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CONCEPT PAPER

ON THE CONSTITUTIONAL REFORMS

OF THE REPUBLIC OF ARMENIA

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CONCEPT PAPER
ON THE CONSTITUTIONAL REFORMS OF THE REPUBLIC OF ARMENIA
ELABORATED BY THE SPECIALISED COMMISION ON CONSTITUTIONAL REFORMS
ADJUNCT TO THE PRESIDENT OF THE REPUBLIC OF ARMENIA
YEREVAN, OCTOBER 2014

"Any society in which the guaranteeing of rights is not assured nor the separation of powers defined, has no constitution at all". French Declaration of the Rights of Man and of the Citizen /August 26, 1789/, Article 16

INTRODUCTION

A Specialized Commission on Constitutional Reforms was formed by the Decree of the President of the Republic of Armenia as of 4 September 2013 based on the necessity for implementing the principle of the rule of law, guaranteeing the basic human rights and freedoms, for ensuring the complete balancing of powers and increasing the efficiency of public administration.

Having analyzed the historic process of constitutional developments in the Republic of Armenia within the framework of systemic integrity, as well as its key peculiarities and the existing problems, the Specialized Commission on Constitutional Reforms considers it necessary to highlight the following main stages in terms of conceptual approaches.

The first stage /1995-2005/

The Constitution of the Republic of Armenia adopted in 1995 played a significant role in the establishment of democracy in the Republic of Armenia, strengthening the bases of a rule-of-law State, finding constitutional solutions in crisis situations, gradual development of the institutions of the State power, and prescribing the constitutional safeguards for the protection of human rights. Moreover, in the Republic of Armenia, as in other newly independent states, the constitutional solutions have been built upon the objective of forming the public authorities of an independent state and safeguarding their performance. The constitutional practice that emerged subsequently, as well as new issues related to the development of public relations and enrooting of democracy, and the obligations assumed in respect of the accession to the Council of Europe gave rise to the necessity of carrying out constitutional reforms. Already in late 1990's this necessity was considered as a pending issue both among specialists and within the framework of social and political thought, and, consequently, resulted in in-depth discussions.

At that stage the necessity for constitutional reforms was primarily conditioned by the existence of the following main issues:

1. The processes of the international integration of the Republic of Armenia showed the necessity for a deeper consideration of the fundamental values, which, especially in the sphere of human rights, were taken as a basis for domestic and interstate legal relations of European countries. Moreover, by taking these values into consideration a lot of countries with classic democracy, as well as Eastern European countries also made significant amendments to their Constitutions.

2. The clear attitude towards the constitutional recognition and stipulation of human rights as the highest value was absent in the Constitution of the Republic of Armenia adopted in 1995, the human dignity being enshrined not as an object for protection under constitutional law, but as an object of protection within the scope of criminal-law relations and the approach typical to the prior Soviet legal system with respect to this issue was still being

applied. **The existing constitutional-legal model was predominantly power-centered.** Based on the provisions of international law and especially those of the European Convention for the Protection of Human Rights and Fundamental Freedoms, the strengthening of constitutional safeguards for guaranteeing, ensuring and protecting the basic human rights, the clarification of the framework of possible limitations of these rights were regarded as an important direction of constitutional reforms.

3. The principle of the separation and balancing of powers was not consistently implemented under the Constitution of the Republic of Armenia. Particularly, the place of the institute of the President of the Republic of Armenia in the system of State power, as well as the framework of responsibilities thereof in the sphere of executive power were unclear. The clarification of the place and role of the institute of the Prime Minister in the system of executive power was also necessary.

4. The constitutional prerequisites supporting the law-making activities and supervisory role of the National Assembly were not sufficiently effective. This issue could be solved only as a result of constitutional reforms, particularly by reserving the National Assembly much more independence in exercising the political responsibility assumed thereby, by abolishing almost absolute discretionary right of the President of the Republic to dissolve the National Assembly, as well as by strengthening the counterbalancing influence of the National Assembly on the functional powers of other branches of State power.

5. New conceptual approaches were required for ensuring constitutional safeguards for the independence and systemic integrity of the judicial power. In this respect, the Articles 91, 92, 94, 95, 100-103 of the Chapter of the Constitution on "Judicial power" needed to be reviewed. The reforms were to be directed at strengthening the constitutional safeguards for the independence of judicial power, enrooting of administrative justice, ensuring clear functional interrelations among the institutions administering judicial power.

There was a need for a Justice Council to guarantee the self-governance of the judicial power in compliance with the international legal standards and to be formed on the basis of new principles.

6. The system of constitutional justice was to become more operative and efficient by supplementing and completing the list of objects and subjects of constitutional supervision and establishing efficient guarantees for the protection of human rights as well as the required procedural preconditions for ensuring the supremacy of the Constitution.

7. The methodological approaches in the Chapter of the Constitution on “Territorial government and local self-government” need to be fundamentally reviewed. A primary issue was to consider the local self-government as a democratic independent institutional system of the society by enshrining the required and sufficient constitutional safeguards for ensuring the independence of the local self-governance.

8. There was also a need for clarification of a number of Articles, editorial adjustments and elimination of certain internal contradictions.

The second stage /after 2005/

The constitutional reforms carried out as a result of the referendum held in the Republic of Armenia on 27 November 2005, having achieved some progress in terms of integral solutions with regard to the above-mentioned issues, contained also a number of incomplete solutions which currently need to be resolved and complete the systemic approaches.

The recent history of constitutional developments in the Republic of Armenia has shown that, due to objective and subjective reasons, the development of independent statehood has still not reached a milestone where one could claim that democracy stands on firm ground, human rights are safely protected, an effective system of government is in place, and the courts are independent and impartial.

The 2005 constitutional reforms, in particular, failed to create the necessary constitutional prerequisites for the more consistent implementation of the rule of law principle and for safeguarding the effective fulfillment of the international commitments of the Republic of Armenia in this field. The provision of Paragraph 3 of Article 3 of the Constitution, according to which "the State shall be confined by basic human and civil rights and freedoms as the law with direct effect," mostly remained a wishful statement, because the constitutional prerequisites needed at the systemic level for its implementation were not prescribed.

For the Republic of Armenia, the lingering key issue was to harmonize the constitutional functions and powers of bodies bearing functions of state power, to clarify the limits of their discretion, and to create real preconditions for confining power by law. It would have been the main way to overcome manifestations of subjectivity and arbitrariness, as well as shady practices in the performance of state power functions.

Moreover, the existing constitutional-legal solutions for issues related to the limitations of human rights and clarifying the discretion of the authorities are not sufficiently consistent with the latest constitutional development trends of Europe. The system for the protection of constitutional rights that apply directly is not complete. The protection of rights in line with the standards of a state governed by the rule of law is not safeguarded at the constitutional level in practice.

In view of the international constitutional developments and the Armenian constitutional culture, we have **still not found safeguards for ensuring stable development of constitutional legal relations.** As a constant and continuous process, constitutional developments have taken place in the international practice in line with the developments of society in the following main ways:

a) Adoption of new constitutions;
b) Amendments and/or additions to the existing Constitution;
c) Consistent and coordinated constitutionalization of legal acts and the law-application practice;
d) Adoption of organic or constitutional laws;
e) Official construal of the constitutional provisions; and
f) Resolution of disputes arising between the bodies of government in matters of constitutional powers.

