



COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Strasbourg, le 23 juillet 2001
<cdl\doc\2001\cdl-inf\017Inf-f-doc>

CDL-INF (2001) 17

COMMISSION EUROPEENNE POUR LA DEMOCRATIE PAR LE DROIT
(VENICE COMMISSION)

**RAPPORT
DE LA COMMISSION DE VENISE
SUR LA CONSTITUTION REVISEE
DE LA REPUBLIQUE D'ARMENIE**

**Aopté par la Commission
à sa 47e réunion plénière
(Venise, 6-7 juillet 2001)**

sur la base d'observations de :

**M. Gerard BATLINER (membre, Liechtenstein)
M. Aivars ENDZINS (membre, Lettonie)
M. Vital MOREIRA (membre, Portugal)
M. Kaarlo TUORI (membre, Finlande)**

Introduction

1. A la suite de la quatrième rencontre du groupe de travail de la Commission de Venise sur la révision de la Constitution avec les autorités d'Arménie (Strasbourg, 5-6 juin 2001) [et de la discussion qui a eu lieu à la 47^e réunion plénière de la Commission (Venise, 6-7 juillet 2001)] au sujet des projets et des notes explicatives soumises par les autorités d'Arménie et des avis présentés par les rapporteurs, la Commission de Venise formule les observations qui suivent au sujet de la révision envisagée de la Constitution de la République d'Arménie.

Observations générales

2. La Commission de Venise a coopéré avec les autorités d'Arménie à la demande de ces dernières au sujet de la révision de la Constitution. La coopération a revêtu la forme de plusieurs réunions entre une délégation arménienne dirigée par MM. G. Haroutyunian, Président de la Cour constitutionnelle et membre de la Commission de Venise et T. Torossian, Vice-Président de l'Assemblée nationale d'Arménie et des rapporteurs de la Commission MM. G. Batliner, A. Endzins, K. Tuori et V. Moreira. Plusieurs réunions se sont tenues entre février 2000 et juillet 2001 pendant lesquelles de nombreuses propositions ont été examinées dans le cadre conceptuel clair qui avait été défini d'un commun accord.

3. Les participants de ces réunions se sont efforcés d'étudier les propositions présentées en tenant compte des traditions sociales, politiques et juridiques de l'Arménie, mais aussi du patrimoine constitutionnel de l'Europe, des tendances du droit constitutionnel moderne et, ce qui est naturel, des normes du Conseil de l'Europe et avant tout des exigences de la Convention européenne des droits de l'homme.

4. S'agissant des droits de l'homme, les amendements de la Constitution renforcent considérablement les garanties constitutionnelles offertes. Ils assurent l'effet direct des droits fondamentaux et leur justiciabilité.

5. Les amendements cherchent de plus à renforcer la séparation des pouvoirs et à mieux équilibrer la répartition des compétences, en s'inspirant du principe de coopération des différents pouvoirs.

6. De plus, les dispositions constitutionnelles sur le pouvoir judiciaire sont modifiées afin de sauvegarder l'indépendance effective de la justice.

7. Le développement des compétences de la Cour constitutionnelle est une bonne chose, car il suit la tendance qui s'observe dans la plupart des Etats membres du Conseil de l'Europe et contribue à faire de la plus haute instance judiciaire de l'Arménie un instrument puissant pour faire respecter effectivement la prééminence du droit et les droits de l'homme.

8. Les amendements introduits au chapitre sur les pouvoirs locaux constituent une amélioration notable et établissent un cadre pour l'élaboration d'un système d'autonomie locale pleinement compatible avec la Charte européenne de l'autonomie locale.

9. Enfin, la Commission note qu'elle n'a ni considéré les dispositions provisoires de la Constitution car celles-ci n'étaient pas rédigées lorsque le présent rapport a été adopté, ni le Préambule de la Constitution, car les autorités d'Arménie n'ont formulé aucune proposition d'amendement sur ce point.

10. En général, les amendements proposés sont le fruit d'une analyse sérieuse et d'une grande maturité politique. Ils reflètent une volonté réelle de se conformer aux normes du Conseil de l'Europe. La Commission de Venise tient à remercier les autorités d'Arménie de leur ouverture et de leur souci de coopération véritable tout au long de ce processus.

Chapitre 1er : bases de l'ordre constitutionnel

11. La Commission se félicite de ce que le projet de Constitution ne comporte plus de termes relevant du droit naturel, qui puissent être source de confusions en sous-entendant l'existence de principes supra-constitutionnels et qui créent ainsi une insécurité juridique en matière de contrôle de constitutionnalité.

12. Elle salue aussi la nouvelle formulation de l'article 4 ("*La République d'Arménie reconnaît les droits de l'homme et les libertés fondamentales, qui sont une valeur inaliénable et absolue. Dans l'exercice du pouvoir, le peuple et l'Etat s'en tiennent aux droits fixés par la Constitution, règle de droit directement applicable*"). Ce libellé, il faut le reconnaître, rend les droits de l'homme directement applicables et les place au sommet de la hiérarchie des normes dans l'ordre juridique de l'Arménie. La Commission aurait souhaité que les droits de l'homme figurent à l'article 1er lui-même, à côté de la prééminence du droit ("*La République d'Arménie est un Etat démocratique et souverain, fondé sur la justice sociale et la prééminence du droit*"). Elle comprend cependant que cet article est une disposition fondamentale qui, selon l'article 114 de la Constitution ne peut faire l'objet d'amendements. Elle constate aussi qu'en raison du nouveau libellé de l'article 4, la notion de "prééminence du droit" à l'article 1er englobe le respect des droits de l'homme.

13. Dans son nouveau libellé, l'article 6 prévoit à juste titre que "*les lois et autres textes législatifs qui contiennent des règles impératives de conduite ne prennent effet qu'après leur publication*". Ce libellé, introduit dans le projet en juin 2001, suit la proposition des Rapporteurs et ne donne plus l'impression que l'ordre juridique de l'Arménie autorise des "textes juridiques non-publiés".

