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The present publication includes reports presented during the Conference devoted to the 85th Anniversary of the Faculty of Law of the Yerevan State University. Articles relate to different fields of jurisprudence and represent the main line of legal thought in Armenia. Authors of the articles are the members of the Faculty of Law of the Yerevan State University. The present volume can be useful for legal scholars, legal professionals, Ph.D. students, as well as others who are interested in different legal issues relating to the legal system of Armenia.

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NATURE OF RELATIONS BETWEEN THE CONSTITUTIONAL COURT AND LEGISLATIVE AUTHORITY IN THE REPUBLIC OF ARMENIA

Karen Amiryan[1]

The world's first constitutional court was set up in 1920. This incomplete centennial experience has undeniably proved that the institutions of constitutional justice are a mandatory component of the legal State and are called upon to play a significant role in guaranteeing the supremacy of the Constitution and law[2].

Its main mission predetermines the role of the authorities of constitutional justice in general and their relation with state authorities, that is, ensuring the supremacy of the Constitution through constitutional justice. At this Conference, the relevance to the relations between the authorities of constitutional justice and the legislative authority is conditioned by the circumstance of identification and adequate assessment of the functioning of the systems of separation of powers and checks and balances within the framework of relations between those authorities.

In Armenia, the relations between the Constitutional Court and the legislative authority (the National Assembly) are first of all conditioned by the current constitutional regulations. Thus, regarding the periods of adoption of the RA Constitution and making amendments to it, the relations between the Constitutional Court and the legislative authority can be classified into 3 main periods:

1. 1995 - 2005

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[2] **G. Harutyunyan,** A speech dedicated to the 20th anniversary of the Constitutional Court of Armenia, page 1, http://concourt.am/armenian/structure/president/articles/speech20-2016.pdf

2. 2005 - 2015
3. 2015 – to present

In this regard, let me make several comparisons:

According to the RA Constitution of 1995, it was the President of the RA and the National Assembly to appoint the Member of the Constitutional Court, and the National Assembly appointed the President of the Constitutional Court upon the proposal of the National Assembly Speaker from the Members of the Constitutional Court. The Constitution also stipulated such regulation with amendments of 2005[1].

There is an exciting peculiarity concerning the termination of the powers of judges of the Constitutional Court. According to the Constitution of 1995 and the Constitution with amendments of 2005, it was the legislative authority to decide on the termination of the powers of judges of the Constitutional Court appointed thereby, and the Constitutional Court was an authority giving an opinion on that matter. Now, according to the Constitution with amendments of 2015[2], the Constitutional Court is empowered to resolve the issue of termination of the powers of judges of the Constitutional Court. The legislative authority raises that matter in the Constitutional Court acting as an applicant. The Constitution stipulates that the legislative authority may apply to the Constitutional Court by the decision adopted by at least three-fifths of votes of the total number of deputies.

Along with the constitutions, the scope of applicants from the legislative authority applying to the Constitutional Court has been extended. According to the Constitution of 1995, at least one- third of deputies may apply to the Constitutional Court, and according to the

[1] The Constitution of the Republic of Armenia (with amendments), adopted 27.11.2005

[2] The Constitution of the Republic of Armenia (with amendments), adopted 06.12.2015

Constitution with amendments of 2005, the scope was extended. The National Assembly and at least one-fifth of deputies were entitled to apply to the Constitutional Court.

In 2015, constitutional reforms took place in the Republic of Armenia which also referred to the functions of the Constitutional Court, as well as its formation, powers and the scope of entities entitled to apply to the Court. Therefore, we attach great importance to the theme to be introduced in the report in the light of new regulations defined by the Constitution with amendments of 2005. Thus, we consider it essential to examine the following issues:

- level of involvement of the legislative authority in the processes of the election of the judges of the Constitutional Court and terminating their powers,
- legislative authority as an entity entitled to apply to the Constitutional Court,
- assessment of the constitutionality of laws by the Constitutional Court,
- implementation of the decisions of the Constitutional Court by the legislator, obstacles to the implementation and possible ways of overcoming them, as well as the impact of decisions of the Constitutional Court in the domain of legislative policy.

1. According to the RA Constitution with amendments of 2015, the National Assembly shall elect the judges of the Constitutional Court by the decision adopted by at least three-fifths of votes of the total number of deputies for a 12-year term. The Constitutional Court shall be comprised of 9 judges, and 3 of them shall be elected upon the proposal of the RA President, another 3 – the Government, and the other 3 - the General Assembly of judges. The General Assembly may propose only judges. The same person may be appointed as a judge of the Constitutional Court only once. The Constitutional Court shall elect the President and the Vice President of the Constitutional

Court from among its judges for a 6-year term and without the right to re-election.