The last three of the listed six paragraphs are not present in Armenia. The constitutional-legal safeguards for the performance of paragraph "c" are insufficient. This situation creates serious problems for the constitutional evolution and dynamic developments. Safeguarding constitutional developments in the areas mentioned in paragraphs "a" and "b" are brought to the forefront, which is problematic, and **the constitutional process turns into a purely political one**. The international experience and modern constitutional studies have shown the vital necessity of safeguarding constitutional developments particularly in the aforementioned areas "d" and "f" for a state governed by the rule of law.

The following issues, in particular, have now become very urgent and require conceptually new approaches at the level of constitutional solutions:

1. In methodological terms, a consistent transition should be made from a power-centered system of constitutional solutions to a human-centered system, which could not be fully achieved through the constitutional reforms in 2005. In turn, it requires creating sufficient and necessary constitutional-legal prerequisites for implementing the principle of the rule of law, which necessarily requires:

- Safeguarding the direct application of basic rights in systemic integrity, strengthening the constitutional foundation for their protection, and clarifying the positive obligation and public-legal responsibility of the state in this matter; and
- Confining the discretion of the power by law.

The main principle of this approach is that the safeguarded protection of rights ensures the democratic freedoms and the direct application of rights, and limits discretion and manifestations of the subjectivity of the power.

2. It is necessary to put in place clear constitutional safeguards for the consistent implementation of the constitutional principle of the social state and implementing specific programmatic and goal-oriented policies.

3. It is necessary, in the context of systemic integrity, to implement the constitutional principle of the separation and balance of powers more consistently, **to guarantee harmony in the function-institution-power chain, to balance the functional, the mutually-balancing and mutually-checking powers of government bodies, and to strengthen the proper efficiency and functional independence of the various branches of power.** The necessary constitutional prerequisites should be created for overcoming expressions of shady relations and subjectivity in the performance of state power functions, as well as safeguarding public-legal accountability and programmatic and goal-oriented activities of the state power.

4. It is necessary to ensure the consistent implementation of the requirements of Article 2 of the Constitution (which may not be amended) and to preclude the performance of state power functions through state bodies not stipulated by the Constitution.

5. The Constitution has not overcome the excessive personality focus and excessive concentration in the political system of the Republic of Armenia. There is obvious disproportion between the real volume of powers of various constitutional bodies and their political responsibility.

6. The constitutional bases of the executive power system are inadequate. It lacks a solid internal logic and clear delineation of functions and powers. There is an urgent need to eliminate the lack of clarity and the ambiguity between the functional role, authority, and responsibility of the executive power.

7. The role of the National Assembly of the Republic of Armenia should be enhanced to the necessary level, in line with the current requirements of parliamentarism, in areas such as effective law-making activities, oversight, and formation of state power and government bodies, whilst creating sufficient and required constitutional safeguards for the effective functioning of the parliamentary minority and the enhancement of its balancing role.

8. Reforms of the electoral system and the institution of referendum should ensure an effective democratic process in which the government is elected, accountable, and changeable, alongside the active role of civil society in carrying out adequate public oversight of the activities of government.

9. Together with the formation of a justice system enjoying an appropriate level of public trust, the significant strengthening of the balancing role of the judiciary vis-à-vis other branches of power should be safeguarded constitutionally in line with the standards of the rule of law state. The safeguards of the functional independence of the judicial power will suffer serious negative consequences if the constitution lacks clarity regarding the functions of judicial authorities, and if the institutional solutions and procedures are imperfect.

10. The gap between the Constitution and real life should be overcome in principle. Constitutionality and the constitutionalization of social relations should help to find legal safeguards for solving political, social, economic, and other issues, based on the fundamental truth that **overcoming the deficit of constitutionality is the guarantee of stable development.** In a state that ensures the rule of law, the political, economic and administrative potentials may not become integrated. The constitutionality of the goals and activities of political forces must be guaranteed and secured. The Constitution should underline the importance of constitutionalizing the individual's social conduct and the government's political and public conduct, both of which should be based on the principle of the rule of law.

11. The Republic of Armenia should draw necessary conclusions also from the experience of constitutional developments of other former USSR countries. With the exception of the Baltic States (Estonia and Latvia) and Moldova, the other post-Soviet countries, including Armenia, adopted and subsequently preserved semi-presidential or presidential systems of government. In four of them, the same individuals have been holding the presidential post for over 20 years. In two of them, according to the analysts, so-called "hereditary monarchies" have formed. In three other countries (Ukraine, Georgia, and Kyrgyzstan), they were more persistent in implementing and reforming the constitutional solutions for a semi-presidential system of government. However, they have experienced the so-called "color revolutions," while constitutional developments focused on enrooting the parliamentary system of government.

The Republic of Armenia faces a major choice: either to safeguard stable development of the country via political consensus and reforms, or to choose the path of the aforementioned countries with a seriously-undermined prospect.

If the first option is chosen, and the main political forces of the country achieve the necessary consensus, the aforementioned problems will be solved, allowing the constitutional reforms to support the development of a stable democracy and the rule of law state, which are two essential pillars of progress and a safe future for the Republic of Armenia.

Based on the assessment of the actual situation, conceptual approaches related to all of the aforementioned issues are elaborated in the relevant sections of this Concept Paper (hereinafter "the Concept Paper") based on the fundamental modern principles of constitutional development.

I. THE MAIN PRINCIPLES UNDERLYING THE CONSTITUTIONAL REFORMS

The Republic of Armenia constitutional reforms shall be based on the fundamental principles, according to which:

1. The human being, his or her dignity, basic rights and freedoms, recognized by the State as the highest value, **must ensure the strict implementation of the principle of rule of law and guarantee the restriction of State power by law**.

2. The constitutional norms must not only declare the constitutional right of a person but also maximum **clearly define the guarantees for the exercise thereof, the obligations of the State and the permissible scope of limitation of certain rights**. Human rights must be considered as applicable rights, and the limitations thereof must arise from the rules of international law, be proportionate, not distort the content and sense of the right, be clearly defined by law and be combined with relevant obligations of the State.

3. The required proportionality must be guaranteed with regard to the issue of realizing the opportunities of direct and representative democracy.

4. Based on the principles of proportionality and balancing of functions and taking into account the integral approach and the international experience, the gaps and shortcomings with respect to the implementation of the principle of separation and balancing of powers must be eliminated by **guaranteeing the harmony of the "function-institute-power" chain, as well as the balance of functional, counterbalancing and restraining powers reserved, and guaranteeing the imminence of the public and legal liability equivalent to the vested authorities**. At the same time, the functional independence of all the branches of State power must be guaranteed. Their interrelations must be based on an operative system of checks and balances, **and disputes having arisen in respect of the constitutional powers must have clear resolution mechanisms**.

5. The required and sufficient preconditions for functional, structural, material and social independence of the judicial power must be enshrined and guaranteed at the constitutional level.

6. A clear methodological approach must be applied with regard to the reforms of the provisions of the Constitution relating to the local self-government, by taking as a basis the consistent implementation of the main principles of the European Charter on Local Self-Government, by ensuring the establishment of clear democratic system of self-government in the Republic of Armenia.