14. La Commission note avec approbation la formule employée pour définir la règle sur la hiérarchie des normes : "*Les lois de la République d'Arménie sont conformes à la Constitution. Les autres textes législatifs et normatifs sont conformes à la Constitution, aux lois et aux traités internationaux ratifiés par la République d'Arménie*". L'ambiguïté qui aurait pu être créée au sujet de la place du droit international dans la hiérarchie des normes en Arménie est évitée, car le même article prévoit clairement, à son avant-dernier paragraphe qu'au cas où les règles de traités internationaux diffèrent de celles qui sont définies par les lois nationales, ce sont les règles conventionnelles qui s'appliquent.

15. La Commission se félicite de la nouvelle disposition de l'article 7.1 selon laquelle "*L'Eglise de la République d'Arménie est séparée de l'Etat*". La même disposition reconnaît "*le rôle historique exceptionnel joué par L'Eglise apostolique arménienne*". S'agissant de l'article 26 (ex-article 23) de la Constitution, qui garantit la liberté de pensée, de conscience et de confession, ainsi que la liberté de culte, la Commission présume que la disposition reconnaissant le rôle exceptionnel de l'Eglise arménienne n'entraîne aucune conséquence négative quelle qu'elle soit, et ne sera à l'origine d'aucune discrimination pour ceux qui n'en font pas partie. Une discrimination de ce type violerait les articles 9 et 14 de la Convention européenne des droits de l'homme (et éventuellement le Protocole 12). Cette position est reflétée plus clairement par le libellé de l'article 7.1 *in fine* selon lequel "*la liberté d'action de l'ensemble des organisations religieuses œuvrant selon les modalités définies par la loi est garantie dans la République d'Arménie*".

16. La Commission a proposé à l'origine que les garanties constitutionnelles de la propriété privée inscrites à l'article 8 ("*Le droit de propriété est reconnu et protégé dans la République d'Arménie*") soit déplacé au chapitre 2 sur les droits fondamentaux. Elle comprend pourtant l'importance pour une société post-communiste, de placer la garantie constitutionnelle de la propriété dans le chapitre sur les bases de l'ordre constitutionnel. De plus, elle note qu'en raison de son nouveau libellé, l'article 8 peut être considéré comme une disposition déterminant la position de l'Etat à l'égard de la propriété et de l'économie de marché ("*la liberté économique et la libre concurrence économique fondées sur les principes des relations économiques de marché sont garanties dans la République d'Arménie. Il est interdit d'abuser d'une situation de monopole, de restreindre illégalement la concurrence et de se livrer à une concurrence déloyale sur le marché. Les formes possibles de monopole et leurs limites autorisées peuvent être définies par la loi dans l'intérêt de l'Etat et de la société.*"). Par ailleurs, l'article 31 garantit le droit personnel au respect de ses biens.

17. La disposition selon laquelle l'Etat contribue au libre accès de son patrimoine culturel ayant une importance nationale ou mondiale est une excellente chose.

18. La Commission se félicite du nouveau libellé de l'article 11.2 : "*La République d'Arménie reconnaît et garantit l'autonomie locale sous la forme d'un système démocratique indépendant d'autonomie*", qui est un principe consacré par la Charte européenne de l'autonomie locale.

Chapitre 2 : libertés et droits fondamentaux de l'homme et du citoyen

19. La Commission de Venise insiste sur la nécessité de consacrer **clairement l'ensemble des valeurs fondamentales** et plus particulièrement les **droits fondamentaux** dans la Constitution. Celle-ci devrait aussi définir et établir autant que possible un catalogue de tous les droits constitutionnels fondamentaux et des droits culturels et sociaux. A cet égard, la disposition du nouvel article 42 dont le libellé initial prévoyait que "*les droits et libertés énoncés dans la constitution ne sont pas exhaustifs*" paraissait problématique. La Commission estimait que cette disposition visait à empêcher que les libertés et droits fondamentaux garantis par les traités internationaux soient restreints outre-mesure ou écartés en raison des garanties constitutionnelles des droits de l'homme. Elle note donc avec satisfaction que le nouveau libellé prévoit ce qui suit : "*Les droits et libertés énoncés dans la Constitution n'excluent pas d'autres droits et libertés civils ou fondamentaux stipulés par la loi ou par les traités internationaux conclus par la République d'Arménie*".

20. La Commission de Venise **soutient résolument** la disposition proposée de l'article 15, qui **abolit la peine de mort**. Elle rappelle que l'abolition de la peine de mort est l'un des engagements pris par l'Arménie quand elle est devenue membre du Conseil de l'Europe. Elle note de plus que la mention de la peine de mort "*en temps de guerre ou en cas de menace inévitable de guerre*" est tirée en substance du Protocole n° 6 à la CEDH. En conséquence, elle présume que l'application de cette disposition respectera strictement les règles applicables dans les autres Etats membres du Conseil de l'Europe.

21. La Commission de Venise s'est demandée s'il serait souhaitable d'incorporer dans la Constitution des dispositions concernant l'interdiction des expériences sur le fœtus humain. Des dispositions pertinentes de la Charte des droits de l'homme de l'Union européenne et de la Convention européenne sur la bioéthique pourraient servir de modèles. Elle a pourtant estimé qu'il était peu opportun de lancer un débat sur ce thème à l'étape actuelle du processus de révision constitutionnelle. De plus, elle est persuadée que les dispositions garantissant le

respect de la dignité humaine peuvent fort bien s'interpréter de manière à prévenir les abus dans le domaine de la bioéthique.

22. Elle note avec satisfaction l'adjonction à l'article 16 (nouveau) d'une liste exhaustive des cas où la privation de liberté peut être autorisée. Elle constate que cette liste suit de près le libellé de l'article 5 par. 1 de la CEDH.

23. La nouvelle structure de l'article 18 (ex-article 38) est remarquable, car elle donne une base constitutionnelle aux mécanismes judiciaires et non judiciaires de protection des droits de l'homme, que ce soit en droit interne ou en droit international. Telle qu'elle est rédigée dans le projet, la disposition garantit aux personnes qui affirment être victimes de violations de leurs droits constitutionnels, le droit à un recours effectif devant les autorités étatiques, le droit d'accès à la justice, le droit de s'adresser au "Défenseur des droits de l'homme" et le droit de saisir des organes internationaux de protection des droits de l'homme.

