forces. In the event of an armed attack against or of an immediate danger to the Republic, or a declaration of war ~~by the National Assembly,~~ the President shall declare a state of martial law and may call for a general or partial mobilization. *In such a situation the armed forces and other troops of the Republic of Armenia are placed under the subordination of the operative management of the chief headquarters of the Ministry of Defense. In time of war the President of the Republic may appoint and dismiss the Commander in Chief of the armed forces.*

14) In the cases of *using the armed forces or* declaring martial law, ~~*the President of the Republic*~~ *a special sitting of the National Assembly shall be immediately convened by the force of law*, *which shall examine* ~~*the legal rationale for declaring martial law.*~~ *the issue of the correspondence of the measures undertaken with the situation. The legal regime of martial law shall be defined by law.*

15) in the event of an imminent danger to the constitutional order, and consulting with the President of the National Assembly and the Prime Minister, shall *declare an extraordinary situation,* take measures appropriate to the situation~~, and address the people on the subject making an address to the people *in advance*~~. *In this case,* ~~*the President of the Republic*~~ *a special sitting of the National Assembly shall be immediately convened by the force of law, which shall hear the issue of* ~~*the legal rationale and proportionality*~~ *the correspondence of the measures undertaken with the situation. The regime of the extraordinary situation shall be defined by law.*

16) ~~shall grant citizenship of the Republic of Armenia and resolve the issue of granting political asylum~~ *shall, by the procedure defined by law, resolve issues pertaining to granting citizenship of the Republic of Armenia and political asylum*;

17) shall award the orders and medals of the Republic of Armenia and grant the highest military and honorary titles and diplomatic and other titles;

18) may grant pardons to convicted individuals.

Article 56. The President of the Republic may issue orders and decrees which ~~shall be subject to execution throughout the Republic.~~

~~The orders and decrees of the President of the Republic may not contravene~~ *shall correspond to the* Constitution and the laws *of the Republic of Armenia.*

56.1 The President of the Republic is immune.

Article 57. The President of the Republic may be removed from office for state treason or other high crimes.

In order to request a conclusion on questions pertaining to the removal of the President of the Republic from office, the National Assembly shall appeal to the Constitutional Court by a resolution adopted by the majority of the total number of deputies.

A decision to remove the President of the Republic from office must be rendered by the National Assembly by a minimum two thirds majority vote of the total number of Deputies, based on the conclusion of the Constitutional Court.

If, by the conclusion of the Constitutional Court, the bases for removal of the President of the Republic from office are absent, the issue shall be removed from the National Assembly's discussion.

Article 58. ~~The resignation of the President of the Republic shall be accepted by the National Assembly~~ *The President of the Republic shall submit his or her resignation to the ~~at the sitting of the~~ National Assembly.* ~~*The National Assembly shall accept the resignation of the President of the Republic* by a majority vote of the total number of Deputies.~~ *In the event the resignation has been presented again, immediately after ten days, the resignation of the President of the Republic of Armenia shall be considered as accepted, and special elections shall be held within the periods and procedures prescribed by Constitution.*

Article 59. In the event of the serious illness of the President of the Republic or of insurmountable obstacles affecting the performance of his or her duties, *which make the continuous performance of his/her authorities impossible*, upon the recommendation of the Government and on the basis of a conclusion by the Constitutional Court, the National Assembly shall adopt a resolution on the incapacity of the President of the Republic to exercise his or her duties with a minimum two thirds majority vote of the total number of Deputies. *If by the conclusion of the Constitutional Court the bases for the incapacity of the President of the Republic to exercise his or her duties are absent, the Government may not apply to the National Assembly with such a proposal.*

Article 60. In the event that the office of the President of the Republic remains vacant and until a newly elected President assumes office the duties of the President of the Republic shall be performed by the President of the National Assembly, and if that is not possible, by the Prime Minister. *In the event the duties of the President of the Republic are not possible to be performed by the President of the National Assembly or the Prime Minister these shall be performed by the President of the Constitutional Court.* During this period it is prohibited to dissolve the National Assembly, call a referendum, and appoint or remove the Prime Minister and the Prosecutor General.

If the RA President cannot perform his/her duties temporarily, he/she shall officially inform the President of the National Assembly about that, who takes upon himself/herself the performance of the duties of the President of the Republic during that period except for the cases prescribed by clauses 2-6 and 8-12 of Article 55 of the Constitution.

Article 60.1 Elections of the President of the Republic shall not be held in conditions of martial law, and the President of the Republic shall continue the performance of his or her authorities ~~until~~. In this case, on the fortieth day after the termination of martial law, ~~after which~~ elections of the President of the Republic shall be held.

Article 61. *The President of the Republic shall set up his staff.* The compensation, servicing and security of the President of the Republic shall be prescribed by law.

CHAPTER 4. The ~~National Assembly~~ *Legislative power*

Article 62. Legislative power in the Republic of Armenia shall be vested in the National Assembly. In cases provided by Articles *57, 58,* 59, 66, *67,* 73, 74, *74.1*, *77,* 78, *80,* 81, 83, 84, *85.1,* 111, 112 of the Constitution, as well as for purposes of organizing its own

activities, the National Assembly shall adopt resolutions, which shall be signed and published by the President of the National Assembly.

The National Assembly may adopt addresses according to the procedure prescribed by its rules of procedure.

The powers of the National Assembly are defined by the Constitution.

~~The National Assembly shall operate in accordance with its rules of procedure.~~

The procedure for the activity of the National Assembly, the formation and activity of its bodies shall be defined by the Constitution and the rules of procedure of the National Assembly.

Article 63. The National Assembly shall have ~~one hundred and thirty one~~ *one hundred and one* Deputies.

The authority of the National Assembly shall expire in June of the fourth year following its election, on the opening day of the first session of the newly elected National Assembly, on which day the authority of the newly elected National Assembly shall begin.