7. The necessary preconditions must be set up for strengthening the constitutional stability, and establishing the supremacy of the Constitution and constitutionality.

II. CONCEPTUAL APPROACHES TO CONSTITUTIONAL REFORMS

The following conceptual approaches are set forth on the basis of the aforementioned issues and principles and may serve as a basis for the elaboration of the draft of constitutional reforms of the Republic of Armenia.

2.1. Guaranteeing, ensuring and implementing the principle of rule of law for constitutional solutions, strengthening of constitutional and legal preconditions for rule-of-law State

The key objectives of constitutional reforms of the Republic of Armenia are deemed to be the consistent implementation of the principle of rule of law and the improvement of constitutional mechanisms for guaranteeing basic human rights and freedoms.

Especially in the last decade, the top priority of constitutional developments in Europe is to safeguard the direct application of basic rights and freedoms and to confine the fulfillment of public authority functions by such rights and freedoms.

This issue requires an integral and urgent solution and is related to all Chapters of the Constitution.

At the same time the international experience in constitutional developments shows that certain solutions of enshrining and guaranteeing the principle of rule of law in the Constitution are largely dependent on the level of legal and constitutional culture, the traditions of statehood-building, as well as the place and role of customs and traditions in the legal system.

The conceptual approach is that when administering power, the people and the State must be limited to the basic human and citizen's rights and freedoms. The important thing is what the legitimate extent of that limitation is, how they are afforded legal certainty by statutes governed by the rule of law, by guaranteeing constitutionality through constitutionalization of the legal system and the law enforcement practice.

In addition, the Constitution must provide for necessary and sufficient constitutional and legal guarantees in order to ensure the direct effect of rights. The latter must become also the main standard for guaranteeing the supremacy of the Constitution.

Certain constitutional solutions are called for creating the environment which is first necessary for making rule of law as the basis for the appreciation — by the society — of a human being and a citizen and the axiological basis for his or her self-expression and self-realization and second — for creating harmony between the political and public-legal behavior of the authorities and the principle of rule of law.

Rule of law, being the essence of a rule-of-law State, implies:
- human rights must be constitutionally stipulated, guaranteed by law, as well as ensured and protected by adequate structural solutions;
- the principle of equality of everyone before the statute governed by the rule of law must be respected and guaranteed;
- laws and other legal acts must be in conformity with the principle of legal certainty, must be predictable, clear and free from gaps and ambiguities;
- the administration of power must be hinged on the guaranteeing the harmonization of functions and vested powers;
- the principle of legitimacy must underlie the administration of public authority;
- the principle of prohibition of arbitrariness must be guaranteed and the extent of discretion of the public authorities must be clarified;
- the State must bear a positive obligation in respect of guaranteeing, ensuring and protecting rights and must assume adequate public-legal responsibility;
- any interference with basic rights and any action of the authorities must derive from the principle of proportionality;
- there must be necessary mechanisms for effective solution of legal disputes exclusively through legal measures;
- the justice must be independent and impartial.

Guaranteeing the principle of rule of law implies the simultaneous existence of all these interdependent and complementary legal conditions **and the assurance of constitutional guarantees required therefor, which is currently still not consistently safeguarded in the Republic of Armenia Constitution.**

The aforementioned principles also derive from the positions presented in Resolution No 1594 (2007) of the Parliamentary Assembly of the Council of Europe regarding the rule of law, recommendation CM (2008)170 of the Committee of Ministers of the Council of Europe as of 21 November 2008 and CDL-AD (2011)003rev. Report of the Venice Commission of the Council of Europe as of 4 April 2011 and the provisions of the UN Resolution on Rule of Law adopted on 24 September 2012. The results of the discussions held at the conference on "Rule of Law as a Practical Concept" (London, 2 March 2012) held within the scope of the presidency of the United Kingdom in the Committee of Ministers of the Council of

Europe and the conference on "European Standards of Rule of Law and the Scope of Discretion of National Authorities" (Yerevan, 3-4 July 2013) held within the scope of the presidency of the Republic of Armenia in the Committee of Ministers of the Council of Europe. The fact is that, throughout Europe, all of these approaches have gained systemic development in recent years and posed adequate requirements for the constitutional development of countries that are Member States of the Council of Europe.

In practical terms rule of law exists to the extent that the legitimacy of the authorities hinged on law is not at risk, laws are *legitimate* and derive from objective preconditions, and the judiciary is independent and impartial.

Taking into consideration the above mentioned and taking into account that in Article 3 of the Statute of the Council of Europe signed in London on 5 May 1949 is clearly defined that each member of the Council of Europe must accept the principle of rule of law, the main criteria for application of the latter in the European legal system are stated in detail in the above-mentioned CDL-AD (2011)003 rev. Report of the Venice Commission of the Council of Europe on Rule of Law as of 4 April 2011. It will be of key significance when the Commission sets forth approaches for certain constitutional solutions.

2.2. Ensuring the direct effect of basic human and citizen's rights and freedoms; constitutional solutions for the limitations of rights

The constitutional reforms held in 2005 resulted in significant content-related and structural amendments made in Chapter 2 of the Constitution which are deemed as the required constitutional and legal basis for the protection of basic rights. **At the same time, with regard to basic rights, the constitutional amendments of 2005 were carried out based on the logic of enshrining the rights and freedoms without making any distinction between them, which is typical mostly of former USSR countries and reflects inertia in the legal thinking**. As a result, no fundamental solutions were provided in respect of the issue of ensuring the direct effect of rights, since the directly applicable rights, as well as the particularities of the protection thereof were neither clearly differentiated nor enshrined. This, in particular, concerns the distinction between the classic basic rights and social basic rights.

The constitutional amendments of 2005 failed to guarantee, in integral entirety, also the clear distinction of peculiarities relating to the limitation of basic rights and their compliance with international standards. A number of Articles in the list of basic rights provide for both general and special limitations, giving rise to differing interpretations with regard to their scope and content. Another problematic issue is that possibilities of limitation of certain basic rights have not been defined, whereas the necessity thereof is obvious.

Despite the availability of the constitutional provision as of which the limitations of basic human and citizen’s rights and freedoms may not exceed the scope laid down under the international commitments of the Republic of Armenia, the Constitution in force has failed to sufficiently clarify the requirements to the limitation of rights, which is considered as problematic from the point of implementation and protection of basic rights. **The current constitutional solutions fail to specify also the procedures for judicial protection of basic and other rights.**

Individual provisions of the Chapter 2 of the Constitution do not make clear whether they are addressed only to the State, bound by basic rights, or are directly mandatory also for other individuals or citizens. The obligation imposed on everyone by part 1 of Article 47 of the Constitution in force, i.e. to respect the rights, freedoms and dignity of others, gives an opportunity, by virtue of the Constitution, to directly extend the application of basic rights to relationships between private individuals which contradicts the traditional ideas on basic

rights.
The solution to the above-mentioned issues, taking into account the international practice and the current trends in constitutional developments, **requires new conceptual approaches**. They can generally lead to the following:

(1) clarification of rights, freedoms and duties in terms of their content, structure and editing;
(2) ensuring the systemic integrity of the scope, content, interrelation, form of setting forth of and approach to the general and specific limitations;
(3) clarification of the limitations of rights and freedoms, based on the international standards for the classification thereof and the legal positions of the European Court of Human Rights, taking into account in particular:
(a) the necessity for enshrining the guarantee of inviolability of rights in order to prevent them from being blocked;
(b) the necessity for clearly enshrining the principle of proportionality;
(c) the permissibility of limiting a right only in compliance with law and the principle of legal certainty.