24. La Commission se félicite aussi que cette disposition institue un Défenseur des droits de l'homme (médiateur). Bien qu'un libellé plus clair (comme "*Il est institué un service de médiateur chargé des droits de l'homme*") eût pu être choisi, la Commission note avec satisfaction que cette disposition, conjointement aux articles 83 par. 4 (désignation du médiateur par l'Assemblée nationale) et 101 par. 8 (qui autorise le médiateur à porter une affaire devant la Cour constitutionnelle) constitue un cadre constitutionnel suffisant pour faire fonctionner cette institution.

25. Elle salue la nouvelle formulation du droit au respect de la vie privée et familiale à l'article 23 (ex-article 20), qui suit la proposition des rapporteurs. De plus, le nouveau projet prévoit à juste titre que les autorités étatiques peuvent uniquement porter atteinte au droit au respect de la vie privée et familiale, de la correspondance (article 23) et du domicile (article 24) si elles y sont autorisées par la loi.

La lacune constatée par les rapporteurs de la Commission, à savoir qu'aucune exigence constitutionnelle ne prévoyait que ces ingérences poursuivent aussi des buts reconnus comme légitimes par la Constitution, est maintenant comblée de manière satisfaisante dans le nouveau libellé de l'article 43 *in fine*. Il convient de noter que l'article 43 couvre désormais les droits garantis par les articles 23 et 24.

En ce qui concerne le droit des personnes d'avoir accès aux renseignements que les autorités conservent sur eux et d'obtenir que ces renseignements soient corrigés ou éliminés, la Commission observe que ces droits sont limité aux *citoyens*. Cette limitation semble contraire au droit au respect de la vie privée et familiale de "toute personne", reconnu par l'article 8 de la CEDH. Depuis son arrêt rendu en février 1997 dans l'affaire Z. c. Finlande, la Cour européenne des droits de l'homme a estimé à plusieurs reprises que la protection des données est un élément fondamental d'une protection effective du droit à la vie privée. L'article 8 de la Charte des droits de l'homme de l'Union européenne considère aussi la protection des données comme un droit fondamental. Il convient aussi de souligner que les constitutions accordent en général ce droit à toute personne et non aux seuls citoyens (voir par ex. l'article 10 de la Loi fondamentale de la RFA ; l'article 22 de la Constitution de la Lituanie, l'article 31 de la Constitution de l'Ukraine et l'article 20 de la Constitution de la Géorgie). Il faut aussi faire observer que l'article 51 de la Constitution polonaise interdit la collecte d'informations sur les **citoyens** (et, donc, *a contrario*, autorise la collecte d'informations sur les étrangers), mais autorise **toute personne** à avoir accès aux documents et informations officiels la concernant.

26. L'article 27 garantit la liberté d'opinion et d'expression. Une nouvelle disposition, ajoutée à cet article pour garantir la liberté des médias, prévoit ce qui suit : *"La liberté des médias et d'autres moyens d'information est garantie"*.

La Commission se félicite de cette addition, qui va au-delà de la sauvegarde classique de la liberté d'expression individuelle. La *"liberté des médias"* doit se comprendre comme une garantie fondamentale de la démocratie pluraliste.

A cet égard, la Commission présume que la liberté des médias comprend une exigence d'indépendance des médias et, notamment, que les médias du secteur public sont structurés et administrés de manière à être indépendants du gouvernement et de tout service public, et que cette liberté permet aux différentes tendances de l'opinion de s'exprimer. La liberté des médias implique aussi l'existence d'une autorité indépendante chargée de garantir cette indépendance face au pouvoir politique et économique. La Commission renvoie aux articles 38 et 39 de la Constitution du Portugal, qui portent sur la liberté de la presse et des médias, et aux recommandations pertinentes du Comité des Ministres du Conseil de l'Europe, notamment les Recommandations R (96) 10 concernant la garantie de l'indépendance du service public de la radiodiffusion et R (2000) 23 concernant l'indépendance et les fonctions des autorités de régulation du secteur de la radiodiffusion. Si la disposition constitutionnelle s'interprète comme cela est suggéré plus haut, il n'est pas besoin d'une disposition constitutionnelle explicite sur une autorité indépendante chargée des médias.

27. La Commission note avec satisfaction qu'il est proposé dans le projet de reconnaître le droit de rassemblement pacifique non seulement aux citoyens, mais aussi à toute personne (article 29).

28. L'article 30.1 est une nouvelle disposition qui définit les bases constitutionnelles du service civil. La Commission rappelle qu'il est nécessaire d'assurer la conformité de la loi sur le service civil (en cours de rédaction) avec cette disposition. Voir à cet égard l'avis de M. Tuori (CDL (2001) 25) concernant les aspects constitutionnels de la loi sur le service civil.

29. La Commission prend note avec satisfaction de l'amendement de l'article 31 paragraphe 2, qui interdit aux étrangers et aux apatrides de posséder des terres en Arménie *"à l'exception des cas prévus par la loi"*. Les rapporteurs de la Commission estimaient qu'une limitation aussi stricte du droit de propriété pouvait faire naître de graves problèmes en rapport avec l'exigence de proportionnalité en matière de restrictions des droits fondamentaux. Le nouveau libellé ne contient plus d'interdiction catégorique, mais permet de limiter par la loi les droits de propriété foncière des étrangers et des apatrides : *"la loi peut limiter le droit des étrangers et des apatrides de posséder des terres"*.

30. S'agissant des droits sociaux garantis par les articles 32 (à l'exception de l'art. 32 par. 4 (droit de grève)) à 34, la Commission rappelle qu'il est souhaitable de distinguer clairement entre les droits de l'homme classiques et les autres droits. En particulier, il est nécessaire de faire une distinction nette entre les droits individuels et exécutoires et les obligations de l'Etat ou droits non exécutoires (par exemple, le droit à un niveau de vie approprié, article 34 ; voir aussi CDL (2000) 105). L'article 34 *in fine* devrait prévoir ce qui suit : *"L'Etat prend les mesures nécessaires pour assurer l'exercice de ces droits."* Les mots *"des citoyens"* doivent être biffés, car les droits garantis ne sont plus au bénéfice des citoyens, mais de toute personne.

