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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW
(VENICE COMMISSION)

in co-operation with
Constitutional Court of the Republic of Armenia
International Association for Constitutional Law
Conference of Constitutional Control Organs of Countries of Young Democracy
Centre for Constitutional Law of the Republic of Armenia

CONFERENCE TO COMMEMORATE THE 10TH
ANNIVERSARY
OF THE ESTABLISHMENT OF THE CONSTITUTIONAL
COURT OF
THE REPUBLIC OF ARMENIA

"THE LEGAL PRINCIPLES AND POLITICAL REALITY
IN EXERCISE OF CONSTITUTIONAL CONTROL"

Yerevan, Armenia, 29 September – 2 October 2005

SYNOPSIS

On the occasion of the 10th anniversary of the Constitution and the Constitutional Court of Armenia, the Constitutional Court, the Venice Commission, the International Association of Constitutional Law (IACL) and the Conference of Constitutional Control Organs of the Countries of Young Democracy organised the Conference on “Legal Principles and Political Reality in the Exercise of Constitutional Control”. The Conference, attended by presidents and judges from 22 countries, was opened by the President of the Republic, Mr Kocharian, Mr Buquicchio, the Secretary General of the Venice Commission, the President of the European Court of Human Rights, Mr Wildhaber, and the President of IACL, Ms Saunders.

During the Conference, the relationship between constitutional courts and politics was approached from several angles. It was pointed out that the independence of the constitutional courts is of key importance in order to guarantee the implementation of the Constitution. Even though constitutional judges are often elected by Parliament, they do not represent the political force which may have nominated them but act on the basis of their own personal judgment. On the basis of the principle of collegiality the judges work together as a single body and their allegiance is to the Constitution, not to any party or institution. Constitutional court judges have the famous “duty of ingratitude” towards the entity which nominated them. Notwithstanding their independence, constitutional courts may be subject to undue pressure from other state powers. Mr Buquicchio pointed out that the Venice Commission is ready to stand up for the courts in such situations.

Some courts can themselves take into account the possible consequences of the implementation of their decisions. For example when they mitigate these effects by delaying the entry into force of their judgment or by limiting its effects *inter partes*. Ms Saunders underlined that the more power was concentrated in one hand, the more the scope of action for constitutional courts was reduced. In some cases, courts would have to assess the sustainability of their judgments.

Another problem addressed was the non-execution of decisions of constitutional courts. Sometimes, even in older democracies, problems in the execution of final and binding constitutional court judgments can be witnessed. In a democratic state ruled by law, constitutional court decisions may be regretted by other state powers but they are not negotiable and have to be implemented as handed down by the court.

The notions of judicial restraint and “political questions” were discussed as well. Several participants insisted that a clear distinction between political and legal questions will often be impossible and the nature of constitutional cases could not be defined in a general way. All the more it was important that the constitutional courts gave clear and transparent decisions based on a coherent reasoning which laid open the criteria for the decision taken.

In parallel to the Conference, the Parliament had organised a round table on the constitutional amendments in which about 40 persons, participants of the Conference parliamentarians, civil society and the media took part. The debate covered different aspects of the amendments, which had been adopted in third reading shortly before the Conference.

Both the Conference and the round table had an excellent media coverage.