Besides clarifying the content of basic rights, freedoms and duties, from the point of a clearer interpretation of basic rights structural clarifications are required which will make the wording and sequence of the provisions on basic rights more coordinated. The splitting of the Chapter on basic rights into sub-chapters is one of the possible solutions; however, taking into account that a perfect classification of the whole material is not possible, the clarification of the Chapter on basic rights may also be achieved through a new sequence of the wording of individual Articles and the components thereof. Moreover, one of the most important objectives is to make a clear distinction between, on the one hand, "classic" basic rights and, on the other hand, social basic rights and objectives of the State. Such distinction will give possibility to highlight all basic rights **based on which the individual will be able to protect his or her constitutional rights, including by means of a constitutional appeal.**

All the provisions on basic rights, which do not give rise to subjective rights of the person and oblige only public authorities (first of all, the legislator), **must be clearly differentiated from the directly applicable subjective basic rights, which may not only be referred to in the courts but shall also have adequate procedures for judicial protection.** Such distinction, taking into account the different legal effects of the provisions on basic rights and objectives of the State, is also desirable in the cases where the matter concerns the same base in respect of subject-matter (for instance, the freedom of creation enshrined in Article 40 of the Constitution, on the one hand, and the right to avail of scientific achievements or the right to take part in the cultural life of the society, on the other hand.)

The issue concerning the limitations of basic rights needs to be fundamentally reviewed. This concerns both the main form of limiting the basic rights, *i.e*. providing for a reservation to law, and the grounds for such limitations. The clarification of requirements to the limitations is also of special importance. Providing for the limitation by law leaves the resolution of the issue in respect of prevention of conflict of interests of the society and of others and balancing different interests and rights under the competence of the legislator. The Constitution in force follows mainly the technique of special reservation to law, which defines certain grounds for limitation of relevant basic right. The main issue here is the way of enshrining the grounds for these limitations. They may be general - for all the rights subject to limitation (like part 1 of Article 43 of the Constitution), or special - for every basic right (as, for instance, in part 2 of Article 26 of the Constitution). The advantage of the second approach is that it allows to take into account the peculiarities of limitation of every basic right, which is obviously more preferable from the point of protection of basic rights. However, the extent of limiting the right so as to ensure the required balance between the interests of the society and other individuals, is problematic.

The issue of limitations of basic rights is closely connected with the requirements to such limitations. Besides the special reservations to law, **additional constitutional and legal requirements limiting the discretion of the legislator are necessary.** Taking into account the diversity of legitimate interests, which may be required for the limitations of basic rights, the list of such requirements may not be exhaustive; the Constitution, however, should at least enshrine the requirements which are widely recognized in the modern constitutional law as well as in part 1 of Article 52 of the Charter of Fundamental Rights of the European Union. **It particularly concerns the necessity of clearly enshrining the inviolability of the rights and, specifically, the principle of proportionality.** An additional important guarantee is the requirement enshrined in part 2 of Article 43 of the Constitution, which particularly ensures the application of standards of the European Court of Human Rights to the limitation of basic rights. Noteworthy is also the provision for requirements to the laws limiting the basic rights which are aimed at establishing the procedural preconditions for the effective exercise and implementation of basic rights. The requirements to the limitations of basic rights may also include the principle of legal certainty.

The limitation of direct impact of basic rights on State-citizen relations, *i.e.* the exclusion of their direct applicability by virtue of the Constitution in the ambit of legal relationships between private individuals, give rise to the suspicion that the basic rights also produce effect in the field of private law. In case of classic basic rights, the State is obliged not only to restrain from interference with those rights, but also to protect those basic rights through legislative arrangements from interference by third persons. In the field of private law this implies that the legislator is obliged, in case of a conflict, to balance the basic rights of various participants of private legal relationships on the basis of the principle of proportionality, where there is no any ground in respect of the subject-matter for giving a privilege to one of the parties.

The safeguards for ensuring the rights of national minorities also need to be additionally enshrined.

Appropriate amendments to Chapter 2 of the Republic of Armenia Constitution need to be based on the aforementioned conceptual approaches in order to create the required and sufficient constitutional-legal safeguards for effectively safeguarding human rights.

2.3. Guarantees for the implementation of the constitutional principle of a social State

Review and improvement of guarantees for the implementation of the constitutional and legal principle of a social State is one of the important and necessary directions of constitutional reforms.

Article 1 of the Constitution establishes that "The Republic of Armenia is a sovereign, democratic, social and rule-of-law State". Republic of Armenia is recognized as a social and rule-of-law State by the Article of the Constitution that may not be amended. The characteristic of a modern social state is the social market economy and its normal functioning. In such a State based on social market economy the concept of a free individual is fundamental, who is independent and responsible for the actions thereof. Free development of an individual is inevitably connected to emergence of inequalities. A social State is called to mitigate these inequalities through different measures by implementing a targeted policy concerning social security, social insurance and social aid.

Since the content of the principle of a social State is so broad that it is impossible to derive specific legal effects therefrom, for this reason it is the primary task of the legislator to particularize this principle. In the very general sense the principle of a social State is aimed

at social justice, it obliges the State to ensure fair social order. The principle of a social State is not only a common programme provision or a constitutional and legal benchmark, but also a mandatory constitutional norm. First it is addressed to the legislator and obliges the latter to develop and implement the principle of a social State not only in a narrow field of social law, but also in all fields of law. Certain constitutional and legal benchmarks stem from the principle of a social State, which should be taken into account by the legislator through particular social arrangements, provision of social aid to those in need, development of social services and social security measures.

The Chapter of the Constitution in force relating to the fundamentals of constitutional order does not contain any provision, that would particularize, even in more general terms, the recognition and declaration of a social State. Constitutional restraint as regards a social State is especially evident against the background when the principles of a rule-of-law State and democracy are already particularized in the Chapter on the fundamentals of constitutional order. Thus, the general overview of the principle of social State in the Chapter on fundamentals of constitutional order may contribute both to more precise interpretation of that principle and to its manifestation in the legislation and law enforcement practice.

The principle of a social State is an objective constitutional norm and yet, as such, does not establish subjective rights of a citizen. It is closely interconnected with the provisions on main social rights and objectives of the State. Social basic rights and objectives of the State are enshrined without any distinction in a number of Articles of Chapter 2 of the Constitution in force, moreover, **in many cases social objectives of the State are formulated in the Constitution as basic social rights.**

Given the requirements of legal certainty and clarity, strict distinction must be made between basic social rights and objectives of the State, since they produce completely different legal effects. All the provisions concerning the social field that are binding only on the legislator and the executive power, must be formulated as objectives of the State, since they are not deemed as legal requirements to an individual, but contain only objectives which must be achieved by the State "to the possible extent". As compared to basic rights, objectives of the State are only objective-legal provisions and do not create subjective rights.