The National Assembly may be dissolved in accordance with the Constitution.

~~A newly elected National Assembly may not be dissolved during a one year period following its election.~~

The National Assembly may not be dissolved during a state of martial law, or in the cases foreseen under paragraph 14 of Article 55 of the Constitution, or when the removal of the President of the Republic from office is being deliberated.

The authorities of the National Assembly shall be prolonged in time of martial law until the opening day of the first session of the newly elected National Assembly after the termination of martial law.

Article 64. Any person having attained the age of twenty five years, having been a citizen of the Republic of Armenia for the preceding five years, having permanently resided in the Republic for the preceding five years, and who has the right to vote, may be elected as a Deputy.

Article 65. A Deputy may not hold any other state office, *be in the bodies of local self-government, be engaged in entrepreneurial activities, as well as* engage in any other paid work, except for scientific, pedagogical and creative work.

A Deputy shall perform his or her authorities on a permanent basis.

The ~~compensation~~ *status and* guarantees for the activity of a Deputy shall be prescribed by *the Constitution and the* law.

Article 66. A Deputy shall not be bound by any compulsory mandate and shall be guided by his or her conscience and convictions.

A Deputy*, during and after the term of his or her parliamentary authorities,* may not be prosecuted or held liable for actions arising from his or her status, or for his or her opinions expressed in the National Assembly, provided these are not slanderous or defamatory.

A Deputy may not be ~~arrested and subjected through the judicial process to administrative or criminal~~ *involved as an accused or subjected to a suit for administrative* responsibility *through the judicial process* without the consent of the National Assembly.

A Deputy may not be arrested without the consent of the National Assembly except for cases when he or she was caught while committing a crime or immediately thereafter. In such a case the President of the National Assembly shall be immediately notified.

Article 67. The powers of a Deputy shall terminate upon the expiration of the term of the National Assembly, upon the dissolution of the National Assembly, upon violation of the provisions of the first part of Article 65 of the Constitution, upon loss of citizenship of the Republic of Armenia, for unfounded absences from half of the floor votes during a single

session upon being sentenced to imprisonment, when deemed incapacitated and upon his or her resignation.

The procedure for the termination of Deputy's powers shall be prescribed by the rules of procedure of the National Assembly.

Article 68. Regular elections to the National Assembly shall be held within sixty days prior to the expiration of the term of the current Assembly.

Procedures for elections to the National Assembly shall be prescribed by law.

The date of elections shall be fixed by decree of the President of the Republic.

The first session of a newly elected National Assembly shall convene on the ~~second~~ *third* Thursday following the election of at least two thirds of the total number of Deputies.

Until the election of the President of the National Assembly, its meetings shall be chaired by the Deputy who is most senior in age.

Article 69. The regular sessions of the National Assembly shall convene twice per year from the ~~second~~ *first* Monday of September to the ~~second~~ *third* Wednesday of December and from the ~~first~~ *third* Monday of ~~February~~ *January* to the ~~second~~ *first* Wednesday of ~~June~~ *July*.

The sittings of the National Assembly shall be open to the public. Closed door sittings may be convened by a resolution of the National Assembly.

Article 70. An extraordinary *sitting or* session of the National Assembly may be convened by the ~~President of the Republic~~ *President of the National Assembly*, at ~~initiative of the Government or of at least one third of the total number of Deputies.~~

~~Extraordinary sittings shall be conducted~~ with the agenda and timetable specified by the initiating party.

An extraordinary sitting or session of the National Assembly may be convened by the President of the Republic, defining the agenda.

Article 71. Laws and resolutions of the National Assembly shall be passed by the majority vote of the Deputies ~~present at a given sitting~~ *participating in the voting*, if more than half of the total number of Deputies participate in the voting, except for cases covered under *part three of Article 57*, Articles 58, 59, 72, 74, 84, 111 of the Constitution, and the fourth paragraph of Article 75, the first paragraph of Article 79, and Section 3 of Article 83 of the Constitution.

Article 72. The National Assembly shall deliberate on a priority basis any law which has been remanded by the President of the Republic.

Should the National Assembly decline to accept the recommendations and objections presented by the President of the Republic, it shall pass the remanded law, again with a majority vote of the total number of Deputies.

Article 73. There *may* ~~shall~~ be *not more than nine* ~~six~~ standing committees established in the National Assembly~~. Ad hoc committees may be established as necessary.~~

The standing committees are established for the preliminary consideration of draft *legislative acts* ~~draft legislation~~ and other proposals and for the submission of findings on such legislation and proposals to the National Assembly.

If needed ad hoc committees ~~are established~~ *may be established by a procedure defined under the procedural rules of the National Assembly,* for the preliminary consideration of particular draft laws or for the submission of findings and reports on specific events and facts to the National Assembly.

Article 74. Within twenty days ~~of the formation of a newly elected National Assembly or~~ of its own formation, the Government shall present its ~~program~~ *concept paper of the program* of its activity to the National Assembly for its approval, thus raising the question of a vote of confidence before the National Assembly.

A draft resolution expressing a vote of no confidence toward the Government may be proposed within twenty four hours of *the Government's* raising of the question of the vote of confidence by not less than one third of the total number of Deputies.

The proposal for a vote of no confidence shall be voted on no sooner than forty eight hours and no later than seventy two hours from its initial submission. The proposal must be passed by a majority vote of the total number of Deputies.

If a vote of no confidence toward the Government is not proposed, or such proposal is not passed, the Government's program shall be considered to have been approved by the National Assembly.