31. L'article 36 *in fine* oblige les individus à "*prendre soin de leurs parents incapables et démunis*" Bien qu'elle souscrive pleinement à ce principe, la Commission souligne que cette obligation ne diminue en rien les obligations sociales de l'Etat à l'égard des individus incapables et démunis, telles qu'elles découlent d'autres dispositions constitutionnelles.

32. Elle note avec satisfaction que l'article 37 reconnaît à toute personne et pas seulement aux citoyens le droit à la sécurité sociale.

33. De plus, l'article 39 prévoit que "*toute personne a droit à l'éducation*" et que l'éducation primaire générale est obligatoire pour *toute personne*. La Commission se félicite de ces amendements, qui mettent la Constitution d'Arménie en conformité avec l'article 2 du Protocole n° 1 à la CEDH.

34. Elle note avec satisfaction le nouveau libellé de l'article 41 (ex-article 37) qui garantit aux **membres** de minorités le droit "*d'exprimer, de préserver et de développer en toute liberté leur identité ethnique, linguistique, culturelle et religieuse.*"

35. S'agissant des **restrictions aux libertés et droits fondamentaux (article 44.1)**, elle constate qu'une disposition générale en vertu de laquelle "*les limites des libertés et droits de l'homme ne peuvent outrepasser les limites définies dans les normes effectives du droit international et ne violent pas l'essence des instruments relatifs aux droits et libertés*" a maintenant été incorporée dans le projet. La Commission est résolument favorable à l'inscription de cette disposition, qui devrait éliminer toute incompatibilité avec la CEDH.

36. La Commission note aussi à cet égard que les règles relatives aux restrictions des droits fondamentaux dans la Constitution d'Arménie sont assez dispersées, car elles peuvent résulter a) du caractère absolu de certains droits (comme l'interdiction de la torture); b) des restrictions qui font suite à l'affirmation du droit concerné (comme la restriction du droit à la liberté, voir article 16); c) des restrictions inhérentes aux droits sociaux; d) de la disposition sur les restrictions aux articles 23 à 30 et 32 par. 4 qui figure à l'article 43 et de la clause générale sur les restrictions de l'article 44.1. Bien que cela semble de prime abord déroutant, l'effet combiné des ces dispositions offre une protection suffisante contre les restrictions arbitraires des droits de l'homme et des libertés fondamentales. En tout état de cause, le processus de révision ne peut refondre entièrement la structure actuelle du chapitre 2.

37. La Commission se félicite de la mention à l'article 44 (situations d'urgence) du principe de proportionnalité et des obligations internationales. Elle présume que la référence aux obligations internationales recouvre les aspects procéduraux de celles-ci (par exemple la déclaration prévue à l'article 15 de la CEDH).

38. Elle note avec satisfaction la disposition sur les droits fondamentaux des personnes juridiques (article 48).

Chapitres 3, 4 et 5 concernant les organes d'Etat et la séparation des pouvoirs

39. Après avoir examiné avec soin l'équilibre des pouvoirs dans les chapitres précités du nouveau projet de texte, la Commission est convaincue que le projet prévoit une répartition cohérente des pouvoirs et des compétences entre le Président, le Parlement et le Gouvernement. En particulier, la Commission observe ce qui suit :

40. La nouvelle disposition de l'article 55 devrait être un motif de satisfaction car elle clarifie le processus de contrôle constitutionnel préventif exercé par le **Président** en

prévoyant l'intervention finale de la Cour constitutionnelle comme suit : *"Le Président de la République 2) signe et promulgue dans les 21 jours après réception, les lois adoptées par l'Assemblée nationale. Pendant ce délai, le Président peut renvoyer une loi à l'Assemblée nationale, assortie d'objections et de recommandations, en demandant un nouvel examen. Le Président signe et promulgue dans les cinq jours une loi qui a été à nouveau adoptée par l'Assemblée nationale ou saisit la Cour Constitutionnelle d'une requête pour obtenir ses conclusions sur la conformité du texte avec la Constitution. Si la Cour conclut que des dispositions de la loi sont contraires à la Constitution, le Président ne signe pas la loi"*.

41. Le droit présidentiel de **dissoudre** l'Assemblée nationale (le nouveau projet emploie l'expression *"réduit le mandat des autorités de l'Assemblée nationale"*) est maintenant encadré comme il convient, car ce pouvoir ne peut être exercé que dans les cas prévus expressément par la Constitution (à l'article 74.1 dans le Chapitre sur l'Assemblée nationale), conformément à une procédure décrite dans la Constitution et après des consultations avec le Président de l'Assemblée nationale et le Premier-Ministre.

42. La Commission salue le fait que la disposition autorisant l'Assemblée nationale à destituer le Président de la République ait été supprimée du projet de texte. Certes, l'Assemblée reste la seule institution qui puisse le faire, mais ce droit est maintenant clairement limité aux cas de trahison et de crimes graves. De plus, la Cour constitutionnelle joue un rôle capital dans le processus de destitution, car elle doit rendre des conclusions sur les motifs de la destitution (article 57). Ce sont là des garanties suffisantes contre toute destitution du Président décidée pour des motifs politiques.

La Commission estime que la "destitution" politique par l'Assemblée nationale du Président élu au suffrage direct comme le pouvoir illimité du Président de dissoudre l'Assemblée étaient des options qui pouvaient créer un climat politique conflictuel préjudiciable au bon fonctionnement des institutions démocratiques. Les options retenues dans le nouveau projet indiquent un strict respect des principes de l'héritage démocratique européen.

43. Les rapporteurs de la Commission se sont inquiétés d'une règle, contenue dans le projet initial, qui autorisait l'Assemblée à ne pas accepter la démission du Président de la République car cela est assez exceptionnel en droit constitutionnel comparé. Il y avait un risque manifeste que le refus d'une démission n'entraîne un dysfonctionnement des organes démocratiques d'Etat. En conséquence, la Commission se félicite de la nouvelle disposition de l'article 58 selon laquelle : *"Le Président de la République présente sa démission à l'Assemblée nationale. Au cas où elle est à nouveau présentée dans les dix jours qui suivent immédiatement, la démission du Président est considérée comme acceptée et des élections extraordinaires sont organisées dans les délais et selon les modalités prévues par la Constitution"*.