Chapter 2 of the Constitution does not differentiate in any way social basic rights and classic basic rights. The enshrinement thereof without distinction in the list of basic rights challenges the principal decision of the legislator, according to which basic rights are directly applicable rights. As a rule, basic social rights and rights to freedom in terms of the structural nature are absolutely different from each other. **Classic basic rights to freedom, first of all, require from the State to abstain from interference into these rights, while most of the social basic rights, just the contrary, require positive actions of the State for the exercise of those rights.**

At the same time it should be taken into account that there are several basic rights relating to the social field which are directly effective rights (for example, right of freedom to choose occupation or the right to strike) **and which may be protected by way of constitutional justice.**

The risk of enshrining "classic" and social basic rights without any distinction is, on the one hand, that the strictly binding nature of the "classic" basic rights may give rise to frustrated expectations also in the case of social basic rights, whereas, on the other hand — just the contrary — a less binding nature typical to social basic rights may mitigate the strict requirements set in respect of "classic" basic rights. The constitutional clarifications related to this problem are necessary safeguards of implementing the constitutional principle of a

social state.

2.4. Separation and balancing of powers

2.4.1. Current issues

The constitutional issue of separation and balancing of powers in Armenia, the constitutional essence of which is rather complex and has not been adequately understood, requires comprehensive assessment of the current situation, identification of existing problematic and imperfect solutions, the integral analysis and proposal of specific mechanisms for the resolution thereof.

The issues currently faced by us are conditioned both by the peculiarities of the form of governance, non-consistent implementation of the principle of separation and balancing of powers, imperfect integral solutions, as well as by the low level of political and constitutional culture, insufficient firmness of political party system.

Within the triune chain of "function-institute-power" essential harmony is not yet guaranteed at the constitutional level by the Constitution of the Republic of Armenia. Whereas, without that **the desired balance of functional, counterbalancing and restraining powers may not be ensured.** Absence of the latter substantially endangers the stable development of the country**, and dangerously expands shadow relations and the scope of subjective discretion in administration of State power.**

Conceptually, some of the current issues that need to be highlighted are as follows:

1. In case of non-simultaneous elections of the President of the Republic and those of the National Assembly the two institutes with primary mandates appear to be at different levels of public confidence, and the absence of a majority in the Parliament in support of the President of the Republic and the current context of the legal thinking significantly **increase the danger of political crisis and confrontation.** Under these circumstances, political confrontation can grow into public confrontation, with all of its negative consequences.

In accordance with the Constitution in force this system also obliges to establish two Governments within two years, which considerably destabilizes the system of the executive power, giving rise to uncertainty and a certain level of non-confidence in the field of economy.

2. The absence of an absolute majority for the President of the Republic in the National Assembly and internal parliamentary counterbalances **increases the danger of political autocracy.** This leads to a situation where **presidential power becomes absolute, without having efficient counterbalances neither on the part of the legislative, nor on the part of the executive power.**

3. Necessary proportionality is not provided between the functions and powers of the President of the Republic. In particular, **sufficient clarity is not afforded to the powers of the President in administering executive power and performing the functions of observing the Constitution.**

4. **Proper guarantees are not yet ensured at the constitutional level for the full implementation of the legislative and supervisory activities of the National Assembly** ***as well as for the effective performance of its balancing role by the parliamentary minority.***

5. There is no clear constitutional and legal mechanism for the settlement of disputes arising as regards the constitutional powers in President of the Republic-National Assembly, President of the Republic-Government, National Assembly-Government interrelations, as well as in the relations between the institutions of State power. **In a rule-of-law State such disputes must be settled within legal framework rather than at political level.**

6. Clarity is not afforded to the system of executive power. **The requirement of Article 2 of the Constitution, not subject to amendments,** according to which: "The people shall exercise their power through free elections, referenda, as well as through State and local self-government bodies and officials **provided for by the Constitution**", **is not consistently implemented.**

There is also certain unclarity in the functional role, competences and liability of the executive power. The inner dualism of the executive power, conditioned by the functional powers of the President of the Republic and the Government, is not sufficiently clarified as a result of which **the Government does not perform with full and complete responsibility the functions typical to the executive power.**

7. Imperfection of the political system, lack of legal and political culture, ineffective operation of the constitutional system of checks and balances have served as a reason for individual Articles of the Constitution, particularly part 3 of Article 3, parts 2 and 3 of Article 7, part 2 of Article 8, Article 14, Article 27.1, Article 65, etc., to become largely declaratory.

8. The counterbalancing role of the judicial power with respect to other branches of State power is not guaranteed in line with the criteria of a rule-of-law State.

The presented issues become more evident in the light of still insufficient firmness of democratic institutions of the country, low level of political and constitutional culture, shortcomings existing in legislative policy and law enforcement practice.

2.4.2. Conceptual approaches to resolving current issues

1. From the conceptual perspective constitutional reforms should guarantee the necessary proportionality in the triune chain of "functions-institutions-power" for all branches of government, as well as the balance of functional, counterbalancing and restraining powers. The key issue is to provide constitutional guarantees for establishing a full-fledged institution of the head of the state, strong and balanced bodies of legislative and executive branches and an independent and impartial court.

2. For the normal establishment of the political system of the country, an important issue is the creation of necessary legal guarantees for ensuring the constitutional requirement of democratization of political parties, public disclosure of their financial activities.

3. **Attaching special importance to further strengthening of the legislative and supervisory role of the National Assembly**, it is necessary to:
- strengthen the role of bodies of the National Assembly with regard to legislative activities;
- enhance the role of the National Assembly in formation of state authorities and public administration bodies;
- extend the scope of supervisory powers of the National Assembly;
- strengthen constitutional guarantees for the rights of parliamentary minority.

4. The institutional system of the executive branch, the scope of its systemic relations with the President of the Republic and the National Assembly should be clarified at the constitutional level. Mechanisms should be designed to overcome the situation when the activities of many bodies fulfilling executive functions lie beyond the supervision of the

legislature.

The functional dualism of the executive power should be overcome to the extent possible. Government should be availed of functional powers of the executive power **reserving to the President of the Republic counterbalancing and restraining complete powers, typical of the head of the state.**5. An effective system for the legal resolution of disputes between state bodies in matters of constitutional powers should be implemented. Moreover, systemic conflicts should be precluded to the extent possible at the level of the constitution. The utmost goal of legal regulation should be to safeguard dynamic functional harmony.

6. **The Constitution needs to safeguard the public-legal responsibility of state government bodies and public officials for their programmatic and goal-oriented activities and for the performance of their powers.**

7. An effective system for securing and monitoring constitutionality in the country should be implemented within the framework of the function of upholding the Constitution.

2.4.3. Opportunities Availed by a Parliamentary System of Government

Possible amendments within the framework of proposed conceptual approaches do not completely guarantee resolution of the following issues under the existing system of government:

1. Guaranteeing systemic integrity of the executive branch: under semi-presidential system of government the President of the Republic possesses unbalanced powers within the executive branch without adequate political accountability.