~~If a vote of no confidence is passed, the Prime Minister shall submit the resignation of the Government to the President of the Republic.~~

Article 74.1. If the National Assembly does not give a vote of confidence to the Government headed by the Prime Minister appointed upon the proposal of the President of the National Assembly or, in the event the President of the National Assembly does not present any candidacy, to the Government headed by the Prime Minister appointed by the President of the Republic, as well as if does not give a vote of confidence twice to the Government headed by the Prime Minister appointed with its approval, then the President of the Republic shall, by the procedure prescribed by Article 55, point3 of the Constitution, ~~dissolve~~ reduce the term of the authorities of the National Assembly, by assigning special elections, which shall be held in the manner defined by point3 of Article 55 of the Constitution. The term of authorities of the National Assembly may ~~may be dissolved~~ be reduced by the President of the Republic also:

a) *if the National Assembly fails, within two months, to make decisions with respect to draft laws that are deemed urgent by decision of the Government;*

b) *if, during the regular session of the National Assembly, its sittings are interrupted for over two months;*

c) *if, during the regular session of the National Assembly it is unable, for over two months, to adopt any decision in relation to issues under its discussion.*

Article 75. The right to initiate legislation in the National Assembly shall belong to the Deputies, *the President of the Republic* and the Government.

The Government ~~shall~~ *may* stipulate the sequence for debate of its proposed draft legislation and may demand that they be voted on only with amendments acceptable to it. ~~Any draft legislation considered urgent by a Government decision shall be debated and voted on by the National Assembly within a one month period~~.

The National Assembly shall consider all draft legislation reducing state revenues or increasing state expenditures ~~only upon the agreement~~ *in case of the existence of the conclusion* of the Government *and at its demand* and shall pass such legislation by a majority vote of the total number of Deputies.

The Government may raise the question of a vote of confidence in conjunction with the adoption of a draft law proposed by it *or by a Deputy*. If the National Assembly does not adopt a vote of no confidence against the Government in the manner provided by Article 74 of the Constitution, then the ~~latter's~~ *Government's* proposed draft law is considered to have been adopted *or the draft law presented by the Deputy to have not been adopted.*

The Government may not raise the issue of a vote of confidence in conjunction with a draft law ~~proposed by it~~ more than twice during any single session.

Article 76. The National Assembly, upon submission by the Government, shall adopt the state budget *and together with that the four-year plan of activity of that Government, by years*. If the budget is not adopted by the start of the fiscal year, all expenditures shall be incurred in the same proportions as in the previous year's budget.

The procedure for debate on and adoption of the state budget shall be prescribed by law.

Article 77. The National Assembly shall supervise the implementation of the state budget, as well as of the use of loans and credits received from foreign states and international organizations.

The National Assembly shall examine and adopt the annual report on the implementation of the state budget if on the conclusions of the National Assembly's Oversight Office are available.

~~Article 78. In order to ensure the legislative basis of the Government's program, the National Assembly may authorize the Government to adopt decisions that have the effect of law that do not contravene any laws in force during a period specified by the National Assembly. Such decisions must be signed by the President of the Republic.~~

Article 79. The National Assembly shall elect *and recall* the President of the National Assembly *and two deputies to the President* ~~for the duration of its full term~~ by a majority vote of the total number of Deputies.

The President of the National Assembly shall chair the sittings *of the National Assembly* ~~manage its material and financial resources,~~ and shall ensure its normal functioning. ~~The National Assembly shall elect two Vice Presidents of the National Assembly.~~

The President of the National Assembly shall represent the National Assembly.

Article 80. Deputies have the right to ask questions to the Government. For one sitting each week during the regular sessions of the Assembly, the Prime Minister and the members of the Government shall answer questions raised by the Deputies. The National Assembly shall not pass any resolutions in conjunction with the questions raised by the Deputies. *The Deputies shall also have the right to address written questions to the Government, the heads of the bodies of territorial administration ~~and local self-government~~, state institutions and to receive answers therefrom*.

The answers ~~in connection with~~ to the *written* questions raised by the Deputies *are not presented at the sitting of the* National Assembly.

At least ten Deputies or a faction of Deputies may apply with a written query to the Government~~, to the Chairman of the Central Bank~~. The Prime Minister, the members of the Government~~, the Chairman of the Central Bank~~ shall answer the queries of the Deputies. A query shall be answered during a regular session not later than within 30 days following the receipt of the query and during the first sitting of the next session, if the session is over. The answer to the queries of the Deputies is presented at the sitting of the National Assembly and, by the decision of the National Assembly, may be discussed at the sitting prescribed by paragraph 1 of this Article.

Article 80.1 To develop the legislative policy and to organise its implementation a Council of the National Assembly composed of the President of the National Assembly, his/her Deputies, the Chairmen of the standing committees shall be established. The Council also approves the cost estimate of the National Assembly. The procedure of the activities of the Council is defined by the ~~regulations~~ rules of procedure of the National Assembly.

Article 81. Upon the recommendation of the President of the Republic, the National Assembly:

1) declares an amnesty;

2) shall ratify or revoke the international treaties signed by the Republic of Armenia. ~~The range of international agreements~~ Subject to ratification by the National Assembly *are those international treaties* ~~shall be prescribed by law;~~

a) *a) which are of a political or military nature, relate to the autonomy and territorial integrity of the country,*

b) *b) which relate to human rights, freedoms and obligations,*

c) *c) which foresee essential financial obligations for the Republic of Armenia,*

d) *d) the application of which provides for a change in laws, or an adoption of a new law, or define norms other than prescribed by the laws,*

e) *e) which so provide.*

3) ~~may declare war~~ *shall make a decision on the declaration of war and establishment of peace. In the event of impossibility of ~~convening~~ a sitting of the National Assembly ~~being convened~~ the issue of declaring war shall be resolved by the President of the Republic.*

The National Assembly, on the basis the conclusion of the Constitutional Court, may terminate the implementation of the measures prescribed by Sections 13 and 14 of Article 55 of the Constitution.

Article 82. The National Assembly, upon the recommendation of the Government, shall determine the administrative-territorial divisions of the Republic.

