BINDING NATURE OF THE LEGAL POSITIONS OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA: FROM THEORY TO PRACTICE

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One of the most important features of the Constitutional Court legal positions is their binding nature. According to Article 61(5) of the RA Law "On the Constitutional Court", the decisions of the Constitutional Court on the merits of the case are mandatory for all the state and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. It is obvious that the mentioned legislative provision itself implies that it concerns the whole decision of the Constitutional Court, hence, the legal positions, expressed both in the operative and in the reasoning parts of the decision. It is not accidental, as on the contemporary stage of the development of constitutional law decisions of the Constitutional Court are no more perceived as a document just determining constitutionality or unconstitutionality of legal acts, but more emphasis is given to the circumstance that the latter are primary means for formation of a uniform constitutional doctrine and development of the Constitution. Therefore, the realization of the mentioned mission requires proper consideration not only to the conclusion on the issue of the constitutionality of the legal act, but also to other legal positions of the Constitutional Court. The last ones are primary means for ensuring the stability and development of the Constitution and in this sense are no less important than the above-mentioned conclusions. Moreover, from the aspect of legal consequences the legal positions are equivalent to them.

As it was mentioned in the decision of the Constitutional Court of the Republic of Armenia SDVo-943 of 25 February 2011, the legal positions expressed in the Court decisions shall ensure more

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complete and uniform understanding of the RA Constitution and constitutional lawfulness in the law enforcement practice, and shall purposefully direct the law enforcement practice to the understanding and application of the normative acts in accordance with their constitutional legal content. Declaring the challenged act as in conformity with the Constitution, the Constitutional Court often reveals the constitutional legal content of disputed legal norms through their interpretation and in the operative part of the Decision, declares those norms as in conformity with the Constitution or as in conformity with the Constitution within the framework of certain legal positions or partially within the framework of certain legal regulation, thus indicating:

- the legal limits of understanding and application of the given norm;
- the legal limits beyond which the application or interpretation of the given norm shall lead to unconstitutional consequences;
- the constitutional legal criteria, based on which the competent authorities are obliged to provide additional legal regulations for the full application of the norm in question.

Therefore, it is not possible to fully implement the decision of the Constitutional Court without taking the above-mentioned legal positions into consideration[2], which, in its turn, presupposes that the

[2] In this context we would like to mention the practice of the Lithuanian Constitutional Court, which stated that its rulings constitute a whole. The resolving part is based on the arguments of the reasoning part. The perception of constitutional provisions and other legal arguments, presented in the reasoning part of the Constitutional Court decision, are binding for bodies, adopting corresponding acts, i.e. for the Seimas, the President of the Republic, the Government in the course of adopting new acts or amending them. So, it is not the resolving part of the ruling of the Constitutional Court that legitimates and legalizes the part of reasoning, but on the contrary – the decision established in the resolving part is a logical and, for this reason, legally inevitable continuation and ending of the constitutional argumentation (see Decision of 12 January 2000, http://www.lrkt.lt/dokumentai/2000/d000112.htm, Ruling of 30 May 2003, http://www.lrkt.lt/dokumentai/2003/r030530.htm, Constitutional justice in Lithuania. Vilnius, 2003, pp. 222-225). The Constitutional Court of the Russian Federation has also turned to the binding force of legal positions several times,

legal positions expressed not only in the operative, but also in the reasoning part of the Constitutional Court decision are subject to mandatory implementation[3].

This is the reason that pursuant to the Decision of the RA Constitutional Court SDVo-943, an amendment was made to Article 68(8) of the RA Law "On the Constitutional Court", according to which the Constitutional Court can make decisions not only on finding the challenged act or its challenged provision in conformity with the Constitution or finding the challenged act fully or partially invalid and in non-conformity with the Constitution, but also on finding the challenged act or its challenged provision in conformity with the Constitution **by the constitutional legal contents revealed by the decision of the Constitutional Court**. Moreover, Article 69(12) of the RA Law "On the Constitutional Court" prescribed that in the cases defined by the mentioned Article if the provisions of the Law applied against the applicant are recognized as invalid and contradicting the Constitution, as well as when **the Constitutional Court, in the operative part of the decision, revealing the constitutional legal content of the provision of the law, recognized it in conformity with the Constitution and simultaneously found that the provision was applied to him in a different interpretation**, the final judicial act made against the applicant is subject to review on the grounds of new circumstances in

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defining that the legal positions of the Constitutional Court are binding and apply directly. They are mandatory for all representative, executive and judicial, as well as law enforcement bodies. Moreover, the Court stated that it is impermissible for the legislator to overcome not only the Constitutional Court decisions, but also its legal positions. The norms, reproducing the provisions of normative acts challenged at the Constitutional Court of the Russian Federation, can be interpreted only on the basis of the legal positions formed by the Court (Кряжков В. А., Кряжкова О. Н. Правовые позиции Конституционного суда РФ в его интерпретации // Государство и право, 2005, N 11, с. 13).