44. Selon l'article 55 par. 4, le Président nomme un nouveau Premier Ministre en cas de démission ou de motion de censure. Cette disposition doit s'interpréter conjointement avec le nouvel article 85.1, qui requiert expressément que le Président nomme aussi un nouveau Premier Ministre après l'élection d'une nouvelle Assemblée nationale. La Commission estime qu'il s'agit là d'un élément clé de la Constitution et note avec satisfaction cette nouvelle disposition."

45. L'article 55 par. 13 à 15 définit la procédure à suivre pour déclarer la loi martiale et l'état d'urgence. Ces dispositions doivent s'interpréter en conjonction avec les articles 44 (Chapitre sur les droits de l'homme), 81 et 100 par. 6 qui prévoient la participation de l'Assemblée nationale et de la Cour constitutionnelle à la détermination des motifs et de la

proportionnalité des mesures d'urgence et de la persistance du danger qui impose le recours à des pouvoirs d'exception :

Article 55 : "*Le Président, ...*

13) *décide du recours aux forces armées. En cas d'agression armée, de danger immédiat pour la République, ou de déclaration de guerre, le Président déclare la loi martiale et peut décréter une mobilisation générale ou partielle. Dans ce cas, les forces armées et autres forces de la République d'Armée sont placées sous le commandement opérationnel de l'état-major général du ministère de la Défense. En temps de guerre, le Président de la République peut nommer ou limoger le Commandant en chef des forces armées.*

14) *En cas de recours aux forces armées ou de déclaration de la loi martiale, une séance extraordinaire de l'Assemblée nationale est immédiatement convoquée de plein droit, pour examiner l'adéquation des mesures prises avec la situation. Le régime juridique de la loi martiale est défini par la loi.*

15) *En cas de danger imminent pour l'ordre constitutionnel, il décrète l'état d'urgence, en consultation avec l'Assemblée nationale et le Premier Ministre, et prend les mesures adaptées à la situation. Dans ce cas, une réunion extraordinaire de l'Assemblée nationale est immédiatement convoquée de plein droit pour examiner l'adéquation des mesures prises avec la situation. Le régime de l'état d'urgence est défini par la loi.*

Article 81 : "*Sur la recommandation du Président de la République, l'Assemblée nationale se prononce sur la déclaration de guerre et l'instauration de la paix. Au cas où il est impossible de convoquer une séance de l'Assemblée nationale, le Président de la République tranche la question de la déclaration de guerre.*

Sur la base des conclusions de la Cour constitutionnelle, l'Assemblée nationale peut mettre fin à la mise en œuvre des mesures prévues à l'article 55 paragraphes 14 et 15".

L'article 83.1 prévoit que le régime juridique de l'état d'urgence et de la loi martiale est régi par la loi (art.83.1 al. 22).

Art. 100 par. 6 : La Cour constitutionnelle "*6) rend ses conclusions sur la constitutionnalité des mesures prises conformément à l'article 55 paragraphes 14 et 15 de la Constitution*".

La Commission présume que l'Assemblée nationale exerce un contrôle général sur toutes les mesures prises dans le cadre de l'état d'urgence et de la loi martiale : d'abord, l'Assemblée peut évaluer la nécessité des mesures prises dans ce cadre. Elle peut aussi, en tenant compte des conclusions de la Cour constitutionnelle, décider de mettre fin à la loi martiale ou à l'état d'urgence. Bien que dans la pratique, les choses dépendent beaucoup de l'aptitude du Conseil constitutionnel et de l'Assemblée nationale à évaluer rapidement la situation, la Commission estime que les dispositions précitées comportent suffisamment de garanties pour éviter tout abus en matière de déclaration de l'état d'urgence ou de recours à des pouvoirs d'exception.

Elle préférerait un système qui interdirait au Président ou à l'exécutif de prendre la moindre mesure dans le cadre de l'état d'urgence ou de la loi martiale, avant que l'Assemblée nationale ait décidé de mettre ou non fin à la déclaration de l'état d'urgence ou de la loi martiale par le Président. En tout état de cause, la Commission suppose que la loi sur l'état d'urgence et la loi sur la déclaration de la loi martiale fixeront un délai **bref et précis** pour

l'adoption de conclusions par la Cour constitutionnelle et la prise d'une décision par l'Assemblée nationale.

46. les **Pouvoirs législatifs du Président** sont déterminés à l'article 56. Les rapporteurs de la Commission ont souligné que ces pouvoirs doivent être **fondés** sur la Constitution et la loi et être **compatibles avec** ces textes. L'article 56 du nouveau projet précise ce qui suit : *"Le Président de la République peut prendre des ordonnances et des décrets qui sont conformes à la Constitution et aux lois de la République d'Arménie."*

La Commission présume que l'expression "sont conformes à la Constitution et aux lois" ne signifie pas seulement que les ordonnances et décrets du Président sont compatibles avec la Constitution ou ne sont pas en contradiction avec celle-ci, mais que l'activité législative du Président s'inscrit dans le cadre de la Constitution et de la loi. De plus, elle estime que la disposition générale de l'article 49 de la Constitution selon laquelle le Président de la République *"veille au fonctionnement normal du pouvoir législatif et judiciaire"* ne peut être considéré comme le fondement autorisant le Président à exercer un pouvoir législatif. La Commission note aussi que la disposition selon laquelle le Président de la République jouissait de compétences législatives générales non seulement pour les questions qui lui sont expressément confiées par la Constitution et par délégation (dévolution) par la loi, mais aussi dans tous domaines jusqu'à ce que l'Assemblée nationale légifère, a maintenant été éliminée du Chapitre 3. Selon la Commission, ce pouvoir législatif général posait problème, car il étendait manifestement d'une manière illimitée les compétences législatives du Président. La Commission présume qu'il peut être justifié, dans les États en transition, où il est urgent de légiférer dans de nombreux domaines en même temps, d'autoriser le Président de la République à recourir pendant une période de transition à des pouvoirs législatifs exceptionnels. Cependant, ces pouvoirs doivent rester exceptionnels et transitoires, et être régis par les dispositions transitoires plutôt qu'incorporés dans le corps de la Constitution.