Article 83. The National Assembly:

1) shall appoint *and remove* the Chairman of the Central Bank and his deputy upon the recommendation of the President of the Republic;

2) shall appoint *and remove* the Chairman of the National Assembly's Oversight Office ~~upon the recommendation of the President of the National Assembly,~~ shall appoint members of the Constitutional Court and the President of the Constitutional Court from among the members of the Court.

If within thirty days of the formation of the Constitutional Court the National Assembly fails to appoint the President of the Constitutional Court, the President of the Constitutional Court shall then be appointed by the President of the Republic;

3) may, on the basis of the conclusion of the Constitutional Court, terminate the powers of a member of the Constitutional Court appointed by it, approve such member's ~~arrest~~ *involvement as an accused or the initiation of proceedings to subject him/her to administrative responsibility*~~, and authorize the initiation of administrative or criminal proceedings against such member~~ through the judicial process.

4) appoints the Defender of Human Rights for a five-year term. The grounds for the termination of the authorities of the Defender of Human Rights are defined by law.

Article 83.1. The following are defined exclusively by the RA laws:

1. *1. human and civil rights, freedoms and obligations, the guarantees for those rights and freedoms,*
2. *2. citizenship, citizens' status as subjects of law, the status of foreigners and persons without citizenship,*
3. *3. the bases for the utilization of natural resources and environmental safety,*
4. *4. the bases of social protection, the forms and types of pension provision, the bases of labor and employment, marriage, family, childhood and maternity, upbringing of children, education, culture and health,*
5. *5. labor relationships and social security,*
6. *6. the legal status of ownership,*
7. *7. the legal grounds and guarantees for entrepreneurship, the rules of competition and norms of antimonopoly regulation,*
8. *8. the status of physical and legal persons, the subjects and objects of civil law, transactions, representation, the law of obligations,*
9. *9. principles of foreign relations and external economic activity,*
10. *10. legal regime for the formation of a free economic zone,*
11. *11. the bases for the regulation of demographic and population movement processes,*
12. *12. the grounds for the creation and activity of parties and other unions of citizens,*
13. *13. the legal status of the mass media,*
14. *14. the bases of state service and the activity of the organs of executive power,*

15. 15. *the bases of state statistics and information,*
16. 16. *the administrative territorial structure of the Republic of Armenia,*
17. 17. *the bases of local self-government,*
18. 18. *court formation, judicial procedure, the status of judges, the bases of court expert examination, the organization and activity of the procuracy, investigative and pre-investigative bodies, the notariat, organs and institutions executing punishments, and the bases of the organization and activities of advocates,*
19. 19. *the status of the capital of the Republic of Armenia, the special statuses of other settlements,*
20. 20. *the bases of national security, the organization of the armed forces of the Republic of Armenia and the bases for ensuring social order,*
21. 21. *the legal regime of the state border,*
22. 22. *the legal regime of the military and emergency situation,*
23. 23. *the procedure for the organization and holding of elections and referenda,*
24. 24. *the procedure for the formation and activities of the RA National Assembly, the status of the Deputies of the National Assembly,*
25. 25. *the definition of crimes, administrative and disciplinary violations and the liability for them,*
26. 26. *the state budget and budgetary system of the Republic of Armenia,*
27. 27. *the tax system, taxes, duties and mandatory payments,*
28. 28. *the principles for the organization and activities of the financial, credit and investment markets,*
29. 29. *the status of the national currency, the legal regime of applying foreign currency in the Republic of Armenia,*
30. 30. *the procedure for issuing and circulating state securities,*
31. 31. *the procedure for sending subdivisions of the armed forces of the Republic of Armenia to other states, the procedure for permitting the subdivisions of the armed forces of other states on the territory of the Republic of Armenia and the conditions of their stationing,*
32. 32. *the state anthem, state flag and coat of arms,*
33. 33. *the procedure for the use and protection of state symbols,*
34. 34. *state awards,*
35. 35. *military ranks, diplomatic classifications and other special degrees,*
36. 36. *state holidays,*
37. 37. *the units of weight, size and time, the procedure for defining state standards.*

Article 84. The National Assembly may adopt a vote of no confidence toward the Government by a majority vote of the total number of Deputies. The National Assembly may not exercise this right *in the case of reducing the term of authorities of the National Assembly, as well as* in time of martial law or in the cases provided by Section 14 of Article 55 of the Constitution.

CHAPTER 5 The ~~Government~~ *Executive power*

Article 85. The executive power of the Republic of Armenia shall be vested in the Government of the Republic of Armenia and *other bodies performing the functions of executive power defined by law.*

~~The Government shall be composed of the Prime Minister and the Ministers. The powers of the Government shall be determined by the Constitution and by laws. The organization and rules of operation of the Government shall be determined by a decree of the President of the Republic, upon the recommendation of the Prime Minister.~~

The Government shall conduct the domestic and foreign policy of the Republic of Armenia. All issues of state governance which are not reserved by law to other state or local self-government bodies are subject to the jurisdiction of the Government.

The Government shall adopt decisions on the basis of the Constitution, international treaties, laws of the Republic of Armenia, the normative acts of the National Assembly and the President the Republic and to ensure their execution, which shall be subject to execution within the overall territory of the Republic.

The Government shall consist of the Prime Minister and the ministers.

The Government is considered formed, if the Prime Minister and all the ministers prescribed by law have been appointed.

The Prime Minister and the ministers must be RA citizens.

The Prime Minister shall appoint one of the ministers ~~as deputy Prime Minister, who will~~ to perform the authorities of the Prime Minister in the absence of the Prime Minister.

The authorities of the Government shall be defined by the Constitution and laws.

The structure and the procedure for the operation of the Government shall be defined by law.

