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(VENICE COMMISSION)

COMMENTS

ON THREE SETS OF PROPOSALS FOR CONSTITUTIONAL AMENDMENTS IN ARMENIA

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COMMENTS on the Draft Amendments to the Armenian Constitution

The first set of proposals for Constitutional Amendments in Armenia [CDL (2004) 100]

1. I principally agree with prof. Kaarlo Tuori's September 19, 2004 comments on the project. It acquits me from the necessity to repeatedly point to separate aspects of the Draft, which have been included in prof.K.Tuori's comments.

2. My comments as well as the notes on inaccuracies of technical character will be stated on the offered Amendments to Articles of the Constitution, but not on the Articles of the Draft Law. I concede that part of my notes might be connected with inexact English translation of the Draft.

3. There is a technical error in the third part of Article 6 –indication to "rules of conduct" has been included twice.

4. To my mind the concept "citizen rights" is not precise, and "civil rights" should be used instead (see the second part of Article 14, the third part of Article 23, the first and fifth parts of Article 42, Article 43, Article 44).

5. Welcome is the supplementation of Article 17 with the new third part "Children under age of 16 shall not be subjected to scientific, medical and other experiments".

6. Wording of the fourth part of Article 20 (the second sentence) should be changed from "right to pardon" to "right to request a pardon".

7. In the third part of Article 23 instead of "every citizen" the word "everyone" should be used. As concerns this aspect the 25th. enlarged Comment on the Report of the Venice Commission on the Revised Constitution of the Republic of Armenia adopted by the Venice Commission at its 47th. Plenary Meeting on 6-7 July, 2001 [CD2-INF (2001) 17] remains in effect.

8. In the first part of Article 27 there is a misprint. Instead of the word "expess" the word "express" should be used.

9. The former wording of Article 27.1 [in the document CDL- INF (2001)17] was much better. The present wording "… to submit letters and recommendations to the authorized public and Local Self-Government bodies…" is not precise and even contradictory, as it in fact denies the public character of the self-government.

10. Welcome is the introduction of a new Article 31.1.

11. At the end of the second sentence of Article 34 the words "by the citizens" should be deleted [see the 30th. Comment of the Venice Commission Document CDL-INF (2001) 17].

12. The first sentence of Article 35 (the second part), namely, "men and women of marriageable age shall have the right to marry and to found a family" should be supplied with a reservation, that this right may be restricted under the procedure, stipulated by law or to incorporate the reservation to this Article in Article 43.

13. Disputable is the text anticipated in the last part of Article 39, that "Everyone shall have the right to free higher and vocational education…". Does it refer only to the State educational institutions? If so, then it excludes the possibility of the creation of private educational establishments.

14. In Article 40 instead of "aesthetic" "artistic" is apparently meant.

15. To my mind in Article 41 instead of the words "People belonging…" it would be better to use "Persons belonging…" .

16. In the second part of Article 42 there evidently is a misprint and instead of "… right to act in a way prohibited by law" the phrase "… a way not prohibited …" shall be used.

17. In the third part of Article 49 apparently is not meant "the succession of the State" but "succession of State power of the Republic"

18. As concerns the third part of Article 51, then the phrase "valid votes" shall be used, as it is done in the second part of this Article.

19. In the second part of Clause 2 of Article 55 the word "President" has been omitted and the text should read like this: "Within this period the President may…". This item should also be pointed out in the wording expressed by the Venice Commission anticipated for the President the possibility of choice – "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" [see the 40th. Comment in the document CDL-INF (2001)17].

20. It is not understandable why the authors of the Draft have included in Article 62 also the indication to Clause 13 of Article 55. In the third part of Article 62 instead of the word "dined" should be used the word "defined".

21. To my mind in Article 70 it would be advisable to determine that an Extraordinary Session or Meeting shall be convened not only on the initiative of one third of the deputies of the National Assembly and the Government. The same right shall be granted also to the Chairperson of the National Assembly, but the President of the Republic shall have the right to convene not only the Extraordinary Session but also the Extraordinary Meeting.

22. It is not clear why the authors of the Draft in Article 71 make a reference to the third part of Article 57. Is it because the third part envisages the qualified 2/3 majority of vote of all the members of the National Assembly? Consequences of this Article are not understandable because of the fact that references to exceptions have not been presented in the succession of Articles as well as it is not clear why with regard to Articles 75; 79 and 83 there are indications to separate parts of these Articles. If the authors want to be

consistent they should make indications also to the second part of Article 72 ; the third part of Article 74 etc.

23. It is not necessary to determine in Article 73 the number of the Standing Committees, as well as to explain why they and ad hoc Committees are created. The above and other detailed preconditions shall be included in the Rules of Procedure of the National Assembly. The more so because this Draft anticipates adoption of the Rules of Procedure as the law.

