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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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CONSTITUTIONAL DEVELOPMENTS REGARDING THE INSTITUTE OF CONSTITUTIONAL JUSTICE IN THE REPUBLIC OF ARMENIA

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Driven by the need of implementation of the principle of rule of law, improvement of constitutional mechanisms for guaranteeing the fundamental rights and freedoms of the human being, ensuring a full balance of powers and increasing the effectiveness of public administration, in accordance with a decree of the President of the Republic of Armenia, issued on September 4, 2013, a Specialized Commission on Constitutional Reforms was established, which prepared the concept of the mentioned reforms and submitted it to the President of the Republic on October 15, 2014. It should be mentioned that on October 10-11, 2014, " the European Commission for Democracy through Law" of the Council of Europe (the Venice Commission) adopted an opinion on the draft concept of the constitutional reforms of the Republic of Armenia during its 100th Plenary Session, describing the draft concept as a good and valuable basis for the preparation of a package of concrete amendments, which would strengthen democratic principles and establish necessary conditions for ensuring the rule of law and respect for human rights within the country[2]. On March 14, 2015, the President of the Republic approved the concept submitted by the Commission, by which a package of the concrete amendments was prepared, which was adopted by the referendum held on December 6, 2015.

Among the most important amendments in the context of

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[2] http://moj.am/storage/uploads/CDL-AD2014027-e_.pdf

realization of implementation of the principle of rule of law, improvement of constitutional mechanisms for guaranteeing the fundamental rights and freedoms of the human being, ensuring a full balance of powers and increasing the effectiveness of public administration were reforms regarding the Institute of constitutional justice in the Republic of Armenia, which we consider necessary to analyze within the frames of the article.

At first it should be mentioned that in the result of constitutional reforms of 2015 Article 103 of the Constitution of the Republic of Armenia stated that the Rules of Procedure of the National Assembly, the Electoral Code, the Judicial Code, the Law on the Constitutional Court, the Law on Referendum, the Law on Political Parties and the Law on the Human Rights Defender shall be constitutional laws and be adopted by at least three fifths of votes of the total number of Deputies. Hence, in the context of the further legislative developments in the Republic of Armenia, a need for the adoption of the above-mentioned constitutional laws arose.

For the elaboration of the draft Constitutional Law «On the Constitutional Court,» a working group was established, which elaborated the noted draft. At this stage, the draft Constitutional Law «On the Constitutional Court» is presented for public discussions on the website www.e-draft.am.

What about reforming the Institute of constitutional justice, it should be mentioned that in the result of constitutional reforms both the procedure of appointment of the judges of the Constitutional Court, the requirements set for the latter, and also the authorities of the Constitutional Court, were changed.

In comparison with the previous regulations, according to which the members of the Constitutional Court were appointed by the President of the Republic and the National Assembly, were irremovable and should serve the office until attaining the age of sixty-five, hereinafter, judges of the Constitutional Court shall be

elected by the National Assembly for a term of twelve years, by at least three fifths of votes of the total number of Deputies. According to Article 166 of the Constitution (with the amendments of December 6, 2015) the Constitutional Court shall be composed of nine judges, of which three judges shall be elected upon recommendation of the President of the Republic, three judges upon recommendation of the Government, and three judges upon recommendation of the General Assembly of Judges. The General Assembly of Judges may nominate only judges. The same person may be elected as a judge of the Constitutional Court only once.

Henceforth, the Constitutional Court shall elect the Chairperson and Deputy Chairperson of the Constitutional Court from among its members for a term of six years, without the right to be re-elected. It should be mentioned that according to the previous regulations the Chairperson of the Constitutional Court was appointed by the National Assembly and in case of non-appointment by the National Assembly, by the President of the Republic.

In the result of constitutional reforms, the requirements set for the judges of the Constitutional Court were also amended. According to Article 165 of the Constitution (with the amendments of December 6, 2015) a lawyer with higher education, having attained the age of forty, holding citizenship of only the Republic of Armenia, having the right of suffrage, with high professional qualities and at least fifteen years of professional work experience may be elected as a judge of the Constitutional Court. The draft Constitutional Law «On the Constitutional Court» also stated an additional requirement set for the judges of CC, that is, the requirement of having high moral qualities, which, to our mind, is an important prerequisite for being elected as a judge of the Constitutional Court.

One of important amendments regarding the status of the judge of the Constitutional Court, prescribed in the RA Constitution in the result of constitutional reforms of 2015, is the introduction of the

institute of **functional immunity** of the judge of the CC. The essence of the mentioned institute is the following: criminal prosecution of a judge of the Constitutional Court may be initiated **only concerning the exercise of his or her powers** and **only upon the consent of the Constitutional Court**. A judge of the Constitutional Court may not be deprived of liberty, **concerning the exercise of his or her powers**, without the consent of the Constitutional Court, except where he or she has been caught at the time of or immediately after committing a criminal offense. In this case, deprivation of liberty may not last more than seventy-two hours. The Chairperson of the Constitutional Court shall be immediately notified of the deprivation of liberty of a judge of the Constitutional Court. The mentioned provisions were included in the draft Constitutional Law «On the Constitutional Court», which also stated that the decision on involving the judge of the Constitutional Court as an accused or on choosing a preventive measure against him/her, should be made by the Prosecutor General of the Republic of Armenia.