Article 85.1. After the first sitting of the newly elected National Assembly or accepting the resignation of the Government, the President of the Republic shall present to the approval of the National Assembly the candidacy of the Prime Minister. After receiving the approval of the National Assembly the President of the Republic shall appoint a Prime Minister and, upon the presentation of the latter shall form the Government within a two-week period. If the National Assembly does not give approval to the candidacy of the Prime Minister, then the President of the Republic shall present a new candidacy. In the event the new candidacy does not receive approval the President of the Republic shall appoint a Prime Minister upon the proposal of the President of the National Assembly. During the activities of the Government formed in this manner, the President of the Republic may dismiss the Ministers of Defense and Foreign Affairs from office without the proposal of the Prime Minister. In the event there is no candidacy for Prime Minister presented by the President of the National Assembly within the period of seven days, the President of the Republic shall appoint a Prime Minister and shall form the Government.

Article 86. The sessions of the Government shall be convened and chaired ~~by the President of the Republic, or upon his or her recommendation~~, by the Prime Minister.

Government decisions shall be signed by the Prime Minister ~~and approved by the President.~~

~~The Prime Minister shall convene and chair a Government sitting when requested by the majority of Government members under the circumstances foreseen in Article 59 of the Constitution.~~

The President of the Republic may convene and chair a Government sitting.

The President of the Republic may suspend the effect of the decisions of the Government for a duration of one month and apply to the Constitutional Court to ascertain their compliance with the Constitution and and the laws.

In cases provided for by Article 59 of the Constitution the Prime Minister may, upon the request of the majority of the members of the Government, convene an extraordinary Government sitting.

Article 87. The Prime Minister shall oversee the Government's ~~regular~~ activities and shall coordinate the work of the Ministers.

The Prime Minister shall adopt decisions *on issues connected to the organization of activity of the Government*. ~~In cases prescribed by the rules of operations of the Government, decisions of the Prime Minister shall also be signed by the Ministers responsible for their implementation.~~

Article 87.1 A minister shall govern a specific area of management provided for by the law, shall ensure the implementation of the Government program in that area on the basis of the law ~~shall issue orders and decrees~~.

Article 88. A member of the Government may not be a member of any representative body, *carry out entrepreneurial activities,* hold any other ~~public~~ office, or engage in any other paid occupation, *except for scientific, pedagogic and creative work.*

Article 88.1 State governance in the marzes shall be performed by the marzpets (governors), who shall be appointed and removed by the President upon the recommendation of the Prime Minister.

State governance in the city of Yerevan shall be performed by the mayor of Yerevan, who shall be appointed and removed by the President of the Republic, upon the nomination of the Government. The mayor of Yerevan, in cases provided by law, may also be removed from office by the council of elders of Yerevan.

The marzpets and the mayor of Yerevan shall conduct the territorial policy of the Government, manage the operation of the territorial services of the executive bodies, except for cases provided by law.

Article 89. The Government:

1) shall submit the ~~program~~ *concept paper of the program* of its activity to the National Assembly for approval in accordance with Article 74 of the Constitution;

2) shall submit the draft state budget *and the four-year social-economic program of the country, broken down by years***,** to the National Assembly for approval, guarantee the implementation of the budget *and the program***,** and submit a report on that to the National Assembly;

3) shall manage state property;

4) shall ensure the implementation of unified state policies in the areas of finances, economy, taxation and loans and credits;

4.1 shall ensure the implementation of the state policy of territorial development;

5) shall ensure the implementation of state policies in the areas of science, education, culture, health, social security and environmental protection;

6) shall ensure the implementation of the defense, national security and foreign policies of the Republic;

7) shall *ensure the maintenance of public order,* take measures toward the strengthening of legality, the protection of the rights and freedoms of citizens~~, and the protection of property and public order.~~

Article 90. The Government shall submit the proposed state budget and *the program of the social-economic development of the country* to the National Assembly at least sixty days prior to the beginning of the fiscal year and may request that this proposal, with any amendments it may adopt, be *jointly* voted on prior to the expiration of the budget deadline. The Government may raise the question of a vote of confidence in conjunction with the adoption of the state budget *and the program*. If a vote of no confidence is not adopted by the National Assembly, as provided under Article 74 of the Constitution, then the state budget *and the program* with related amendments approved by the Government shall be considered adopted.

In case of a vote of no confidence in the Government related to approval of the proposed state budget *and the program*, the new Government *after the presentation of its concept paper to the National Assembly and receiving the vote of confidence* shall present the National Assembly the draft state budget *and program* within a period of ~~twenty~~ *thirty* days, which shall be debated and approved within a period of thirty days in accordance with the procedure determined by this Article.

CHAPTER 6. The Judicial Power

Article 91. In the Republic of Armenia justice shall be administered solely by the courts in accordance with the Constitution and the laws. ~~*through constitutional, civil, criminal and administrative proceedings.*~~

~~In cases prescribed by law, trials are held with the participation of a jury.~~

Judicial acts shall be rendered in the name of the Republic of Armenia.

Article 92. The Constitutional Court, courts of general jurisdiction of first instance, appeal and cassation, ~~as well as~~ the economic court, ~~and administrative courts~~, and in the cases provided by law also other specialized courts, operate in the Republic of Armenia.

~~*The sentences, verdicts and decisions of the courts mentioned in this Article having entered into legal force shall be reviewed by the Court of Cassation of the Republic of Armenia in the manner and periods defined by law.*~~

~~The courts of general jurisdiction in the Republic of Armenia shall be the courts of first instance, the courts of appeals and the Court of Cassation.~~

~~In the Republic of Armenia, there shall also be economic, military and other courts as may be provided by law.~~

The establishment of extraordinary courts is prohibited.