[3] In the context of the presented analysis the regulation, prescribed in Article 61(2.1) of the RA Law "On the Constitutional Court", according to which the decisions and resolutions of the Constitutional Court shall be in conformity with the requirements of the principle of legal certainty, gains exceptional importance. We think that the formation of the proper system of the realization of the Constitutional Court legal positions requires necessary attention to the mentioned provision.

accordance with the procedure prescribed by law.

The systemic analysis of the legal regulations regarding the discussed issue leads us to the conclusion that they are aimed to the formation of a thorough system of the execution of the legal positions expressed in the reasoning part of the Constitutional Court decisions and serve as an evidence of their binding force[4].

It should be mentioned that the practice of recognizing the challenged provision in conformity with the Constitution within the frames of the legal positions expressed in the Constitutional Court decision is widespread in the activities of constitutional courts of various other states, including, for instance, Germany, Lithuania, Russian Federation, Slovenia, Spain, Hungary, and Bosnia and Herzegovina. Though each of them has its peculiarities, the circumstance that the interpretation presented in the decision becomes binding for all other state bodies is common for all the mentioned courts. In this sense, the following position of the European Commission for Democracy through Law (Venice Commission) regarding the discussed issue should be noted: "*An explicit legislative – or even better constitutional – provision obliging all other state organs, including the courts, to follow the constitutional interpretation provided by the constitutional court provides an important element of clarity in the relations between the constitutional court and ordinary courts and can serve as a basis for individuals to claim their rights before the courts*"[5].

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[4] In most states legal positions of the Constitutional Court have binding force. Moreover, the practice, when this circumstance gains legislative regulation, is becoming widespread (see, for example, Article 79 of the Federal Constitutional Law "On the Federal Constitutional Court of the Russian Federation", Article 32 of the Law of the Republic of Latvia "On the Constitutional Court", Article 41a of the Act of the Slovak Republic "On the Organization of the Constitutional Court of the Slovak Republic, on the Proceedings before the Constitutional Court and the Status of its Judges", Article 182^2 of the Statute of the Seimas of the Republic of Lithuania).

[5] See CDL-AD(2010)039rev, Study on Individual Access to Constitutional Justice, Adopted by the Venice Commission at its 85th Plenary Session (Venice, 17-18 December 2010), §165, http://www.venice.coe.int/docs/2010/CDL-AD%282010%29039rev-e.pdf.

Notwithstanding the above-mentioned, one of the most important problems existing in the sphere of interrelations of the Constitutional Court and other judicial bodies is the absence of a uniform point of view concerning the judicial bodies granted with the competence of the interpretation of laws subject of constitutional justice and the issue of differentiation of jurisdiction in the mentioned sphere. At first sight the solution of the mentioned problem can be seemed univocal, that is the interpretation of laws is administered only by ordinary courts and the interpretation of the Constitution – by the Constitutional Court. While the mentioned solution, which seems uncontroversial in the theoretical sense, is difficult to apply in practice, first of all taking into account the peculiarities of the status, goals and tasks of the Constitutional Court.

The circumstance that the Constitutional Court is not bound by the interpretation of law given by other courts is a formed reality in the judicial practice of most states[6]. In the Republic of Armenia this circumstance is testified also by current legislative regulations. Particularly, Article 68(8) and Article 69(12) of the RA Law "On the Constitutional Court", which were already presented above, as well as the provisions, stated in the Civil Code and the Criminal Procedure Code of the Republic of Armenia as the result of the changes made on 26 October 2011, according to which the cases when the Constitutional Court of the Republic of Armenia recognizes the provision of law applied by the court in the given civil or criminal case invalid and in non-conformity with the Constitution or **recognizes it in conformity with the Constitution, but in the operative part of the decision, revealing its constitutional legal content, finds that the provision was applied in a different interpretation,** are grounds for reviewing judicial acts based on new circumstances[7]. On the basis of the above-mentioned one can conclude that when exercising its competences, the Constitutional

[6] See the reports, presented in the frames of the XIIth Congress of the Conference of European Constitutional Courts, http://www.confeuconstco.org/reports/.

[7] Article 204.33(1) of the Civil Procedure Code of the Republic of Armenia; Article 426.4(1)(1) of the Criminal Procedure Code of the Republic of Armenia.

Court can reveal the constitutional legal content of the challenged provision of law. Moreover, if according to Article 15(4) of the RA Judicial Code the reasons (including the interpretation of law) of the judicial act of the Court of Cassation or the European Court of Human Rights on the case with concrete factual circumstances are binding for **courts** (emphasis added – A.M.) during the consideration of cases with the same type of factual circumstances …, the same cannot be referred to the Constitutional Court, as the decisions of the latter on the merits of the case, hence, also the constitutional legal content of the provision of law revealed in them, as we already mentioned, are binding for **all the state and local self-government bodies, their officials, as well as for the physical and legal persons** in the whole territory of the Republic of Armenia. Summarizing the above-mentioned, it should be noted that when exercising its competences, the Constitutional Court can reveal the constitutional legal content of the challenged provision of law, and this legal position has binding force.