It should also be taken into account that according to the RA Constitution (with the amendments of December 6, 2015) the Constitutional Court has become the final body solving the issue of termination of powers of the judge of the CC. In particular, according to Article 164 of the Constitution the powers of a judge of the Constitutional Court **shall be terminated upon the decision of the Constitutional Court** in cases of violation of incompatibility requirements, engaging in political activities, the impossibility of holding office for health reasons, in case of committing an essential disciplinary violation.

It should be noted that in the result of constitutional reforms the jurisdiction of the Constitutional Court of the Republic of Armenia was noticeably changed, and it was vested with new important authorities. In particular, henceforth, before the adoption of draft amendments to the Constitution, as well as draft legal acts put to a

referendum, the Constitutional Court shall determine the compliance thereof with the Constitution. The authority of determining the compliance of the draft constitutional amendments with the Constitution is particularly significant. To our mind, while administering the mentioned authority, the Constitutional Court shall consider their compliance with the unchangeable articles of the Constitution, as well as the procedure of adopting constitutional amendments prescribed in the Constitution.

One of the new important authorities of the Constitutional Court of the Republic of Armenia is the authority of settling disputes arising between constitutional bodies concerning the constitutional powers thereof. According to the draft Constitutional Law «On the Constitutional Court» the following subjects may apply to the Constitutional Court on the mentioned issues: at least one fifth of the total number of Deputies – on disputes with respect to their constitutional powers and constitutional powers of the National Assembly, President of the Republic, Government, Supreme Judicial Council and local self-governing bodies – on disputes with respect to their constitutional powers. To my mind, the mentioned issues may be considered by the Constitutional Court only if the action or inaction of the respondent hinders the performance by the applicant of the powers vested with him by the Constitution or poses a direct threat for their performance. Besides, the settlement of the submitted dispute shall not fall within the competence of other bodies, or the issue shall not be subject to settlement within the scope of other powers of the Constitutional Court provided for by Article 168 of the Constitution. The Constitutional Court, interpreting the corresponding constitutional norm, shall state in the decision on the mentioned issue: the constitutional body entitled to perform the disputed power; the constitutional body entitled to perform the disputed power, and shall declare the act committed by the constitutional body as a result of performance of the disputed power

as complying with the Constitution; the constitutional body entitled to perform the disputed power, and shall declare the acts committed by the constitutional body as a result of performance of the disputed power as contradicting the Constitution.

As mentioned above, henceforth, the decision on termination of the powers of the Deputies shall be made by the Constitutional Court. The Council of the National Assembly, as well as at least one-fifth of the total number of Deputies, may apply to the Constitutional Court on the mentioned issue.

One of the new authorities of the Constitutional Court is deciding on the issue of subjecting a judge of the Constitutional Court to disciplinary liability. At least three judges of the Constitutional Court may apply to the CC on the mentioned issue. To my mind, the judge of the Constitutional Court, the issue of imposing disciplinary liability whereon is being examined, shall be involved in the proceedings exclusively as a respondent. According to the draft Constitutional Law «On the Constitutional Court» in the result of consideration of the mentioned case one of the following disciplinary penalties may be imposed by the Constitutional Court: warning; reprimand, which shall be combined with depriving the judge of 30 percent of his or her salary for a period of six months; severe reprimand, which shall be combined with depriving the judge of 30 percent of his or her salary for a period of one year. Moreover, the ground for imposing disciplinary liability on a judge of the Constitutional Court shall be the violation of the rules of conduct for the judges of the Constitutional Court. It should be mentioned that within the frames of reforming the legislation on constitutional justice the adoption of the rules of conduct for the judges of the Constitutional Court is planned.

The issue on termination of the powers of a judge of the Constitutional Court, as well as on giving consent for initiating criminal prosecution against a judge of the Constitutional Court or

depriving him or her of liberty concerning the exercise of his or her powers henceforth will also be decided by the Constitutional Court. It should be noted that in comparison with previous regulations, according to which the Constitutional Court just gave an opinion on the mentioned issues, and the final decision was made by corresponding bodies, henceforth, the final resolution of the noted issues is vested with the Constitutional Court itself. To my mind, in case of the mentioned cases also the judge of the Constitutional Court, regarding whom the corresponding issue is considered, shall be involved in the proceedings exclusively as a respondent.

One of the most important innovations of constitutional reforms of 2015 was the introduction of the Institute of preventive constitutional review of laws by the application of the President of the Republic, who, according to the Constitution, shall observe the compliance with the Constitution. According to Article 129 of the Constitution, the President of the Republic shall sign and promulgate a law adopted by the National Assembly within a period of twenty-one days, or shall apply within the same period to the Constitutional Court to determine the compliance of the law with the Constitution. In case the Constitutional Court decides that the law comply with the Constitution, the President of the Republic shall sign and promulgate the law within a period of five days.

The above-mentioned shows that in the result of constitutional reforms the institute of constitutional justice in the Republic of Armenia underwent vast changes, which, to my mind, will become an essential prerequisite for the realization of the principle of the rule of law, improvement of constitutional mechanisms for guaranteeing the fundamental rights and freedoms of the human being, ensuring a full balance of powers and increasing the effectiveness of public administration.