Article 93. Sentences, verdicts and decisions *of the courts of general jurisdiction, economic and other specialized courts* entered into legal force *shall be reviewed by the Court of Cassation in the manner and within periods defined by law.* ~~may be reviewed by the Court of Cassation based on appeals filed by the Prosecutor General, his or her deputies, or specially licensed lawyers registered with the Court of Cassation.~~

Article 94. ~~The President of the Republic shall be the guarantor of judicial bodies~~ *The independence of the courts shall be guaranteed by the Constitution and laws.* ~~He or she shall preside over the Council of Justice. The Minister of Justice and the Prosecutor General shall be the vice presidents of the Council. The Council shall include fourteen members appointed by the President of the Republic for a period of five years, including two legal scholars, nine judges and three prosecutors. Three Council members shall be appointed each from among the judges of the courts of first instance, the courts of appeals and the Court of Cassation. The general assembly of judges shall submit three candidates by secret ballot for each seat allocated to judges. The Prosecutor General shall submit the names of candidates for the prosecutors' seats in the Council.~~

The authorities of the courts, the procedure for their formation and activities shall be defined by law.

The authorities and the procedure for the formation of the Constitutional Court shall be defined by the Constitution, and the procedure for its activities shall be defined by the Constitution and the law on the Constitutional Court.

Article 94.1 The Council of Justice shall be formed and act according to the procedure defined by the Constitution and law.

The Council of Justice shall consist of seven judges elected by the general meeting of the judges of the Republic of Armenia for three years through secret ballot and three legal scholars appointed by the President of the Republic.

The Council of Justice shall elect a chairman of the Council from its membership.

Article 95. The Council of Justice, *upon the proposal of the Minister of Justice, shall* in the manner defined by law*:*

1) *1) make and present to the approval of the President of the Republic the lists of the official fitness of the candidates for judges and of the professional advancement of the judges, on the basis of which the appointments are made,*
2) 2) *issue a conclusion on the candidacies of the nominated judges,*
3) 3) *present a proposal on the award of qualification classifications for the judges,*

~~4)~~ 4) *subject the judges to disciplinary responsibility.*

The Council of Justice, upon the proposal of the Prosecutor-General, shall issue a conclusion to the President of the Republic on agreeing to involve the judge as an accused or to institute a proceeding to subject the judge to administrative responsibility through the judicial process.

~~5) Shall, upon the recommendation of the Minister of Justice, draft and submit for the approval of the President of the Republic the annual lists of judges, in view of their competence and professional advancement, which shall be used as the basis for appointments;~~

~~6) shall, upon the recommendation of the Prosecutor General, draft and submit for the approval of the President of the Republic the annual lists of prosecutors, in view of their competence and professional advancement, which shall be used as the basis for appointments;~~

~~7) shall propose candidates for the presidency of the Court of Cassation, the presidency and judgeship positions of its chambers, the presidency of the courts of appeals, courts of first instance and other courts. It shall make recommendations about the other judicial candidates proposed by the Minister of Justice;~~

~~8) shall make recommendations regarding the candidates for Deputy Prosecutor proposed by the Prosecutor General, and the candidates for prosecutors heading operational divisions in the Office of the Prosecutor;~~

~~9) shall make recommendations regarding training programs for judges and prosecutors;~~

~~10) shall make recommendations regarding the removal from office of a judge, the arrest of a judge, and the initiation of administrative or criminal proceedings through the judicial process against a judge;~~

~~11) shall take disciplinary action against judges. The president of the Court of Cassation shall chair the meetings of the Council of Justice when the Council is considering disciplinary action against a judge. The President of the Republic, the Minister of Justice and the Prosecutor General shall not take part in these meetings;~~

~~12) shall express its opinion on issues of pardons when requested by the President of the Republic. The operational procedures of the Council of Justice shall be prescribed by law.~~

Article 96. Judges and members of the Constitutional Court are unchangeable. A judge may hold office until the age of 65, while a member of the Constitutional Court may do so until the age of 70. They may be removed from office only in accordance with the Constitution and the laws.

Article 97. When administering justice, judges and members of the Constitutional Court shall be independent and subject only to the law.

The guarantees for the exercise of their duties and the grounds and procedures of the legal responsibility applicable to judges and members of the Constitutional Court shall be prescribed by law.

The judge and the member of the Constitutional Court may not be involved as an accused or subjected to administrative responsibility through the judicial process without the agreement of the body stipulated by the Constitution. The judge and the member of the Constitutional Court may not be arrested, with the exception of cases when the arrest is made at the scene of the crime and arises from the interests of the investigation of the case. In such a case the President of the Republic, the Chairman of the Constitutional Court and the chairman of the respective court shall be immediately notified.

Article 98. Judges and members of the Constitutional Court may not hold any other state office, *be in the composition of the local self-government bodies, carry out entrepreneurial activities, as well as* ~~nor~~ engage in any other paid occupation, except for scientific, pedagogical and creative work.

Judges and members of the Constitutional Court may not be members of any political party nor engage in any political activity.

Article 99. The Constitutional Court shall be composed of nine members, five of whom shall be appointed by the National Assembly and four by the President of the Republic.

Article 100. *The Constitutional Court administers constitutional justice in the Republic of Armenia.*

The Constitutional Court, in the procedure defined by law:

1) shall decide on whether the laws, the resolutions of the National Assembly, the orders and decrees of the President of the Republic, and the decisions of the Government**,** *the Prime Minister, and the representative bodies of local self-government* are in conformity with the Constitution**;**

1.1) shall resolve disputes having arisen between bodies of state power, as well as between state and local self-government bodies, on issues of the constitutionality of authorities, shall interpret the Constitution of Republic of Armenia in the event of resolving such disputes;

1.2) shall decide the issue of compliance of the decisions of the National Assembly, the decrees and orders of the President of the Republic, and the decisions of the Prime Minister with the RA laws;

2) shall decide, prior to the ratification *or approval* of an international treaty, whether the obligations assumed therein are in conformity with the Constitution;

3) shall resolve disputes concerning *the results of* referenda,

3.1) shall resolve disputes concerning *the decisions adopted on the* results of presidential and parliamentary elections;

4) shall recognize as insurmountable or eliminated the obstacles facing a candidate for President of the Republic;

5) shall issue a conclusion on the existence of grounds for the removal of the President of the Republic;

6) shall issue a conclusion on the measures prescribed by Sections 13 and 14 of Article 55 of the Constitution;

7) shall issue a conclusion on the incapacity of President of the Republic to perform his or her functions;

8) shall issue a conclusion on the termination of the authorities of a member of the Constitutional Court, his or her *engagement as an accused or instituting an administrative responsibility proceeding against him through the judicial process;* ~~arrest or initiation of administrative or criminal proceedings through the judicial process;~~

8.1.) *shall render a decision on the termination of the authorities of a judge.*

8.2.) shall issue a conclusion on the availability of grounds prescribed by law on the termination of the authorities of the leader of the community and the dissolution of the community council of elders.