Therefore, the main problem in this context is how the jurisdiction of the mentioned courts should be differentiated in the discussed sphere and what kind of technique should be applied in order to achieve this goal. In this sense Article 92 of the RA Constitution should be mentioned, according to which the highest judicial instance of the Republic of Armenia, except for matters of constitutional justice, is the Court of Cassation, **which is called to ensure the uniform application of the law** (emphasis added– A.M.), and in pursuance to Article 93 the Constitutional Court shall administer constitutional justice in the Republic of Armenia. On the basis of the above-mentioned, one can conclude that the Constitution determined the mission of each judicial body, granting the Court of Cassation (as a body administering justice) the competence of ensuring uniformity in the implementation of law, and the Constitutional Court the function of administering constitutional justice.

Therefore, we consider that in the context of the mentioned constitutional regulations the solution of the discussed problem

should have such form, within which each of the judicial bodies implements the function of interpretation of law in the frames of the spheres of its jurisdiction, just for ensuring the fulfillment of its mission. Otherwise, the initial criterion, conditioning the spherical border of the interpretation of laws by the mentioned judicial bodies, is the goal, underlying their activities. On one hand, the Court of Cassation of the Republic of Armenia, when interpreting a provision of law, has a goal to ensure uniformity in the implementation of law, and on the other hand, the Constitutional Court of the Republic of Armenia fulfills the function of ensuring the administration of constitutional justice, and the indicated functions should underlie self-restraint of the mentioned judicial instances[8]. Approaching the issue of interpretation of laws by the Constitutional Court from this aspect, we draw a conclusion that the latter can implement this function only with the goal of revealing **the constitutional legal meaning** of the law or its corresponding provisions, but not for giving interpretation of law in the whole[9].

The next important issue, which is necessary to take into account in this context, is the following: though one of the tasks of the Court of Cassation is to ensure uniformity in the implementation

[8] In this context the viewpoint presented in the frames of the Hungarian practice should be noted, according to which the mentioned two interpretations have fundamentally different functions. Constitutional requirements are determined in the framework of the control of legal norms, while decisions on legal unity are aimed at the elimination of controversial judicial practices (see "The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts // Report of the Constitutional Court of Republic of Hungary prepared for the XIIth Congress of the Conference of European Constitutional Courts", http://www.confeuconstco.org/reports/rep-xii/Hongarije-EN.pdf).

[9] It should be noted that the above-mentioned is an accepted and steadily exercised practice also at the Federal Constitutional Court of Germany, which reveals the content of legislation only **in the light of the Constitution**. Moreover, this interpretation is also binding for other bodies and has force of law (see Rainer A. The decisions of the German Federal Constitutional Court and their binding force for ordinary courts, www.constcourt.gov.az/en/download/.../9.../10.Rainer_ Arnold_(eng).doc). The same concerns the Constitutional Court of the Russian Federation and bodies administering constitutional justice in several other states.

of the law, within the frames of the presented constitutional regulations we are not about an arbitrary document, having the title of "law", but a **constitutional law**. In this sense it should be mentioned that the law, implying several interpretations, can be considered constitutional only in case it is perceived in the context of corresponding constitutional requirements. This, in its turn, presupposes that in the mentioned cases the interpretation of law recognized in conformity with the Constitution, particularly in this case - given by the Constitutional Court, should be subject to application, as it is just the task of the body administering constitutional justice to mention the legal limits, in the frames of which the given norm should be perceived and applied, and beyond which the applied or interpreted norm will lead to unconstitutional consequences. Hence, the Constitutional Court's competence of interpreting laws is bound by the mentioned frames and cannot be executed beyond them[10].

At the same time, one should take into consideration that the above-mentioned point concerns the existence of such interpretations, when one of them contradicts the constitutional requirements. While in cases, when courts apply an interpretation, which is in conformity with the Constitution, it is not effective from the aspect of differentiation of jurisdiction to interpret the law by the Constitutional Court otherwise. Taking the above-mentioned into consideration, we believe that in cases where the interpretation of law given by other judicial bodies is in conformity with the Constitution, it is expedient that the Constitutional Court applies this interpretation and reveals its constitutional legal meaning otherwise

[10] In this context the viewpoint of one of the judges of the European Court of Human Rights is worth mentioning: "It is progressively becoming more evident that the most crucial task of constitutional courts is the interpretation of constitutional precepts. This implies providing judges, legislators, attorneys and civil servants with general guiding criteria, not only as to how interpret the constitutional text, but also as to how to interpret ordinary (infraconstitutional) laws, so that their application conforms with the mandates of the constitution" (see Guerra L. Latent and Manifest Functions of Constitutional Courts // Альманах (Конституционное правосудие в новом тысячелетии). Ереван, 2011, с. 54).

only in cases where there is a contradiction between the accepted perception of the norm and the constitutional requirements[11].