24. Questionable from the standpoint of Parliamentary democracy and separation of power are the rights of the President of the Republic to dissolve the National Assembly as is anticipated in Sub-clauses "a" and "c" of the second part of Article 74.1. Sub-clause "a" as a matter of fact puts the fate of the National Assembly into the hands of the Government. In this connection the decision on the vote of censure of the Government shall be reached and not the decision of dissolving of the Parliament. Sub-clause "c" may be used as the formal reason for dissolving the National Assembly. The Parliament may review a very complicated and voluminous draft law, which has been submitted for example by the Government. But if the draft has been elaborated in an unqualified way and requires a very careful analysis and many new motions, then the Standing Committees shall work on it and it shall be reviewed at the Parliament in three readings. In such a case the term of two months may be insufficient for the review and adoption of the draft law.

25. Questionable is the proposal of the authors of the draft to determine in Article 83.1 that "the main objective of the Central Bank of the Republic of Armenia shall be to ensure the stability of prices in the Republic of Armenia". The main objective of the Central Bank shall be to take care of the stability of the national currency and not the stability of prices.

26. It could be considered in Article 83.2 whether "… the Control Chamber of the Republic of Armenia" shall not control also the budget of the Local Self-Governments and use of their properties.

27. It should be anticipated in the last part of Article 85 that the structure of the Government as well as the procedure for the operation of other bodies of State administration under the Government shall not be determined by the Decree of the President of the Republic but by the law.

28. Wording of Article 88.1 should not be backed as it runs contrary to the European Charter on Local Self-Governments as well as to Articles 11.2; 107 and 108 of the Draft itself.

29. There is evidently a mistake in Clause 1.1 of Article 100 as it anticipates that the Constitutional Court "determines the compliance of the laws… with the laws of the Republic of Armenia".

The second set of proposals for the Constitutional Amendments in Armenia (CDL(2004)101)

1. As concerns the second Draft Law on Amendments to the Armenian Constitution I also agree with October 2, 2004 Comments, expressed by prof. Kaarlo Tuori. Thus I shall only supplement them.

2. Doubtless, political parties and pre-election associations shall have programmes, in which they state their objectives, their visions as to how to solve problems and so on; however, trying to fix not only the requirement for such yearly and annual programmes on the legal level, but also the requirement for legal responsibility to my mind is absurd. There shall be the requirement for explicit party programmes, but such requirements shall be incorporated in both the law on political parties and the election law. One could speak just and only about the political responsibility before the voters. On the one hand the endeavour of the authors of the draft to determine very strict demands and responsibility for incapability of realizing the aims of the programmes is understandable; because in post-socialist society parties are growing like mushrooms after the rain and they advance populist objectives, which cannot be realized just because of impartial circumstances. But on the other hand it is impossible to influence the above processes with constitutional legal means.

3. Shall the President of the State really be the guarantor not only of the independence, territorial integrity, etc, but also of transparency and accuracy of the official information and the statistical data in the Republic of Armenia? Then one may enumerate many other sectors as well (Article 49).

4. To my mind it is not advisable to reduce the term in which the President may return the law to the National Assembly as envisaged in Article 55, Clause 2. It would be advisable to anticipate in this Clause the possibility for the President of the Republic to address the Constitutional Court in the case that the National Assembly has rejected the objections of the President and he/she holds that the law is at variance with the Constitution.

5. Questionable is the right of the President, anticipated in Clause 3 of Article 55, in case of failure by the National Assembly to annually implement the four-year State programmes, to reduce the term of office of the National Assembly. Article 49 of the Draft Constitution also anticipates that the President of the Republic shall ensure progress of the State programme.

6. Clause 10 of Article 55 is at variance with the valid Constitution, as adequate alterations have not been anticipated in the Draft. The authors envisage that the President shall appoint the members of the Constitutional Court of his/her own choosing and those recommended by the National Assembly. The Draft does not offer adequate alterations of Articles 83 and 99 of the Constitution. The enlargement of the mandate of the President in such an important sector of constitutional supervision as the Constitutional Court shall not be supported.

7. Questionable is the proposal of the authors to introduce a mixed election system, which anticipates elections of 100 deputies under the proportional election system and 31 in

one-mandate election districts. It remains uncertain whether the one-mandate election districts are created on the basis of similar numbers of voters, or they are chosen to ensure administratively territorial representation. As a matter of fact the whole election system with the strict requirements of programmes, distribution of seats, deprivation of mandates, repeated elections in case the newly elected National Assembly does not confirm the Government or its programme and in which only those parties and pre-election associations, that acquired their mandates in regular elections, may participate is absurd and cannot be positively assessed from the viewpoint of democratic election rights. Do the authors really hope that with the help of the above mechanism it will be possible to achieve that one party or pre-election association will be able to really receive the absolute majority of seats in the National Assembly? To my mind, taking into consideration the real situation in Armenia, it is next to impossible. Today among the democratic states there is no state in which the mandate of the deputy, acquired as the result of the elections, may be lost under the procedure, proposed by the authors. Thus Articles 22, 23, 24, 25, 31, 32, 33 and 34 of the draft are unacceptable as unconformable with the standards of the democratic state.