2. The relations between the Constitutional Court and the legislative authority are also conditioned by the fact that the legislative authority acts as an entity entitled to apply to the Constitutional Court. So according to the RA Constitution with amendments of 2015, the entities entitled to apply to the Constitutional Court shall be as follows:

1) **The National Assembly**, in the following cases:

- For deciding on suspension or prohibition of activities of the political party,
- For providing a conclusion on the grounds for impeaching the President of the Republic by the decision adopted by a majority of votes of the total number of deputies.
- For resolving the issue on the termination of the powers of the judge of the Constitutional Court by the decision adopted by at least three-fifths of votes of the total number of deputies.

2) **At least three-fifths of the total number of deputies**, in the following cases:

- Determining the conformity of laws, resolutions of the National Assembly, decrees and orders of the President of the Republic, decisions of the Government and Prime Minister and sub-legislative normative legal acts with the Constitution,
- Resolving the disputes between the National Assembly and other constitutional authority on their constitutional powers,
- Deciding on terminating powers of the judge of the Constitutional Court,

3) **National Assembly Faction** - for disputes related to the decisions on the results of a referendum and elections of the President of the Republic,

4) **National Assembly** – on the issues of constitutional

amendments, membership to international organizations or changing the territory.

5) **Council of the National Assembly** - on deciding on the termination of the powers of the deputy.

Moreover, in the cases mentioned in Points 1, 2 and three applying to the Constitutional Court shall be considered a right, and in the cases mentioned in Points, 4 and five applying to the Constitutional Court shall be considered an obligation.

The fact that the Constitutional Court shall be entitled to resolve disputes between constitutional authorities, including the legislative authority and other authorities on their constitutional powers and determine the issue on the termination of the powers of the deputy, is a brand new reality in Armenian constitutional justice. There shall be no alternative means for the resolution of disputes between constitutional authorities on their constitutional powers. It is a guarantee for stabilization of the balance between different branches of government and the exclusion of exceeding constitutional powers, which shall be ensured by the Constitutional Court. Referring to the issue on termination of the powers of the deputy by the judges of the Constitutional Court, it should be mentioned that such constitutional regulation is aimed at excluding the termination of powers of any deputy upon unreasonable or arbitrary interpretation based on political interests. At the same time, the legislative authority is a part of this process. It has been constituted at constitutional level that at least one-fifth of the total number of deputies and the National Assembly Council shall be considered as the entities entitled to raise the issue of termination of the powers of the deputy; and the power to decide on that issue shall be provided to the Constitutional Court.

3. The third aspect of the relations between the Constitutional Court and the legislative authority - i.e., the assessment of the constitutionality of laws by the Constitutional Court – should be examined from the perspective of the principle of public-legal

liability. The Constitutional Court has adopted many decisions which act as examples of positive and negative public-legal liability.

The research of the decisions of the RA Constitutional Court states that negative liability is expressed only through declaring the challenged provisions contradicting the Constitution and void. The Constitutional Court considered the issue of constitutionality of 572 provisions of disputed acts on the issues stipulated by Point 1 of Article 100 of the RA Constitution, as a result of which the challenged 145 provisions were declared conforming the Constitution, 10 acts in whole and 186 provisions of the challenged acts were declared conforming the Constitution by the certain constitutional-legal content revealed by the decision of the Constitutional Court, 2 acts in whole and 175 provisions of the challenged acts were declared contradicting the Constitution void. About the legislative authority, the Constitutional Court examined the constitutionality of 81 laws and the norms therein (the research includes the decisions adopted from the day of the functioning of the Constitutional Court till 7 February 2017.)

Such public-legal liability is called negative since it is the negative consequence which arises for the legislative authority when it fails to fulfill or improperly fulfills its constitutional liabilities. According to Points 1 and 2 of Article 5 of the RA Constitution, the Constitution has supreme legal force. Laws must complet with the Constitution. In case of negative liability, the legislative authority appears to fail in its primary function, i.e. the law-making activity, and adopted provisions contradicting the Constitution. By negative liability, the Constitutional Court declares the challenged provisions contradicting the Constitution and void, and in the result, those provisions are pushed out of legal circulation and cannot regulate public relations. Provisions declared contradicting the Constitution shall lose legal force, and in case of preliminary constitutional control, the latter even do not enter into force. The analysis of the

provisions declared contradicting the Constitution shows that unconstitutionality is mainly conditioned by improper and incomplete legal recognition, definition, maintenance, guaranteeing and protection of human rights and freedoms, which are, in their turn, consequences of legal gaps, legal uncertainty and impreciseness of margin of discretion.