Therefore, the main criteria concerning the discussed issue, which, in our belief, will also give an opportunity to effectively ensure the differentiation of jurisdiction between various judicial instances, can be summarized as follows:

- The initial criterion, conditioning the spherical border of interpretation of laws by the Constitutional Court and other judicial instances, is their goal, which circumstance should underlie self-restraint of the activities of the discussed bodies;

- The task of the Court of Cassation is to ensure uniformity in the implementation of the **constitutional law**, but not an arbitrary document, having the title of "law", which also presupposes interpretation of law, which is in conformity with the constitutional requirements;

- It is the task of the body administering constitutional justice to mention the circumstances when the interpretation of law is in conformity with the Constitution and when it is not, otherwise, the legal limits, in the frames of which the given norm should be perceived and applied, and beyond which the applied or interpreted norm will lead to unconstitutional consequences;

- The Constitutional Court can implement the mentioned function only with the goal of revealing **the constitutional legal**

[11] In this sense the practice accepted in the Republic of Slovenia, where the Constitutional Court interprets the Constitution and regular courts interpret statutes, except for cases of violation of the Constitution, is worth mentioning. It is possible for the Constitutional Court, however, to interpret laws in instances, when the statutory provision could be interpreted in two ways, one of which would be counter to the Constitution, and the other one in agreement with the latter, as determined by the Constitutional Court in a so called interpretative decision. Such interpretation of a statutory provision is undoubtedly legally binding on courts. However, if the statutory provision allows many possible interpretations, none of which is unconstitutional, then it is the affair of ordinary courts to decide in what way to apply the mentioned norm (see The relations between the Constitutional Courts and the other national courts, including the interference in this area of the action of the European courts // Report of the Constitutional Court of the Republic of Slovenia prepared for the XIIth Congress of the Conference of European Constitutional Courts, http://www.confeuconstco.org/reports/rep-xii/Slovenia-EN.pdf).

meaning of the law or its corresponding provisions, but not for giving an interpretation of law in the whole;

- In cases, when the norm can be interpreted in different ways and the interpretation given by courts is in conformity with the Constitution, from the aspect of differentiation of jurisdiction it is expedient that the Constitutional Court applies this interpretation;

- In cases when the norm can be interpreted in different ways and there is a contradiction between its accepted perception and the constitutional requirements, it is expedient that the body administering constitutional justice, revealing the constitutional legal content of the latter, presents an interpretation, which is in conformity with the Constitution;

- Taking into consideration the above-mentioned changes in the sphere of the RA legislation concerning the types of the Constitutional Court decisions and the basis for review of the judicial acts on the grounds of new circumstances and taking into account the necessity of the observance of the principle of legal predictability, we consider that it is expedient to form a uniform practice of making decisions by the Constitutional Court in case of existence of various possible interpretations of law, applying the "principle of interpreting the law in conformity with the Constitution" and recognizing the norm contradicting the Constitution only in cases, when it cannot be interpreted in the context of constitutional requirements.

Despite the fact that the binding force of the Constitutional Court legal positions is a reality, which nowadays raises no doubts in theory[12], there is also a viewpoint in legal literature, according to which not all the legal positions are endowed with the mentioned feature and they should be differentiated into the following types: 1) generally binding legal positions, and 2) legal positions, having legally guiding and coordinating nature[13]. Notwithstanding this

[12] Harutyunyan G. International Alamanac. "Constitutional Justice in the new millenium". Yerevan, 2011, pp. 39-44; Арутюнян Г. Международный альманах "Конституционное правосудие в новом тысячелетии". Ереван, 2011, С. 39-44.

[13] Kryazhkov V.A., Lazarev V. A. Constitutional Justice in Russian Federation. Moscow, 1998, P. 248. [Кряжков В. А., Лазарев Л. В. Конституционная юстиция в РФ. М., 1998, С. 248].

opinion and the circumstance that according to the Anglo-American doctrine of precedent also only the principle underlying the court decision (*ratio decidendi*) is obligatory, and other expressed positions (*obiter dictum*) don't have binding force[14], there is a more common approach in theory and practice, according to which the legal positions of the Constitutional Court are by their nature closer to *ratio decidendi*, are comparable with the mentioned institute of the English law[15], hence, have binding force without distinction[16]. The Constitutional Court of the Republic of Armenia does not present such a classification, either, thus, considering all its legal positions as

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[14] See, for example, http://www.oup.com/uk/orc/bin/9780199557745/hw7e_ch06.pdf, Kališ R. Is the English Doctrine of Judicial Precedent Becoming Only an Illusion?, http://www.law.muni.cz/sborniky/dp08/files/pdf/mezinaro/kalis.pdf.

[15] See, for e.g. Kazhlaev S.A. Judicial discretion in the functioning of the Constitutional Court of the Russian Federation. Journal of Russian Law.# 11, 2003, pp. 156-157; Zorkin V.D. Precedential Significance of the Decisions of the Constitutional Court of Russian Federation// Journal of Russian Law, #12, 2004, P. 4; Ivanova T.V., Role of the Constitutional Court in the process of norm creation in the Republic of Belarus: theoretical aspects; Krasikova A. V. Constitutional Justice in Russian and Mongolia: Comparative Legal Analysis. Ph.D. Dissertation resume. [Кажлаев С.А. Судебное усмотрение в деятельности Конституционного суда РФ // Журнал российского права, N 11, 2003, pages 156-157, Зорькин В.Д. Прецедентный характер решений конституционного суда Российской Федерации // Журнал российского права, N 12, 2004, p. 4, Иванова Т. В. Роль Конституционного Суда Республики Беларусь в процессе правообразования: теоретический аспект, www.law.bsu.by/pub/31/Ivanova4.doc, Красикова А. В. Конституционная юстиция в России и Монголии: сравнительно правовой анализ: Автореферат диссертации на соискание ученой степени кандидата юридических наук). Омск, 2009, *omsu.ru/file.php?i*я России и Монголии: сравнительно-правовой анализ (Автореферат диссертации на соискание ученой степени кандидата юридических наук). Омск, 2009, *omsu.ru/file.php?id=4400. At the same time, one should have in mind that even in the frames of the Anglo-American doctrine of precedent there is a viewpoint, according to which all attempts for differentiating* ratio decidendi *and* obiter dictum *are inefficient and are doomed to failure in advance* (see Marchenlp M.N. Sources of Law. Moscow, 2008, P. 632. [Марченко М. Н. Источники права. М., 2008, page 632]).