9) shall render a decision on the suspension or prohibition of the activity of a political party in cases prescribed by law.

Article 101. *In accordance with the procedure defined by the Constitution and the law on the Constitutional Court,* to the Constitutional Court may apply:

1) the President of the Republic, *in the cases prescribed by points 1, 1.1., 1.2, 2, 3, 8, 9 of Article 100 of the Constitution;*

2) the National Assembly, in the cases prescribed by points 1.1, *1.2,* 3, 5, 6, 8, 9 of Article 100 of the Constitution;

3) ~~at least one third of the Deputies~~ at least one fifth of the Deputies in the cases prescribed by points 1 and *1.2* of Article 100 of the Constitution;

4) *the Government, in the cases prescribed by points 1, 1.1, 1.2, 7 and 8.2 and 9 of Article 100 of the Constitution;*

5) the representative bodies of local self-government, on the question of the constitutionality of the normative acts enumerated in point 1 of Article 100 of the Constitution relating to their constitutional rights or to dispute the state bodies' exceeding their constitutional authorities;

6) every person, in specific cases, when there exists a final court act ~~and~~ or the constitutionality or compliance with law of this or that provision of another normative ~~legal~~ act listed in point1.2. of Article 100 of the Constitution applied towards him/her is being disputed;

7*) the courts and the Prosecutor General, with questions on the constitutionality of the provisions of normative acts relating to the specific case under their examination;*

8) the Defender of Human Rights, on issues of the consistency of the normative acts listed in point 1 of Article 100 of the Constitution with the provisions of chapter 2 of the Constitution;

9) the candidates for the President of the Republic and Deputies, on issues relating to them in the scopes of points 3.1 and 4 of Article 100 of the Constitution;

10) the Central Electoral Commission, in the cases prescribed by point 4 of Article 100 of the Constitution.

11) the Minister of Justice, in the cases prescribed by point 8.1 of Article 100 of the Constitution.

~~4) Presidential and parliamentary candidates on disputes concerning election results;~~

~~5) the Government in cases prescribed by Article 59 of the Constitution.~~

The Constitutional Court shall only hear cases that have been properly submitted.

~~Article 102. The Constitutional Court shall adopt its decisions and conclusions no later than thirty days after a case has been filed.~~

~~The decisions of the Constitutional Court shall be final, may not be subject to review and shall enter into legal force upon their publication.~~

~~The Constitutional Court shall decide with a majority vote of its total number of members on matters pertaining to Sections 1 through 4 of Article 100 of the Constitution, and with a vote of two thirds of its members on matters pertaining to Sections 5 through 9 of Article 100.~~

Article 102 The Constitutional Court shall adopt decisions and conclusions, in a procedure and within the time-frames defined by the Constitution and the law on the Constitutional Court.

The decisions of the Constitutional Court are final, are not subject to review, enter into force upon promulgation.

The Constitutional Court may also set another date for the entry into force of its decision when the normative act or an individual provision of it loses its legal effect.

The Constitutional Court shall adopt decisions on issues provided for in Article 100, points 1-4 (including point 1.1) and 9, whereas on issues provided for in points 5-8 it shall adopt conclusions. The conclusions, and the decisions on issues provided for in points 1.1 and 9, shall be adopted by at least two thirds of the votes of the total number of members, the remaining decisions shall be adopted by the majority of votes of the total number of members.

On issues of parliamentary elections, as well as on the basis of individual applications of citizens the Constitutional Court, in a procedure defined by law, may hear the case and render a decision by a panel of three members of the Constitutional Court.

Other bodies of state power may not adopt decisions contrary to the conclusions of the Constitutional Court.

~~All~~ When resolving the issues relating to the activities and financing of the Constitutional Court and the material and social security of its members, shall be examined ~~agreed~~ with the Constitutional Court in advance by the state bodies that have the jurisdiction of making corresponding decisions.

Article 103. The Procuracy of the Republic of Armenia represents a unified, centralized system, headed by the Prosecutor General. The Procuracy, in the cases and by the procedure provided for by law:

1) shall institute a criminal case and initiate criminal prosecutions ~~in cases prescribed by law and in accordance with procedures provided by law;~~

2) shall oversee the legality of preliminary inquiries and investigations;

3) shall present the case for the prosecution in court;

4) shall bring actions in court to defend the property interests of the state;

5) shall appeal the sentences, verdicts and decisions of the courts;

6) shall oversee the execution of punishments and other means of criminal-legal influence and administrative compulsion ~~other sanctions.~~

The Procuracy shall operate within the powers granted to it by the Constitution and on the basis of the law ~~on the Office of the Prosecution.~~

CHAPTER 7. ~~Territorial Administration and~~ Local Self-Government

Article 104. ~~The administrative territorial units of the Republic of Armenia shall be the marzes (provinces) and communities. Marzes shall include urban and rural communities.~~

Article 104. The local self-governance is conducted in the communities. The local self-governance is the right of community, provided and guaranteed by the state, to resolve the local matters with self- responsibility, in consistence with Constitution and laws, for the well being of the inhabitants.

Article 104.1. The community shall be the aggregation of the inhabitants of one or several settlements. ~~The community is endowed with the right of self governance.~~

The community is a legal person and has the right to ownership and other property rights.