47. S'agissant du chapitre sur le **pouvoir législatif**, la Commission fait observer ce qui suit :

L'incompatibilité du statut de député de l'Assemblée nationale avec une activité d'entrepreneur ou tout autre travail rémunéré (à l'exception d'un travail créatif, pédagogique ou de recherche) peut être considérée comme trop stricte ; elle n'est cependant pas incompatible avec les normes européennes et peut se justifier par la nécessité d'avoir un Parlement "professionnel".

48. Le rôle dévolu à l'Assemblée nationale dans la désignation du Premier Ministre est défini aux articles 74 et 74.1. Ces dispositions doivent s'interpréter conjointement avec la nouvelle disposition de l'article 85.1 et de l'article 55 par. 4 (voir ci-dessus point 34).

Bien que les dispositions concernant la désignation du Premier Ministre et du Gouvernement et la question de confiance soient dispersées dans le texte, le système pris dans son ensemble parvient à associer un partage du pouvoir équilibré et un exercice effectif du contrôle parlementaire de l'exécutif. Cet exercice juridique et politique délicat doit encore être testé dans les conditions réelles.

49. La Commission note avec satisfaction que le projet prévoit une liste de domaines où l'Assemblée nationale a le pouvoir **exclusif** de légiférer (article 83.1).

50. Elle constate aussi que le Président de la République et le Gouvernement ont le droit d'initiative législative (article 75). Comme les rapporteurs l'ont fait remarquer, une initiative législative parallèle du Président et du Gouvernement peut être source de confusion et

conduire à des situations où les organes exécutifs soumettent des projets de loi contradictoires à l'Assemblée nationale.

51. S'agissant de l'article 80, la Commission estime que le nouveau libellé distingue clairement entre le droit d'obtenir des informations et le droit d'interpellation. Les interpellations sont adressées exclusivement au Gouvernement, comme le prévoit l'article 80 par. 3 conformément aux principes de la démocratie parlementaire.

Bien que la question des enquêtes parlementaires ne soit pas clairement traitée dans le projet, ces enquêtes peuvent être menées en commission ainsi que le prévoit l'article 73 par. 3.

52. La Commission se félicite de la nouvelle disposition inscrite à l'article 83 selon laquelle **L'Assemblée nationale désigne un "Défenseur des droits de l'homme" (médiateur)**. Bien qu'une majorité qualifiée pour une telle désignation eût pu favoriser un large consensus sur la personne du médiateur, et accroître ainsi le prestige et la crédibilité de cette nouvelle institution capitale (voir à cet égard l'avis de Mme Serra Lopes sur la législation concernant le médiateur d'Arménie (CDL (2001) 26)). La Commission présume que l'exigence de majorité qualifiée est rare dans l'ordre constitutionnelle et la pratique de l'Arménie. La désignation des institutions habilitées à proposer des candidats peut être traitée dans la loi sur le "Défenseur des droits de l'homme".

53. S'agissant du chapitre sur le **pouvoir exécutif**, la Commission estime que les amendements proposés sont cohérents avec la logique générale de la réforme constitutionnelle destinée à rééquilibrer la répartition des pouvoirs en renforçant la place du Gouvernement et celle du Premier Ministre, chef de l'exécutif. Les observations suivantes peuvent notamment être faites :

54. Les pouvoirs du Gouvernement sont définis dans la Constitution et la loi et le fonctionnement du Gouvernement est maintenant déterminé par la loi et non plus par un décret présidentiel (article 85). Cette règle renforce le rôle de l'Assemblée nationale.

55. S'agissant de l'article 85.1 (formation du Gouvernement après la première séance d'une nouvelle Assemblée), voir les points 34 et 38.

56. Conformément à l'article 86, les conseils (réguliers) du Gouvernement ne sont plus présidés par le Président, mais par le Premier Ministre, bien que le Président puisse toujours en convoquer et en présider.

Conformément aux nouvelles dispositions de l'article 86, le Président exerce une fonction de contrôle constitutionnel préventif car il peut suspendre pendant un mois l'effet d'une décision gouvernementale en demandant à la Cour constitutionnelle de se prononcer sur la compatibilité de la décision avec la Constitution et avec la loi. La Commission présume que cette fonction porte uniquement sur les actes normatifs (réglementaires) de l'administration et non sur des mesures individuelles.

57. L'article 85 par. 2 comporte une nouvelle disposition selon laquelle *"les questions d'administration de l'Etat qui ne sont pas réservées par la loi à d'autres organes de l'Etat ou de l'autonomie locale relèvent de la juridiction du Gouvernement"*. Il est vrai que cette disposition crée la possibilité d'établir par la loi des organes réglementaires indépendants (comme des autorités indépendantes chargées de la radio-télédiffusion, des commissions de l'énergie, etc.) qui ne seraient pas placés sous la tutelle gouvernementale.

La Commission prend note avec satisfaction de la règle générale selon laquelle les services de l'administration œuvrent sous l'autorité et sous le contrôle du Gouvernement. Elle serait favorable à une disposition explicite sur la possibilité de créer des organes indépendants, en délimitant éventuellement les domaines où cela est possible. En tout état de cause, il convient de garder à l'esprit que les actes et décisions des organes indépendants sont aussi soumis à un contrôle judiciaire.

58. La disposition inscrite à l'article 88.1 semble viser à distinguer clairement entre l'administration territoriale et l'autonomie locale. La Commission se félicite de cette approche.

Cependant, la proposition de revenir à la disposition selon laquelle le maire d'Erevan est nommé et révoqué par le Président de la République (qui était omise dans un projet précédent) est contraire aux principes essentiels de la démocratie locale et tout particulièrement à la Charte européenne de l'autonomie locale. La Commission recommande vivement de supprimer cette disposition.

Elle note de plus que conformément à la disposition proposée, le maire d'Erevan "*mène la politique territoriale du Gouvernement*". La Commission rappelle que le maire doit être le chef élu de l'entité locale autonome d'Erevan. Il peut être difficile d'exercer à la fois les fonctions de responsable élu d'une autonomie locale et de représentant du pouvoir central. Cependant, cela ne peut justifier la perte de l'indépendance nécessaire de l'autonomie locale (voir aussi ci-dessous, chapitre 7).