[16] The constitutional doctrine of Lithuania is interesting in this sense, in the frames of which it is directly mentioned that both *ratio decidendi* and *obiter dicta* of the Constitutional Court decision are obligatory (see Constitutional justice in Lithuania. Vilnius, 2003, pages 212-215).

binding[17]. To our mind, however, the study of the practice of the Constitutional Court of the Republic of Armenia leads us to a conclusion that from the point of view of legal consequences not all the legal positions of the discussed body have identical significance. In this sense the position, expressed in the decision SDVo-758 of 9 September 2008, for instance, can be mentioned, according to which "taking into consideration also the requirements of Article 68(17) of the RA Law "On the Constitutional Court", the Constitutional Court finds that till the further regulation of the issue ... by the National Assembly of the Republic of Armenia the legal regulation concerning the noted institute determined by the Law HO-39-N of 18.02.2004 may be valid". It is obvious that in this case the Court presented not a legal position subject to mandatory execution, but mentioned the legal regulation, **which may, but will not necessarily be valid**, till the further regulation of the issue by the National Assembly of the Republic of Armenia. Therefore, from this point of view the mentioned position has not binding, but guiding nature.

Taking the above-mentioned into account, in this context it is necessary to consider the issues concerning differentiation of the noted legal positions of the Constitutional Court. In this sense we consider that the RA legislation itself resolved the mentioned issue from the aspect that it determined necessary regulations for self-restraint of the body, administering constitutional justice[18]. The study of the practice of the Constitutional Court shows that the latter, as a rule, is guided by them in the course of its activities. Particularly, turning to issues which are not included in the context of the subject

[17] See the Annual Reports of the Constitutional Court of the Republic of Armenia (2006-2010), the decision of the Constitutional Court of the Republic of Armenia SDVo-943 of 25 February 2011.

[18] For example, according to Article 63(2) of the Law of the Republic of Armenia "On the Constitutional Court", the Constitutional Court shall adopt decisions and resolutions only **regarding the issues that are raised in the appeal**, or in compliance with Article 68(9) of the same law while determining the constitutionality of any normative act mentioned in Article 100(1) of the Constitution, the Constitutional Court shall also establish the constitutionality of any other provision of the act **systematically interrelated with the challenged provision**, etc.

mentioned in the appeal or are not subject to consideration in the frames of the given case, the Court emphasizes this circumstance. In this sense the Decision SDVo-780 of 25 November 2008, for instance, can be mentioned, within the framework of which legal positions were expressed concerning Article 135(1) of the Administrative Procedure Code. However, at the same time, taking into account that in this situation Article 68(9) of the Law "On the Constitutional Court" is not applicable, the Court just gave importance to the circumstance of paying attention to the presented issue by the National Assembly of the Republic of Armenia.

Along with the above-mentioned, it is necessary to take into consideration also the following: to our mind, there is a principal difference between the two legal positions of the Constitutional Court presented in the discussed context. If in the first case the Court mentioned a solution, which has just guiding nature for the regulation of the concrete issue and can also not be implemented in practice, then the situation is different in case of the Decision SDVo-780. Not having an opportunity to make a conclusion concerning the constitutionality of the discussed provision in the operative part of the decision, the Constitutional Court expressed legal positions regarding this issue in the reasoning part. Needless to say that as a result of them provisions of the law were not found in non-conformity with the Constitution and invalid; hence, the consequences prescribed by the RA legislation in this regard were not applied to them[19].

[19] It should be mentioned that some constitutional courts distinguish *ratio decidendi* and *obiter dicta*. The Czech Constitutional Court, for example, directly states in the frames of the decision, which legal positions are the *ratio decidendi* and which one - the *obiter dicta* (see, for example, decisions 2008/01/31 - Pl. ÚS 24/07, 2009/11/22 - IV. ÚS 956/09, 2011/03/22 - Pl. ÚS 24/10 of the Czech Constitutional Court, http://www.concourt.cz/view/726). The Federal Constitutional Court of Germany has developed the following practice: the essential reasoning of the decision is binding, that is the legal positions, which cannot be left out of the decision without the concrete conclusion of the decision being lost (see CDL-JU (2003) 18, The Binding Effect of Federal Constitutional Court Decisions upon Political Institutions // Report by Ms Anke Eilers (Federal Constitutional Court, Karlsruhe), Strasbourg, 22 May 2003, http://www.venice.coe.int/docs/2003/CDL-JU%282003%29018-e.pdf).