2. Overcoming the problem of political autocracy: political combination of a president, a parliament and a government makes normal and efficient functioning of the system of constitutional checks and balances practically unfeasible. Under such circumstances, the principle of mutual balancing in efforts to form judicial power and other bodies by the two institutions conferred with two primary mandates is undermined as well.

3. The possibility of excessive personification of the state power with various manifestations of subjectivism is not eliminated. This, in its turn, hinders actual separation and balancing of powers; groundless social expectations arise.

4. Approaches proposed under a semi-presidential system of government as regards overcoming possible conflicts and ensuring the necessary stability if the president is not supported by the parliamentary majority do not guarantee complete resolution of the issue.
If the necessary political consensus is reached between the political forces of the country, adequate solutions to the aforementioned problems can be found by implementing a parliamentary system of government, which is rather an issue of political choice. Such a choice would further streamline the functional separation of powers between the three constitutional bodies of government, and there shall be no connection in terms of establishing a “supreme” body conditioned by soviet mentality. The National Assembly, as the legislative power, would oversee the highest body of the executive branch—the Government, while the President of the Republic would oversee the compliance of the legislature and the executive with the rules prescribed by the Constitution, the courts shall be accountable only to the law and shall exercise justice independently.

In case of transition to a parliamentary form of government, the more relevant issues will be related to the stability of government, the oversight powers of the parliament, the parliamentary minorities, and the functions and election procedure of the President of the

Republic.

To ensure government stability, it will be necessary to take into account the modern experience of developing parliamentarism and the means supporting stability, which have proven to be effective in the international practice (namely in the Federal Republic of Germany). Examples of the means supporting stability can be a constructive vote of no confidence and the strong role of a prime minister in the system of state government. Liquidation of the parliament can take place only when the National Assembly cannot elect a new prime minister in a crisis situation.

Relative to the existing system of government, the President of the Republic would assume a fundamentally new role. The President would be elected by the National Assembly or an even wider electoral collegium for a term exceeding the term in office of the parliament /in particular, considering also the involvement of the representatives of diaspora/. The President of the Republic would not have the right to be re-elected, so that during his term, he can be utmost independent from the political forces. His core mission will be to oversee compliance with the Constitution and to ensure the effective performance of the counterbalancing and restraining powers, applying also the co-signature institute in case of need. The President of the Republic would first of all assume the role of a mediator and reconciliator, in view of his core mission of ensuring dynamic balance in the country's development. It could become an effective safeguard of systemic stability.

Considering that, in a parliamentary system, the main dividing line is between the political majority and the parliamentary minority, rather than between the government and the parliament, the parliamentary minority would need to be given rights to match its role.

In the field of legislation, the role of the opposition could be enhanced importantly by means of introducing the concept of organic (constitutional) laws, which would need to be adopted by qualified majority vote. An exhaustive list of such laws would need to be prescribed by the Constitution.

To ensure the adequate performance of oversight functions, the minority's right to create investigative commissions could be prescribed (in Germany, for instance, Article 44 of the Basic Law reserves this right for one quarter of the members of parliament). The effective performance of oversight functions by the minority could also benefit from the fact that the chair of an investigative commission would be an opposition member of the parliament (such a rule can be found, for instance, in Article 91 of the Croatian Constitution). Moreover, the parliamentary minority could be given an important role, particularly, in the election of the Chairman of the Chamber of Control and the Chairman of the Central Electoral Commission by prescribing the election of these officials by a three-fifths vote of the total number of members of parliament (similar to the current practice for the election of the Ombudsman). Representation of the opposition in various bodies of the National Assembly could be required, without applying the principle of proportionality (for instance, by reserving for the opposition the post of deputy speaker of the National Assembly or of chairs of certain standing committees, etc.). Other rights of the parliamentary minority can be prescribed by a special law or by Rules of Procedure of the National Assembly.

In a parliamentary system with these typical features:
(a) there shall be a unified executive power headed by the Prime Minister without any risk of dualistic executive branch, especially in areas of vital importance for the country, such as foreign policy, national security and defense;
(b) there may not be any confrontation between the Parliament and the head of the state, since the President of the Republic shall act as a transpartisan, impartial arbitrator;
(c) excessive personification of the power will be considerably minimized, since only the

representative of the strongest and a publicly accepted political force/forces can become a Prime Minister;
(d) there will not be excessive centralization of power in the hands of the head of the executive branch without adequate political accountability to the Parliament,
(e) political accountability of the Government to the Parliament will contribute to the collegial governance;
(f) the political role of the Parliament as a legislative, as well as a supervisory body will be enhanced, with significantly reinforced role of the opposition;
(g) enhancement of the political role of the Parliament will contribute to implementation by political parties of their core functions and gradual establishment of a classical bipolar political system in the country;
(h) the state will be able to overcome external political challenges in a more flexible manner, since the whole process of political decision-making will be of more collegial and less personalized nature.

2.5 Suffrage and the Electoral System

Principal provisions concerning suffrage and mechanisms for their implementation are mainly specified in the Constitution. However, they need to be clarified and revised to some extent.

The following issues need to be revised in constitutional provisions concerning suffrage:
- the scope of possible restrictions on suffrage;
- main characteristics of the electoral system of the National Assembly;
- definition of the status of the Central Electoral Commission.

According to the Code of Good Practice in Electoral Matters: Guidelines and Explanatory Report (CDL-AD(2002)23rev.) adopted by the Venice Commission, convicts may only be deprived of the right to vote in case of grave crimes. Specifying such a restriction in the Constitution is more appropriate than completely depriving the convicts of the right to vote.
The existing mixed electoral system does not have clear orientation and is a result of political concessions of political forces supporting the majoritarian electoral system, on the one hand, and political forces supporting the proportional electoral system, on the other. In case of fixed lists of political parties the election of deputies from those lists is actually carried out by the leaders of those political parties, and the voters, to a certain extent, do not play a decisive role in electing the preferred candidates.

For ensuring sustainable electoral system during elections to the National Assembly its main characteristics must be enshrined in the Constitution and the concrete regulations shall be provided by organic/constitutional law. In particular, that will allow for full realization over time of the potential of the electoral system to promote the bipolar political system.

Constitutional provisions concerning the system of election to the parliament are widely accepted in old member states (Belgium, the Netherlands, Luxembourg, Denmark, Sweden, Norway, Iceland, Ireland, Austria, Spain, Portugal), as well as new member states (Estonia, Latvia, Czech Republic) of the European Union.

Reforms of the electoral system must create necessary conditions and serve as an impetus for the establishment and democratization of political parties and for the promotion of a sustainable political system.
It is necessary to establish specific barriers for political parties and alliances of political parties for enlargement of political parties and stabilization of the party system.

The constitutional status of the Central Electoral Commission need to be clarified.

2.6. Judiciary

2.6.1. In the constitutional system of separation and balancing of the power the judicial branch mainly plays a balancing or stabilizing role. The first precondition for accomplishing this mission is the protection of the judicial branch from any illegitimate influence or intervention by guaranteeing its independence. **Only a judicial power endowed with the necessary and sufficient functional, structural, material and social independence may guarantee the rule of law, efficient justice and fair trials in the country.**

On the basis of internationally recognized principles the Republic of Armenia has undertaken steps aimed at forming and developing an independent judicial branch and efficient system of justice with the adoption of the Constitution in 1995 and reinforcing the process through reforms in 2005. However, as a result of increasing public awareness of their rights and development of civil society in the recent years a number of important issues have been revealed or emphasized in this sector that require efficient solutions on the level of the Constitution in line with the best traditions of democratic and rule-of-law states.