Chapitre 6 : le pouvoir judiciaire

59. La Commission note avec satisfaction la disposition selon laquelle "*la justice est administrée par le biais de procédures constitutionnelles, pénales, civiles et administratives*" (article 91). La mention des procédures administratives s'interprète comme établissant une catégorie particulière de litiges de droit administratif. La nécessité de soumettre les actes administratifs à un contrôle judiciaire est l'un des éléments fondamentaux de la prééminence du droit. Cependant, s'agissant des tribunaux administratifs (article 92), la Commission note que ce n'est pas là un élément nécessaire du contrôle judiciaire des actes de l'administration. On pourrait fort bien envisager que le contrôle des actes réglementaires soit réalisé par la Cour constitutionnelle (comme c'est le cas avec la Constitution actuelle), alors que le contrôle judiciaire d'actes administratifs individuels relèverait de sections ou chambres spécialisées des tribunaux ordinaires (d'ordinaire les cours d'appel et les cours de cassation) comme c'est le cas en Croatie et en Lettonie par exemple. La Commission se réfère à aux observations de M. Torfasson sur l'exigence constitutionnelle d'un contrôle judiciaire des actes administratifs (CDL (2001) 39). Certains arguments plaident naturellement en faveur de la création de juridictions administratives distinctes. La Commission ne souhaite pas prendre position sur ce point. Elle souligne pourtant que le système judiciaire ne doit pas être trop compliqué. La création éventuelle de juridictions administratifs a des incidences sur la nécessité de juridictions spécialisées, économiques et autres.

De plus, selon la Commission, l'établissement ou non d'une juridiction administrative est une solution d'une importance telle qu'elle doit être traitée au niveau constitutionnel.

60. Les rapporteurs de la Commission avaient exprimé leur préoccupation au sujet de l'article 93, qui autorisait le Procureur à saisir la Cour de cassation sans aucune restriction, même dans des affaires civiles. Ce droit d'intervention portait atteinte au principe qui réserve l'initiative de la procédure aux parties en matière civile et ce, d'autant plus que l'article ne prévoyait pas de droit correspondant des parties de saisir la Cour de cassation. Le nouveau

libellé, dont la Commission se félicite, ne mentionne plus spécifiquement le droit du Procureur de saisir la Cour de Cassation, mais précise que les décisions des autres juridictions "*peuvent être contrôlées par la Cour de cassation selon les modalités et dans les délais fixés par la loi*".

61. La Commission est favorable à la proposition de supprimer la disposition selon laquelle "*le Président de la République est le garant de l'indépendance judiciaire*" et de le remplacer par l'expression : "*l'indépendance des tribunaux est garantie par la Constitution et par la loi*".

62. Le fait que la Constitution ne conserve qu'un minimum de dispositions sur le Conseil de la justice est une bonne chose, car cet organe, compétent pour la nomination et la carrière des juges, joue un rôle capital dans la préservation de l'indépendance des magistrats.

63. La Commission relève cependant que les décisions relatives à la révocation de juges appartiennent à la Cour constitutionnelle (article 100.8) Bien que cela puisse paraître comme une garantie supplémentaire de l'indépendance judiciaire, l'absence de recours contre une telle décision de la Cour peut poser un problème. Une solution plus appropriée consisterait à laisser la décision initiale de révoquer un juge au Conseil de la Justice en autorisant le juge concerné à contester cette décision devant la Cour constitutionnelle.

On s'est aussi demandé si la Cour constitutionnelle doit pouvoir envisager d'office la révocation d'un juge quand le Conseil de la Justice ne prend aucune mesure. Les rapporteurs de la Commission ont exprimé des craintes à ce sujet ; il était plus approprié de laisser au Président de la République (autorité de nomination en dernier ressort) ou au Ministre de la Justice le droit de saisir la Cour constitutionnelle. La Commission est maintenant satisfaite que l'initiative de révoquer un juge appartienne au Ministre de la Justice (article 101.11). Naturellement, le rôle du Conseil de la Justice en la matière reste à préciser.

64. La Commission présume que le libellé utilisé à l'article 100 par. 3, selon lequel la Cour constitutionnelle "*tranche les litiges sur les résultats des référendums*" s'applique non seulement aux résultats en tant que tels, mais aussi aux autres questions qui conditionnent la validité des référendums (par ex. la constitutionnalité de la question posée, la conformité de la procédure utilisée, etc.).

65. La Commission se félicite de la disposition de l'article 101 par. 5, qui habilite les organes de l'autonomie locale à contester la constitutionnalité des règles concernant leurs droits et compétences constitutionnels et à porter leurs litiges avec les autorités gouvernementales devant la Cour constitutionnelle.

66. Elle note avec satisfaction les nouvelles dispositions intéressant la Cour constitutionnelle.

Elle présume que la toute première phrase de l'article 100 ("*La Cour constitutionnelle administre la justice constitutionnelle dans la République d'Arménie*"), combinée à l'article 101 par. 5 ("*Conformément à la procédure définie par la Constitution et la loi sur la Cour constitutionnelle, ... les citoyens peuvent saisir la Cour dans des affaires particulières, lorsque un tribunal a rendu une décision, pour qu'elle statue sur la constitutionnalité d'une disposition de la loi ou d'un autre texte réglementaire appliquée dans la décision du tribunal*") doit s'interpréter comme une disposition fondant le droit de saisine individuelle de la Cour constitutionnelle.

67. La Commission se félicite que la saisine de la Cour constitutionnelle prévue à l'article 101 par. 5 ne soit pas restreinte aux citoyens (comme dans le projet originel), mais autorisée à *"toute personne"*.