Article 105. ~~In implementing local self-government the community shall participate in exercising power on the local level insofar as not reserved to other state bodies by the Constitution and laws.~~

Authorities of the community pertaining to managing and disposing of the community's property, resolving issues of community significance and other authorities aimed at fulfilling the requirements of the community shall be exercised by the community as its own authorities, in its own name and under its responsibility. A part of the community's own authorities may by law be deemed obligatory.

For the purpose of the more efficient implementation of the powers of the state they may be delegated to the ~~communities~~ community bodies by law.

Article 105.1. The land within the territory of the community, except for the land required for the state needs and belonging to the physical and legal persons, is the property of the community.

Article 106. The communities shall be autonomous in the formation of their budgets.

The sources for community revenues shall be defined by law.

The law shall define such sources of funding for the communities which shall ensure the carrying out of their authorities.

The authorities delegated to the communities shall be subject to mandatory funding from the state budget.

The communities shall define local taxes and duties within the limits provided by law. The communities may define fees for the services they render.

~~*The State shall be authorized to exercise control in the manner defined by law over the use of the local financial resources, which shall not limit the authorities of the community powers.*~~

Article 107. The community shall implement its right to self-government through the bodies of local self-government, i.e., the council of elders and the leader of the community, which in the manner defined by law shall be elected for the term of four years.

The council of elders of the community, in the procedure defined by law, shall dispose of the community's property, shall approve the budget of the community upon the presentation of the leader of the community, shall oversee the implementation of the budget, shall define local taxes, duties and fees in the manner defined by law, shall adopt legal acts mandatory for implementation on the territory of the community. The acts adopted by the council of elders of the community may not contradict legislation, the procedure for their promulgation and entry into force shall be defined by law.

The authorities of the leader of the community and the procedure for their exercise shall be defined by law.

The members of the community may directly participate in the administration of the community's affairs, by resolving matters of community significance through local referenda. The procedure and conditions for holding local referenda shall be defined by law.

Article 108. Yerevan is a community. The authorities of the leader of the community in Yerevan shall be exercised by the mayor of Yerevan. The characteristics, as well as authorities of the bodies of local self-government in Yerevan shall be defined by the Law on Yerevan.

The law may also provide for local self-government in Yerevan on the level of city neighborhoods.

Yerevan has an independent budget.

Article 108.1 The procedure for state monitoring of the exercise of the authorities delegated to the community shall be defined by law. In order to ensure the legality of the general activities of the community it shall be subject to legal oversight in the manner prescribed by law.

Article 109. In the cases stipulated by law, the Government, on the basis of a conclusion by the Constitutional Court, may dismiss the leader of the community or dissolve the council of elders of the community.

Prior to the newly elected leader of the community's assuming his/her obligations, the marzpet shall appoint an acting leader of the community for a term of not more than six months.

Article 110. If necessary, enlargement of communities may take place by the will of communities themselves, as well as, irrespective of their will, by the National Assembly, upon the recommendation of the Government. Prior to the discussion of the issue in the National Assembly the Government shall promulgate the results of the local referenda held in those communities. The communities may be consolidated or split irrespective of the results of the local referenda.

~~Article 105. Local self-government shall be realized in the communities.~~

~~To manage the property of the community and to solve problems of local significance, self-governing local bodies shall be elected for a period of three years: a council of elders, composed of five to fifteen members, and a leader of the community: a City Mayor or Village Mayor.~~

~~The leader of the community shall organize his or her staff.~~

~~Article 106. The council of elders of the community, upon the recommendation of the leader of the community, shall approve the community budget, oversee the implementation of the budget, and determine local taxes and fees as prescribed by law.~~

~~Article 107. State government shall be implemented through the marzes (provinces).~~

~~The Government shall appoint and remove the marzpets (governors of the provinces), who shall implement the Government's regional policy and coordinate the regional activities of republican executive bodies.~~

~~Article 108. The City of Yerevan shall have the status of a marz (province).~~

~~The President of the Republic, upon the recommendation of the Prime Minster, shall appoint and remove the Mayor of Yerevan.~~

~~Local self-government shall be instituted in Yerevan through neighborhood communities.~~

~~Article 109. In cases prescribed by law, the Government may remove the leader of a community upon the recommendation of the marzpet.~~

~~When the leader of a community is removed by the decision of the Government, special elections shall be held within a period of thirty days. Until such time as the newly elected leader of community may take office, an acting leader of community shall be appointed by the Prime Minister for urban communities and by the marzpet for rural communities.~~

~~Article 110. The election procedure of local self-goverment bodies and their powers shall be determined by the Constitution and the laws.~~

CHAPTER 8. Adoption of The Constitution, Amendments And Referendum[10]

Article 111. The Constitution shall be adopted or amended by referendum which may be initiated by the President of the Republic or the National Assembly.

The President of the Republic shall call a referendum upon the request or agreement of the majority of the Deputies of the National Assembly.

The President of the Republic, within twenty one days after receiving the draft Constitution or the draft of constitutional amendments, may remand it to the National Assembly, with his or her objections and suggestions, requesting a reexamination.

The President of the Republic will submit to a referendum within the period prescribed by the National Assembly a draft Constitution or draft constitutional amendments, when they are reintroduced by at least two thirds of the total number of Deputies of the National Assembly.

Article 112. Laws may be submitted to a referendum upon the request of the National Assembly or the Government, in the manner provided in Article 111 of the Constitution. Laws passed by referendum may be amended only by referendum.

Article 113. A draft submitted to a referendum shall be considered adopted, if more than half of the participants in the voting, but not less than one third of the citizens included in the voters' lists, have voted in favor.

Article 114. Articles 1, 2 and 114 of the Constitution may not be amended.

CHAPTER 9. Transitional Provisions

(will be supplemented after the consideration of the package of reforms).

[10] *The proposals on this chapter will be considered after the final clarification of the general approaches.*

ANNEXES