The main issue is the low level of efficiency of the judicial branch, **which is due to functional uncertainties, structural instability and insufficient independence of the judicial branch, deficiencies in court procedures, as well as a number of negative aspects conditioned by subjective factors. As a result, there is also low public confidence in courts.**

One of the constitutional reasons of the foregoing is that **the Sixth Chapter of the Constitution of the Republic of Armenia mainly identifies structural features (judicial organization), rather than functional attributes and capabilities of the judicial branch.** Therefore, to ensure functional integrity of the judicial power the concept, mission, main functions of the judicial branch, as well as basis for organization and operation of the functional body of the judicial branch need to be specified in the Constitution. Such legal regulation (taking into account general principles of judicial organization and court procedures) will also serve as a basis for formation of a system of judicial authorities with necessary inner independence. At the same time, it will rule out possible attempts to change the structure of the judicial system and to distort the structural integrity and stability of the judicial branch through current laws on the basis of political, tactical, situational or other considerations.

2.6.2. **One of the primary conceptual issues of constitutional reforms is the establishment of an independent, autonomous and accountable judicial branch.** In this sense, the efficiency of reforms is not associated with the creation of new institutions, but rather with the improvement of already established structures. In this context, importance is attached to raising the role and efficiency of activities of the Council of Justice. First of all, this constitutional body must have sufficient structural independence for its protection from illegitimate or discretionary influences. In addition, the Council of Justice shall be endowed with constitutional functions that will enable it to play an active role in ensuring the independence and autonomy of the judicial branch. In this sense, issues relating to the formation of the Council of Justice and its relations with other government bodies (including the National Assembly of the Republic of Armenia, the President of the Republic of Armenia and the Government of the Republic of Armenia), as well as issues relating to the composition and the scope of powers of this body, inter alia, need to be legally regulated anew.

With regard to increasing the efficiency of exercising justice by the courts, on the level of constitutional regulations it is firstly associated with the structure of the judicial system, that is, the number of court instances and agencies, as well as the selection of the best format for their functional interrelation.

In the modern world, there is no model of a judicial system that is distinctly preferable or evidently advantageous. Establishment of judicial systems with two-level, three-level or complex structures may be conditioned by territorial, historical, economic, national or other characteristics of a specific country. However, in all cases, the judicial system in a democratic and rule-of-law state must be based on clear principles deriving from certain consistent patterns.

Thus, when determining the type, the number, powers of court instances or their ratio it is necessary to take into consideration to what extent they may guarantee the exercise of a person's right to judicial protection, the access to the court, the cost-efficient and speedy nature of the court procedure, the efficiency of reviewing a court decision and finally, the adequate quality of justice in the country.

Conceptual approaches to achieving the mentioned result (separately or in combination) will be addressed in detail in the phase of development of the package of constitutional reforms. Particularly, an independent judicial agency (i.e. local courts) may be established within the court of first instance. By carrying out special or specialized functions (i.e. court supervision during pre-trial proceedings), they will reduce the caseload of courts of general jurisdiction, ensuring also adequate quality of judicial activity on specific matters. Reduction of the number of court instances (from three-level to two-level) under the condition of granting the powers of courts of appeal and cassation to the second instance court is also subject to discussion. The introduction of an institution that has yet to be experimented in the national judicial system, e.g. envisaging the opportunity of jury participation in the court procedure, shall be discussed as well. However, in any case, it is considered that the court of first instance will bear the main burden of exercising justice, as a court examining any legal dispute on the merits.

On the conceptual level the new methodological approach first of all implies specifying in the Constitution the necessary and sufficient preconditions guaranteeing functional integrity of the judicial branch which, based on general principles of court procedure and judicial organization, will also serve as a basis for the formation of a system of judicial authorities.

2.6.3. One of the major types of activity carried out by the judicial power of the Republic of Armenia is constitutional justice. The reforms introduced in 2005 (particularly introducing the institute of constitutional complaint, expansion of the scope of entities eligible to appeal to the Constitutional Court, etc.) essentially strengthened the mechanisms for protecting constitutional rights and freedoms of persons. However, the identification of the status of the Constitutional Court was only limited to the following formulation: "In the Republic of Armenia the constitutional justice shall be administered by the Constitutional Court" (Article 93 of the Constitution of the Republic of Armenia). However, taking into account the mission and special direction of the activities of the Constitutional Court, the main function of this judicial body carrying out constitutional supervision, that is, **ensuring the supremacy and direct effect of the Constitution**, must also be clearly specified in the Constitution, providing the necessary and sufficient constitutional and legal guarantees for the implementation of that function.

One of the objectives of the constitutional reform is eliminating certain gaps in constitutional regulations. Such issues have also been identified in the field of constitutional justice. The Constitution of the Republic of Armenia does not provide for the opportunity of solving

disputes between constitutional bodies regarding their constitutional powers. Although this situation has not led to practical difficulties, given the possible increase of the number of constitutional bodies and the probable ratio of their powers resulting from these reforms, for avoiding crisis situations in the future it is necessary to expand the scope of powers of the Constitutional Court, providing the opportunity of solving constitutional disputes between constitutional bodies regarding their powers.

2.6.4. The constitutional reforms must create preconditions for ratification by the Republic of Armenia of the Rome Statute of the International Criminal Court signed on 17 July 1998 in Rome, taking into account the fact that by Decision DCC-502 of the Constitutional Court of the Republic of Armenia of 13 August 2004, certain obligations assumed by the mentioned Agreement have been recognized as contradicting to the Constitution of the Republic of Armenia.

2.7. Constitutional safeguards of Direct Democracy

According to the Constitution of the Republic of Armenia currently in force the main institute of direct democracy - referendum is considered the exclusive legal means for adopting Constitution or making amendments therein, as well as a means of adopting laws.

Legislative developments have resulted also in partial expansion of the components of the institute of referendum, in particular, pursuant to the amendments to the Law of the Republic of Armenia "On referendum" adopted on 26 December 2008 the institute of referendum was defined as follows: 1. Referendum (national voting, hereinafter referred to as "referendum") shall be the direct exercise of power by the people through adopting Constitution or making amendments therein, adopting laws, as well as through revealing public opinion on key issues of state activities."

However, the role of a referendum as an effective means of direct democracy needs to be further enhanced. Admitting that representative democracy is the basic form of the implementation of democracy in the modern world, having regard to the current constitutional and legal developments the role of direct democracy should be mainly viewed in the context of restraining and balancing institutions of representative democracy. The ultimate objective is to benefit to the maximum from the balancing impact of direct democracy on the exercise of state powers. It should, in particular, be directed at preventing the representative power from undertaking unbalanced actions which may negatively affect democratic processes. Along with the development of the civil society, this becomes more urgent for establishing a rule-of-law state, as well as there appears a need to exclude possible extreme approaches and speculations in respect of this issue.