8. The Amendments to the Constitution with regard to the Self-governments (see Articles 41, 42, 43, 44, 45, 46, 47 and 48 of the Draft), proposed by the authors of the Draft, can be assessed as positive.

The third set of proposals for Constitutional Amendments in Armenia (CDL(2004)107)

1. In principle the third Draft of Amendments to the Constitution is similar to the very first Draft, therefore I shall not repeat the Comments, but just refer to the Comments on the first draft. In the same way I shall not mention the Articles of the Draft but the new wording of the Constitution Articles as they are used in the Draft.

2. From the formulation of the new wording of Article 5 (the fourth part) of the Constitution, it follows also that the National Assembly and the courts realize the functions of the executive power, which is unacceptable.

3. In the third part of Article 11.3 it is determined that "A citizen of the Republic of Armenia may not be extradited to a foreign country". This norm shall be supplemented with a reference, which is given in the fourth part of the same Article and attributed only to citizens of other countries or non-citizens. It is not clear what the authors have meant when determining in the sixth part of the same Article that "citizens persecuted for their political convictions shall have the right to political asylum".

4. Item 4 of the first set of proposals refers also to Articles 14, 43, 44, 44.1, 57 and 83.1 of the third Draft.

5. Welcome is the new wording of Article 15, which determines that "death penalty is prohibited in the Republic of Armenia."

6. To my mind the new wording of Article 16 is more extensive and better than in the first Draft.

7. Item 6 of the first set of proposals refers also to the wording of Article 20 of this Draft. The same can be said about Item 7 and Article 23; Item 8 and Article 27; Item 9 and

Article 27.1; Item 11 and Article 34; Item 12 and Article 35; Item 14 and Article 40 as well as Item 18 and Article 51.

8. In the first and sixth parts of Article 39 instead of the words "every citizen", the word "everyone" shall be used [see Comment 33 of the Venice Commission Document CD2-INF (2001)17]. Item 13 of my first set of proposals also refers to the sixth part of this Article.

9. As concerns the text, included in Article 55 (in the second sentence of the second part of Clause 2), namely, "… promulgate the law re-adopted by the National Assembly and apply to the Constitutional Court…" then instead of "and" , "or" should be used.

10. Logic of the text of Article 55, Clause 4.2 "may dismiss the Minister of Foreign Affairs and the Minister of Defense without the Prime Minister's presentation" is not clear. Is this version offered because in accordance with Clause 7 of Article 55 "the President determines the foreign policy priorities, conduct general supervision of the foreign policy…" and in accordance with Clause 12 of the same Article "shall be the Commander-in-Chief of armed forces, co-ordinate the activities of the Government bodies in the area of defence…".

11. The third part of Article 60 establishes that "The person discharging the President's responsibilities shall exercise the powers granted to the President of the Republic by the Constitution save for cases stipulated in Clauses 2-6 and 8-12 of Article 55 of the Constitution". To my mind the first part shall not be deleted from Clause 2, as it anticipates signing and promulgation of the laws adopted by the national assembly.

12. It is not clear why Article 74.1 has been incorporated in the second part of Article 62, as it in such cases envisages: "The President of the Republic may reduce the term of office of the National Assembly". Is it in connection with the Sub-clause "d" of this Article, namely, if the National Assembly does not approve the proposal of the President of the Republic on dismissing the Prime Minister?

13. Item 21 of the Comments of the first set of proposals refers also to Article 70 of the third Draft.

14. Item 22 of the first set of proposals partly refers to Article 71 of the last Draft. Incorporation of the second part of Article 83 in the above is not understandable as it only anticipates that "in the event when the National Assembly fails to appoint the Chairman of the Constitutional Court within thirty days after it is formed, the President of the Republic shall appoint the Chairman of the Constitutional Court."

15. Item 23 of the first Comments refers also to Article 73 of the third Draft.

16. Item 24 of the first set of Comments refers also to Article 74.1 of the last Draft. In this Draft only a Sub-clause "d" is added, which envisages that "the President of the Republic may reduce the term of office of the National Assembly if the National Assembly does not approve the proposal of the President of the Republic on dismissing the Prime Minister".

17. Item 25 of the first Comments refers also to Article 103.2 of the last Draft.