As for positive public-legal liability, it is important to mention that the study of the decisions of the Constitutional Court states that those are the decisions where the Constitutional Court declared the challenged provisions in conformity with the Constitution or declared in conformity with the Constitution in the framework of legal positions expressed by the Court. The RA Constitutional Court adopted more than 80 decisions and by the legal positions expressed therein the Court imposed positive liability on the legislator, i.e., defining new relevant regulations thereby eliminating current shortcomings in the legislation, which carry real hazard of violation of constitutional human rights and freedoms both separately and in the integrity of distortion of legal practice.

4. The nature of relations between the Constitutional Court and the National Assembly is conditioned also by the nature of the decisions of the Constitutional Court and the content of legal positions expressed therein. The examination of the decisions of the Constitutional Court states that:

a) the Constitutional Court points out the legal measures necessary for the implementation by the legislature (absolute position). By saying absolute, we mean the cases when the Constitutional Court specifies and precisely records the importance of legal or other measures (including organizational-technical), rather than generalizes them.

b) the Constitutional Court generalizes the importance of legal or other measures and does not specify them, and those new legal regulations mainly refer to the definition of guarantees or precision of

regulations and necessary regulations deriving from the principles of law (general position),

c) the Constitutional Court draws the legislator's attention to the expediency of current legal regulations, necessity of filling in the gaps in the legal regulations, harmonization of regulations with the principle of the rule of law (legislator's discretion),

d) the Constitutional Court declares the challenged provision contradicting the Constitution and at the same time delays the period for its abolishment. Thus the legislature assumes a positive liability for the implementation of the decision of the Constitutional Court.

The Constitutional Court adopted about 15 decisions by now (DCC-753, DCC-780, DCC-782, DCC-873, DCC-929, DCC-930, DCC-943, DCC-984, DCC-1121, DCC-1127, DCC-1142, DCC-1256, DCC-1271, DCC-1289, DCC-1325[1]) and taking into consideration that the abolishment of norms declared contradicting the RA Constitution at the time of publication of the decision will inevitably result in disruption of legal security due to the cancellation of those norms, in the final parts of those decisions the Constitutional Court defined a deadline for the abolishment of unconstitutional norms, urging first of all the legislative authority to fulfill the requirements of the decision of the Constitutional Court. Namely, by defining a deadline for the abolishment of unconstitutional norms, the Constitutional Court charges the legislature with a positive liability and outlines necessary measures to be taken by the latter.

Implementation of the decisions of the Constitutional Court plays an essential role in ensuring the integrity of constitutional justice. The issue of implementation of the decisions of the Constitutional Court has become the nowadays challenge, especially in the countries of a new democracy. It is becoming a broadly discussed topic at various national and international conferences.

[1] **http://concourt.am/english/index.htm**

By the RA National Assembly Speaker's order, a working group was established in 2008 for drafting appropriate bills following from the decisions of the Constitutional Court, and the working group comprised of representatives of several Standing Committees of the National Assembly, the Staff of the National Assembly, the Ministry of Justice and the Staff of the RA President. The working group should have submitted draft laws following from the decisions of the Constitutional Court on a monthly bases.

Examining many opinions on possible mechanisms of implementation of the decisions of the Constitutional Court, we find that in practice the following measures should be taken:

- the legislative authority must provide information on the implementation of the decisions of the Constitutional Court each year and mention specific steps taken for each decision, discussions organized in certain Standing Committees, number of submitted draft laws, number of amended or added laws,
- the implementation of the decisions of the Constitutional Court must become the daily activity of the Standing Committee on State and Legal Affairs of the RA National Assembly.

It was evident that even in case of the perfect legislation and procedures providing the implementation of the decisions of the Constitutional Court, the effective implementation of those decisions cannot be guaranteed unless necessary and sufficient constitutional environment is formed for that. As rightly said, constitutional control may be effective only in case of necessary and sufficient functional balance. The functional role of the legislative body is also emphasized in this context[1].

However, nevertheless, it is also obvious that, as long as the level and tempo of implementation of the decisions of the

[1] **G. Hrutyunyan,** New Challenges of Systematic and Competitive Capacity of Constitutional Control, Minsk, 27.06.2014, page 1, http://concourt.am/armenian/structure/president/articles/minsk2014.pdf

Constitutional Court are not corresponding to the desired, as long as necessary legal environment and political thinking still need to be sustained - if there is a potential and possibility to do some positive and sustainable progress in ensuring the implementation of the decisions of the Constitutional Court by legislative and institutional changes - it is necessary to urgently bring them to life.