Issues that need to be addressed for the development of the institute of referendum include the following:
(a) clarification of substance and scope of the objects and subjects of referendum; and
(b) clarification of the scope of powers of state authorities and the scope of civil initiative in relation to referendum.
The main conceptual approaches for the development of the institute of referendum include the following:
- giving priority to such an option of clarifying the scopes of referendums according to which issues regarding accession to international organizations resulting in partial restriction of state sovereignty are subject to referendum;
- specifying in the Constitution the scope of issues which may not be put on a referendum;
- establishing the institute of organizing referendums by civil initiative;
- establishing constitutional and legal basis for presentation of a prior opinion by the National Assembly concerning the issue or draft law put on a referendum by civil initiative.

Exploring all the opportunities of direct democracy and reasonably combining it with the potential of representative democracy are of significant importance for ensuring stable constitutional developments in the country. In this regard, taking into account also the new informational opportunities for self-expression of the civil society, constitutional and legal regulations are required for effective introduction of the institute of public petition.

2.8. Conceptual fundamentals for constitutional and legal reforms of local self-government

Current constitutional foundations for local self-government are generally in line with international legal standards, including the European Charter of Local Self-Government. However, individual provisions need to be revised or redefined.

In particular, the Constitution of the Republic of Armenia provides for a legal opportunity of forming inter-community associations, which is fully in compliance with the provisions stipulated by Article 10 of the European Charter of Local Self-Government. However, the international practice also shows that the idea of forming such inter-community structures which will allow for establishment of practical basis for cooperation of communities, and for more targeted and efficient use of human and financial resources is of high priority. Constitutional and legal reforms must facilitate that process and contribute to a new quality of inter-community cooperation and integration.

Local self-government bodies, as independent local bodies of public authority, must be granted a definite constitutional status and possess clear legal mechanisms for cooperation with state authorities.

Conceptual approaches to constitutional and legal reforms of local self-government are generally aimed at the following:

- Revising the procedure for dismissal of a head of community;
- strengthening the role of Community Councils within the system of local self-government, particularly by enhancing the supervisory powers of the latter, as well as the liability of the head of community in respect of the council;
- laying emphasis on the role of inter-community bodies and organizations for the enhancement of the efficiency of local self-government;
- there is a need to complement the constitutional status of local self- government bodies within the political system. In particular, it is necessary to ensure an active role of those bodies in the implementation of effective legal remedies for the protection of rights (Part 1 of Article 18 of the Constitution);
- community associations should also be conferred with certain local self-government powers to make feasible and guarantee the right of local self-government bodies to form associations, and to ensure the required compliance with the European Charter of Local Self-Government, according to Article 10 of which an association is also entitled to carry out functions typical for a local self-government body.

2.9. The structure of the Constitution, elimination of ambiguities within the Constitution, ensuring monitoring of constitutionality

From a conceptual perspective, it is proposed to follow the principle of structural approach while developing the structure of the Constitution of the Republic of Armenia, whereas to address the issue of the choice of a specific structure at the first stage of developing the reform package. This also concerns the clarification of constitutional and legal statuses of the Council of Justice of the Republic of Armenia, Control Chamber of the Republic of Armenia, Human Rights Defender of the Republic of Armenia, Central Bank of the Republic of Armenia, Prosecutor's Office of the Republic of Armenia. Furthermore, the structural approach is instrumental for revealing the nature of the constitutional function of a given

institution, defining the procedure for its formation where it falls within the province of the Constitution, and clarifying the scope of powers or envisaging their definition also by law. Irrespective of the functional roles of different bodies in the formation of the above-mentioned institutions, it is appropriate to view them as autonomous and separate constitutional institutions assigned with specific constitutional and legal functions.

Taking into account the fact that the Constitution regulates dynamic social relations which are affected by various factors, the Basic law must also provide the necessary and sufficient guarantees for the constitutional balance. Only in this case it would be possible to consistently implement the system of values underlying the Constitution in possible constitutional solutions. A typical situation occurs in countries where articles not subject to amendments have been specified in the constitution, which gain particular significance for specific constitutional solutions and possible further amendments. Thus, the structure of the Constitution must also serve the purpose of ensuring the systemic integrity of the Constitution. This may be achieved through clarification of the internal structure of fundamentals of the constitutional order, clarification of the sources of law, and ensuring the integrity and homogeneity of Chapter 1 of the Constitution.

Guaranteeing the consistency and clarity of implementation of constitutional powers is of key importance for eliminating functional and structural ambiguities and inner contradictions in the Constitution. The Constitution currently in force contains a significant number of instances of internal discrepancies. The conceptual approach to overcoming this situation must be based on eliminating, to the extent possible, such discrepancies in the Constitution along with clarifying the structure of the Constitution.

The mere adoption of a constitution does not resolve constitutional and legal issues in the country. The main guarantee for resolving those issues is the implementation of the Constitution, ensuring constitutionality in the country. It would only be possible if the following constitutional and legal guarantees are in place:
(a) ambiguities in the Constitution are eliminated and self-sufficient nature and coherent development of the Constitution are ensured;
(b) the necessary constitutional guarantees for preventing perversion of the system of constitutional values when carrying out legislative activities are envisaged;
(c) the necessary and sufficient preconditions for bringing the law enforcement practice in line with the Constitution are specified on the constitutional level;
(d) guaranteeing the supremacy of the Constitution has become a priority of the state policy, and the political system is capable of achieving it.

The issue of guaranteeing constant supremacy of the Constitution has not yet been resolved in the entire system, whereas the implementation of the Constitution and the gradual constitutionalization of social relations are of primary, major importance for the present and the future of our country. All the necessary and sufficient guarantees for achieving it should be enshrined in the Constitution itself.

The starting point is ensuring the supremacy and direct effect of the Constitution, constitutionalization of social relations, and elimination of discrepancies between the Constitution, the legal system and the law enforcement practice. For ensuring the latter constant diagnosis and monitoring of the situation concerning constitutional legality and constitutionality in the country are required for the purpose of assessing the objective social situation and eliminating discrepancies, gaps and various perversions through efficient implementation of operational powers of state authorities. This system gives rise to new issues particularly relating to strengthening of the role of the head of the state and the National Assembly, and presupposes enhancement of the role of the civil society and implementation of an effective system for constitutional education from the standpoint of enrooting the constitutional legal mindset and ensuring reasonable use of the potential of

the checks and balances system of direct democracy. The role of the Public Council may also be crucial when tackling this issue.

3. Requirements for Drafting the Constitutional Reforms

Based on the Concept Paper approved by the President of the Republic of Armenia the Professional Commission for Constitutional Reforms adjunct to the President of the Republic of Armenia will develop the draft of constitutional amendments, with due respect for the following requirements:

(1) amendments will be presented in accordance with specific chapters and articles, taking into account systemic interrelations;

(2) each amendment will be justified having regard to:

(a) its relevance and urgency for the country;

(b) international obligations of the Republic of Armenia;

(c) the general logic and available experience concerning international constitutional developments;

(d) international and national judicial practice;

(3) amendments proposed for each chapter will also be discussed with the experts of the Venice Commission and with the participation of individuals and organizations that have submitted specific recommendations.