At the same time it is obvious that regardless of the above-mentioned circumstance, such legal positions, expressed in case of existence of serious problems in the sense of constitutionality, should get necessary attention by their addressees. Otherwise, a formal approach will be demonstrated to the essence of the institute of constitutional justice. Moreover, proper attitude to the above-mentioned legal positions by the corresponding bodies vested with state authorities is conditioned by their functions in the sphere of ensuring the continuity of state power, inviolability of the foundations of constitutional order and protection of constitutional rights and freedoms. Therefore, the absence of necessary attention to these positions indicates also the fact of disregarding the mentioned functions and of distorting the goals of the noted body's activities[20].

The above-mentioned leads us to a conclusion that the solution of the discussed issue should not be mechanistic, and the simple technique of differentiating the binding legal positions of the Constitutional Court from the guiding judgments cannot underlie it. As we already mentioned, this circumstance is important for considering the peculiarities of the concrete legal positions' implementation. But it influences in no way the significance of the latter in the sphere of development of the legal system of Armenia. It is obvious that the Constitutional Court is the body, administering constitutional justice in the Republic of Armenia, and the solution of constitutional legal issues is vested just in the mentioned judicial body. Therefore, in cases, when the Constitutional Court expresses legal positions concerning the above mentioned issues, it indicates their correct solutions (in the sense of constitutionality), which leads

[20] In this sense the Annual Report of the Constitutional Court of the Republic of Armenia concerning the execution of the decisions adopted in 2008 is worth mentioning, by which the Court stated: "The Constitutional Court decisions first of all concern the law making and law enforcement practice and include obligations to undertake certain actions. Particularly, determination of legislative gaps by the Constitutional Court cannot remain without consequences. An obligation to fill the legislative gap through a proper legal regulation and to remove the non-quality one arises as a result of the Constitutional Court decision. Leaving the decision without no response or partial filling of the gap by the legislator is considered as an anomaly of the legal order".

us to the conclusion that these positions cannot remain without consequences. At the same time we believe that the noted solutions can be effective only in case when the Constitutional Court, in its turn, follows the requirement of "expedient self-restraint"[21], taking into account the mentioned circumstances and the constitutional legal restraints existing with respect to its activities[22].

The next issue we consider necessary to discuss in the mentioned context is the circumstance whether the Constitutional Court's legal positions are binding also for the Court itself. Undoubtedly, one of the main conclusions of the presented analysis

[21] In this sense an opinion was expressed in legal literature, according to which if the constitutional court or some other organ which interprets the constitution with finality, is not prepared to exercise self-restraint, this endangers the principles of the separation of powers (see Pavcnik M. Constitutional Interpretation (in Continental Europe) (http://ivr-enc.info/index.php?title=Constitutional_Interpretation_%28in_Continental_Europe%29)). In this context the approach, expressed in the dissenting opinion, presented by Mr. G. Gadzhiev – a judge of the Constitutional Court of the Russian Federation – on case on the interpretation of Article 103(3), Article 105(2) and Article 105(5), Article 107(3), Article 108(2), Article 117(3), Article 135(2) of the Constitution of the Russian Federation, is worth mentioning, according to which while resolving the issue of the admission of petitions concerning the interpretation of the Constitution an expedient self-restraint of the judiciary is necessary in order not to involve the Constitutional court in the political process of law-making. The rules regarding the admission of petitions concerning the interpretation of the Constitution are based on the principles of separation of powers (Article 10 of the Constitution) and of restraint of the Constitutional Court by the competence of other bodies (Article 3(3) of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation") (see http://www.constitution.ru/decisions/10004579/10004579.htm).

[22] In the sense of the discussed issue the regulation, prescribed by Article 40 of the Law "On the Constitutional Council of the Republic of Kazakhstan", is interesting, according to which the recommendation and the offer on perfection of the legislation, contained in decisions of the Constitutional Council, shall be subject to obligatory consideration by the authorized state bodies and officials with the obligatory notice of the Constitutional Council on the accepted decision. Article 47 of the Law "On the Constitutional Court of the Republic of Tajikistan" is also worth mentioning, in compliance with which in case of revealing concrete violation of the Constitution and laws of the Republic of Tajikistan, the court states this circumstance, drawing the attention of the competent authorities and officials, who committed it, to the violation and the need to eliminate it and the Constitutional Court shall be informed on the measures taken concerning it within the prescribed period.

is the following: the mentioned legal positions are mandatory for all the state and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. This circumstance leads most of the authors to a conclusion that the noted binding force concerns also the Constitutional Court itself[23]. However, there is also another viewpoint in legal literature, according to which the mentioned rule concerning the mandatory force has one exception in the sense of its scope of application, that is, the Constitutional Court, as the latter is endowed with the opportunity of changing the principles prescribed in its case-law[24].