68. S'agissant du mécanisme de recours constitutionnel et de saisine de la Cour, la Commission présume que la juridiction traitant une affaire (voire le ministère public) peut soulever la question de constitutionnalité d'une disposition devant la Cour et suspendre la procédure jusqu'à ce qu'un arrêt soit rendu. De plus, une partie à la procédure peut, après le prononcé du jugement contester la constitutionnalité *"de la disposition de la loi ou d'un autre texte réglementaire appliquée dans la décision du tribunal"*. Un arrêt de la Cour constitutionnel selon lequel la disposition contestée est anticonstitutionnelle devrait logiquement conduire à l'annulation du jugement (faute de quoi, la procédure devant la Cour constitutionnelle ne sera pas considérée comme une voie de recours efficace). Il reste au législateur à décider si la saisine de la Cour constitutionnelle ne doit être possible qu'après l'épuisement des autres voies de recours disponibles ou si elle peut être possible après toute décision, même si celle-ci n'est pas définitive. La Commission présume qu'il est probable que c'est cette dernière option qui sera sans doute suivie.

69. Elle est favorable à la disposition de l'article 101 par. 7 autorisant le médiateur à saisir la Cour constitutionnelle. Ce mécanisme offre au médiateur et à la Cour la possibilité de devenir des acteurs importants de la protection des droits de l'homme et de l'ordre constitutionnel. Le médiateur devrait pouvoir demander à tout moment à la Cour de se prononcer sur la constitutionnalité d'une disposition, qu'une affaire soit pendante ou déjà tranchée.

70. Le délai de trente jours fixé par la Constitution en vigueur (article 102) pour traiter et trancher une affaire portée devant la Cour est plutôt irréaliste. Son abolition dans le nouveau libellé de l'article 102 est une bonne chose.

71. On ne voit pas encore bien si le ministère public et le Procureur général doivent être considérés comme faisant partie du judiciaire ou comme un service **indépendant** rattaché à l'exécutif. Il s'agit pour beaucoup de savoir si le ministère public sera chargé de défendre les intérêts de l'Etat dans les affaires civiles et administratives (modèle américain). Cependant, le fait de placer le ministère public au chapitre 6 dans le cadre du judiciaire et le fait que les procureurs soient nommés par le Président – et non par le Premier Ministre (voir article 55 par. 9) indiquerait plutôt une préférence pour l'approche suivie par les pays de droit romain. Si ce dernier modèle est suivi, les procureurs devraient être représentés au sein du Conseil de la Justice, qui devrait être compétent pour leur nomination, leur carrière et, éventuellement, leur révocation.

Chapitre 7 : l'autonomie locale

72. La Commission se félicite des dispositions contenues dans ce chapitre. L'article 104 définit les collectivités, fixe le droit d'avoir une autonomie locale et établit la personnalité juridique des collectivités, alors que l'article 105 par. 1 consacre les compétences propres des collectivités et le principe selon lequel celles-ci peuvent aussi exercer des pouvoirs exécutifs par délégation de l'Etat. Les rapporteurs ont aussi noté avec satisfaction la garantie constitutionnelle de l'indépendance budgétaire des collectivités, consacrée par l'article 106.

73. La Commission se félicite aussi de ce que l'article 107 comporte maintenant une garantie constitutionnelle de l'**élection** des "conseils des anciens" et du "chef de la

collectivité". Ce point est conforme aux exigences de la Charte européenne de l'autonomie locale.

74. La Commission présume que l'article 108.1 distingue l'étendue du contrôle étatique des pouvoirs délégués (première phrase de l'article 108.1) du contrôle de l'exercice des pouvoirs réservés aux collectivités (deuxième phrase de l'article). On se rappellera à cet égard que conformément à la Charte européenne de l'autonomie locale, le contrôle étatique de l'exercice des pouvoirs réservés aux collectivités doit se limiter à un contrôle de légalité.

75. L'article 108 concernant la ville d'Erevan devrait comporter le principe selon lequel le maire et le conseil doivent être **élus**. Les rapporteurs sont conscients que le conseil et le maire élus peuvent être chargés de tâches liées à l'exercice de la politique gouvernementale dans la capitale et que cela peut les placer dans une situation délicate, car la politique gouvernementale peut ne pas être toujours compatible avec la politique menée par le conseil municipal ou le maire. Cette situation n'a pourtant rien d'extraordinaire. Les rapporteurs notent que plusieurs capitales européennes ont trouvé des solutions spécifiques à ces problèmes. La loi sur la ville devrait traiter cette question.

76. Les rapporteurs craignaient que l'article 109, qui autorisait la destitution de maires élus et la dissolution de conseils de collectivité élus eût pu conduire à des situations qui auraient été incompatibles avec l'essence même de la démocratie. La Commission note maintenant avec satisfaction que le nouveau libellé prévoit que la destitution ne peut avoir lieu que pour des motifs "*prévus par la loi*" et sur la base de conclusions de la Cour constitutionnelle. A cet égard, elle rappelle que le législateur se doit, en adoptant les règles concernant les motifs de la destitution de maires ou de conseils de collectivité élus, de respecter l'essence et le principe de l'autonomie locale.

77. Elle estime que les règles contenues à l'article 110 qui régissent la fusion et la division de collectivités sont en général compatibles avec les normes européennes. Elle se félicite du nouveau libellé, qui suit les propositions des rapporteurs.

APPENDIX

**PROPOSED REVISED CONSTITUTION
OF THE REPUBLIC OF ARMENIA**

RECOMMENDATIONS FOR CONSTITUTIONAL REFORMS

CHAPTER 1. The Foundations of Constitutional Order²

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.~~

~~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*

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 strikethrough font have been either deleted or moved (in this case it has been moved to Article 14).

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 14⁶.

~~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 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

⁶ See Chapter 1, Article 11.3

⁷ See Article 14.1 with new wording.

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.

Article 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 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 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 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 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 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 24 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 34 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 35 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 37 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 38 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 39 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 40 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 41 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 42 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* individuals shall not have retroactive effect.

Legal acts that improve the legal status of *an* individuals, 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 51. 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 ~~east 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 ~~east~~.

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 Assembly⁸.

~~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~~

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.

~~recommendation of the Prime Minister.~~

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

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*;

13) 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 ~~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 marzets 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

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 point 1.2. 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 Minister, 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 government bodies and their powers shall be determined by the Constitution and the laws.~~

CHAPTER 8. Adoption of The Constitution, Amendments And Referendum¹⁰

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.*