Regarding the situation in the Republic of Armenia concerning the discussed issue, it should be mentioned that also in our perception the body, administering constitutional justice, is bound by its legal positions. Otherwise, it can lead to the distortion of such values, underlying the state governed by rule of law, as the predictability of the Constitutional Court activities, the continuity of its practice, abidance by the principle of legal certainty, etc. This is the reason that in the course of its activities the Constitutional Court of the Republic of Armenia adheres to its previously expressed legal positions, regularly recalling them in the decisions[25]. But the above

[23] Marchenko M.N. Sources of Law. Moscow, 2008, P. 414; Kampo V. Legal Positions of the Constitutional Court of Ukraine as a necessary element for guaranteeing the legal and judicial reforms// Constitutional Justice: Bulletin of the Council of Constitutional Control Bodies of the States of New Democracy. Published by the Center of the Constitutional Law of Armenia, #1(47) 2010, P. 27 [Марченко М. Н. Источники права. М., 2008, р. 414, Кампо В. Правовые позиции Конституционного суда Украины как необходимый элемент обеспечения судебно-правовой реформы // Конституционное правосудие: Вестник Конференции органов конституционного контроля стран молодой демократии, 1(47)2010, С. 27]; Ku'ris E. Constitutional Law as Jurisprudential Law – the Lithuanian Experience, with Special Reference to Human Rights // Конституционное правосудие: Вестник Конференции органов конституционного контроля стран молодой демократии, 1(51)2011, С. 111.

[24] Kommers D. P. The Constitutional Jurisprudence of the Federal Republic of Germany. Duke University Press, Durham and London, 1997, page 54.

[25] See, for example, the decisions of the RA Constitutional Court SDVo-754 of May 27, 2008, SDVo-852 of January 19, 2010, SDVo-943 of February 25, 2011, SDVo-1027 of May 5, 2012, etc.

mentioned does not presuppose that the noted legal positions are, by essence, absolutely unchangeable. It is obvious that the formation of the constitutional doctrine by the Constitutional Court is not a single-step process, but a process, being fulfilled permanently and gradually[26]. Therefore, the latter is not a petrified phenomenon and can be changed along with the development of the social relations. Not by chance is the Constitutional Court endowed with such an opportunity in many states, such as, for instance, the Russian Federation, Germany, Lithuania, Hungary, etc.[27] It is just important for the Constitutional Court to use the mentioned opportunity, taking as a basis not the unlimited discretion of the discussed body, but a concrete constitutional necessity, *i.e.* the change in the corresponding constitutional norm or its perception. In other words, the main key

[26] In this sense the legal position of the Lithuanian Constitutional Court is worth mentioning, according to which the official constitutional doctrine is not formulated all "at once" on any issue of the constitutional legal regulation, but "case after case" (see Ruling No. 33/03 of the Constitutional Court of the Republic of Lithuania of 28 March 2006, http://www.lrkt.lt/dokumentai/2006/r060328.htm). This is the reason that the viewpoint, according to which the stability of the legal positions of the Constitutional Court doesn't mean that they can't be concretized, clarified or changed along with the changes in the Constitution and the laws, as well as in the social and public life, is widespread in legal literature (see, for example, Vitruk N. Constitution Justice. Moscow., 2005, P. 119; Bondar N. Judicial Constitutionalism in Russia., Moscow 2011, P. 130; Zorkin V. Contemporary World, Law and Constitution. Moscow 2010, P. 167 [Витрук Н. Конституционное правосудие. М., 2005, p. 119, Бондарь Н. Судебный конституционализм в России. М. 2011, p. 130, Зорькин В. Современный мир, право и Конституция. М., 2010, p. 167]).

[27] Zorkin V. Principle of Separation of Powers in the Practice of the Constitutional Court of Russian Federation.Зорькин В. Принцип разделения властей в деятельности Конституционного суда Российской Федерации // Конституционное правосудие: Вестник Конференции органов конституционного контроля стран молодой демократии, Ереван, 2(40)-3(41) 2008, pp. 34-35, Kommers D. P. The Constitutional Jurisprudence of the Federal Republic of Germany. Duke University Press, Durham and London, 1997, p. 54, Ruling No. 33/03 of the Constitutional Court of the Republic of Lithuania of 28 March 2006, http://www.lrkt.lt/dokumentai/2006/r060328.htm. The Lithuanian Constitutional Court even expressed legal position concerning the discussed issue, stating that another interpretation would imply inter alia the fact the Constitutional Court does not administer constitutional justice and guarantee the supremacy of the Constitution (see Ruling No. 33/03 of the Constitutional Court of the Republic of Lithuania of 28 March 2006, http://www.lrkt.lt/dokumentai/2006/r060328.htm).

for the effective solution of the discussed issue is finding balance between the continuity and predictability of the practice of the Constitutional Court and the values, underlying the development of the constitutional doctrine, in each concrete situation, accompanied with the observance of the principle of "expedient self-restraint" by the Constitutional Court. In the mentioned context the regulation prescribed in Article 68(14) of the RA Law "On the Constitutional Court" is worth mentioning, which defines a possibility for the Constitutional Court to review any of the decisions on the merits of the case mentioned in Part 1 of this Article within seven years after the ruling of the noted decision if: a) the provision of the Constitution applied for the case is changed, b) a new understanding of the provision of the Constitution applied for the case has emerged, which may be a basis for a differing decision on the same case and if the issue has a principle constitutional legal significance.

Some authors consider that in this case it should not concern the review of the Constitutional Court decisions, but of the legal positions of the latter, as the review of the Constitutional Court decision leads to a change in the legislative and law enforcement policy, formed on the basis of the previously made decision, while the review of the legal position of the Constitutional Court means that the Constitutional Court changes its previously formed position and, conditioned by essential changes in social life, reviews the perception of the constitutional norm in the new case. The change of the legal position of the Constitutional Court cannot have a retrospective significance and leads to a change in the legislative and law enforcement policy, formed on the basis of the previously made decision[28].

It is obvious that the formulation "review of the decision", prescribed in the Law "On the Constitutional Court", concerns also legal positions. At the same time we consider that the aim of the discussed provision is to define regulations concerning the review of

[28] Ghambaryan A.A., The admissibility of Reviewing of the Decisions of the Constitutional Court // Issues of Jurisprudence, # 1-2, Yerevan, 2009, P. 50. [Ղամբարյան Ա. ՀՀ սահմանադրական դատարանի որոշումների վերանայման թույլատրելիությունը // Իրավագիտության հարցեր, N 1-2, Երևան, 2009, էջ 50].

the final conclusion regarding the constitutionality or unconstitutionality of the act, and not of the legal positions of the Constitutional Court, and it concerns legal positions in so far as their change is necessary for the review of the discussed conclusion. This is testified also by the corresponding judicial practice of the states where there is an opportunity to review the Constitutional Court decisions, as in the frames of the latter (according to such provisions) the final conclusion of the Court is reconsidered on the basis of the change of the previous legal position[29]. While the international practice of constitutional justice shows that besides the above-mentioned, there may be situations when the necessity of the change of the legal position rises not for the review of a previously made concrete decision and for the change of the final conclusion, but for making a decision in a new case. It is obvious that the latter, in comparison with the review of the previously made final conclusion, concerns not the "destiny" of the already resolved case, but is necessary for the development of the constitutional doctrine and for making decisions in new cases, hence, has a principal constitutional legal significance in any case[30]. Therefore, in such situations the change of the legal position cannot be conditioned on such preconditions, as the specific type of the previous decision or the

[29] See, for example, the resolution N З-56/97 of the Constitutional Court of the Republic of Belarus of 15 April 1997 on the review of the resolution of the Constitutional Court of the Republic of Belarus of 4 November 1996, http://www.lawbelarus.com/repub2008/sub39/text39295.htm, the decision №7 of the Constitutional Council of the Republic of Kazakhstan of 24 September 2008 on reconsideration of the decisions № 22/2 of 26 December 2000, № 16-17/3 of 13 December 2001, № 2 of 18 May 2006 of the Constitutional Council of the Republic of Kazakhstan, http://www.constcouncil.kz/rus/resheniya/?cid=11&rid=448.

[30] In this sense the viewpoint, expressed in legal literature, is worth mentioning, according to which the operative part of the Constitutional Court decision refers to the past. The function of the latter is to withdraw the act, contradicting the Constitution, from the legal turnover, while the reasoning part of the decision refers to the future and fulfills not only the function of justifying the adopted decision, but also a preventive function, a function of guiding the legislator to certain constitutional criteria, from which it can't deviate (see Kuris E. Constitutional Justice. Issues of Theory and practice. Yerevan, 2004, P.37 [Курис Э. Конституционное правосудие. Вопросы теории и практики. Ереван, 2004, С. 37]).

time frame of its adoption. While the regulation, prescribed in Article 68(14) of the Law "On the Constitutional Court", concerns only the cases when at least seven years have passed after the ruling of the decision on the merits of the case and the appeal does not refer to the legal acts (their certain provisions) that were found unconstitutional and invalid by the decision of the Constitutional Court. Therefore, we consider that the main goal of the mentioned provision, prescribed in the Law "On the Constitutional Court", is to define regulations concerning the review of the final conclusion regarding the constitutionality or unconstitutionality of the act and it does not concern the change of the legal positions of the Constitutional Court in the above mentioned other situations which do not have the mentioned goal orientation. The opposite approach will form a petrified system of the practice of the Constitutional Court and the constitutional doctrine, endangering the whole legal security of the state.

Summarizing the above-mentioned it should be noted that the notion "legal positions" of the Constitutional Court determines the attitude of the latter to concrete constitutional legal issues, which is expressed in the acts of the mentioned body. Legal positions are mandatory for all the state and local self-government bodies, their officials, as well as for the natural and legal persons in the whole territory of the Republic of Armenia. Moreover, not only the noted subjects, but also the Constitutional Court itself is bound by them, though these legal positions can be changed in case of existence of corresponding bases. In any case, while making the mentioned changes one should take into account the main key for the effective solution of the discussed issue – finding balance between the continuity and predictability of the practice of the Constitutional Court and the values, underlying the development of the constitutional doctrine, in each concrete situation, accompanied with the observance of the principle of "expedient self-restraint" by the Constitutional Court.