

## Towards Constitutionalism for the Republic of Armenia

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### Introduction

The collapse of the Soviet Union brought about a set of issues that had to be addressed urgently if new countries opted for democratic transition. One of these issues is the establishment of constitutionalism, which usually finds its incarnation in a Constitution. This is not to say that constitutionalism exists in every polity, which has a Constitution. In this respect, it is sufficient to recall the communist experience.

A democratic Constitution settles the structural and organizational mechanisms with the help of which relations between state organs and individuals are regulated. Modern democracy implies the creation of a written Constitution, the purpose of which is to found the legal prescriptions to follow in political practice. To achieve this, Andrew Arato states, a Constitution should be effective and legitimate. He also argues that 'for a Constitution to be effective, it must coherently anchor the legislative, executive and judicial processes of the political system in legally rigorous procedures and decision rules. To be legitimate, by liberal and democratic criteria, fundamental law ought to incorporate a full set of civil and political rights, as well as mechanisms guaranteeing the democratic and public character of the political process'.<sup>1</sup> A Constitution, he goes on to say, 'will be coupled with constitutionalism only if mechanisms are provided ensuring the compliance of the branches of power with fundamental law'.<sup>2</sup>

A political system cannot be encapsulated in a document, its realization depends on its application to reflect the constant adaptations in a state. Political systems are the complex outcome of the actions of multiple actors and intertwined interests, leaving law sometimes in the rearguard. This divergence from political practice might distort the pre-defined legal rules, thus damaging constitutionalism, which presupposes the maintenance of the constitutional provisions in procedural terms. This happens because law cannot remain unaffected by cultural impacts. Therefore, it is hard to gain harmony between law and politics in order to promote constitutionalism.

To substantiate the idea of institutional settings, it is worth mentioning that there exist different forms of democratic government: presidentialism, parliamentarism and semi-presidentialism. When analyzing the forms of government, the specific models have been cast a look at to specify the executive-legislative relations inherent to these forms. Presidentialism can be thought of as embodied in the US model and its Latin American derivatives. When talking about a parliamentary system, one cannot but refer to the Westminster prototype, the mother of many parliamentary governments and the current German model. As to the semi-presidential form of government, the classic example that stands out is that of the French V Republic. The distinguishing feature of semi-presidentialism is its dual executive structure. The 'monologue' of the executive power is transferred from the President to the Prime Minister and vice versa depending on majority support in the parliament.

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<sup>1</sup> Arato, Andrew, "Constitution and Continuity in the East European Transitions, Part I: Continuity and its Crisis", *Constellations*, vol. 1 (1994): 92

<sup>2</sup> *ibid.*

The need for legal and institutional determination becomes especially vivid in democratizing countries, which are making a drastic shift from one regime to another. In many post-communist countries the constitution-making process has been prolonged because of the slow adaptation to a new ideological stance, which should be in conformity with democratic standards. The constitution-making process in Armenia, launched after independence of the country, lasted from 1991 to 1995. It did not entail a compromise between the political actors but was a 'directive' of the ones who enjoyed majority support, thus making the Constitution nothing more but an instrument in the struggle for power and its aftermath. Although the Constitution of 1995 did arrange the state powers in the frames of a semi-presidential form of government it was assessed as flawed both by the domestic actors and international reporters. The constitutional revisions, launched in 1998, were directed at attaining a more balanced system of separation of powers, which would ensure political democracy.

In the thesis I claim that constitutionalism in Armenia cannot be achieved unless the Constitution is treated as a legitimate source of law and politics and not an instrument of self-interest advancement both by the Armenian 'elite' and the West. Firstly, I will argue that the Armenian political actors have been quelling the Constitution to their own benefit. Secondly, I will assert that Western policies of inducing a new model-Constitution craft an illegitimate domestic polity. The thesis will assess whether constitutionalism can be attained as long as the Constitution remains an instrument.

The general research question will be unfolded with the help three parts. Chapter One will examine the constitutional development in Armenia by focusing on the legal and political challenges since 1990 and the constitution-making process. Chapter Two will elucidate the Constitution of 1995 and the problems, connected with the principle of separation of powers as belonging to the legal domain, as well as the political disarray throughout 1995-2000 as display of the political realm. Finally, chapter three goes on to outline the domestic initiatives for recent constitutional revision in 1998, the legal advice, provided by the European Commission for Democracy through Law (Venice Commission of the Council of Europe) and the parliamentary deliberation as a feedback to two competing drafts.

The value and novelty of this academic thesis is that very little attempt has been made to analyze the interdependence between the establishment of constitutionalism and institution-building in Armenia. Therefore, the thesis would fill in the gap of the existing body of academic literature. It would also benefit the country in practical terms helping to see the problems, identified through its drafting and revisions processes as factors that can impede constitutional democracy in Armenia when they are not legitimate.

## Chapter One

### Constitutional Evolution during 1990-1995

This Chapter will examine the constitutional evolution in the Republic of Armenia since regime change and the establishment of its independence after the collapse of the Soviet Union. This will be achieved by following the dynamics of constitutional trends throughout the transition process in Armenia. This part comprises two sub-chapters: the *first* one narrating the legal and political challenges the country was confronted with after independence, the *second* one focusing on the analysis of the constitution-making process and its enactment.

#### 1. First Legal and Political Challenges after Independence

##### 1.1. Steps towards Independence

The first significant step for departure from the Soviet rule in Armenia was made in the political sphere when the elections of the Chairman of the Supreme Council had to take place. Six candidates were supposed to run for the position – Levon Ter-Petrosyan, a prominent leader of the Armenian Pan-National Movement (APNM)<sup>3</sup>, Vladimir Movsisyan, First Secretary of the Communist Party of Armenia (CPA), Souren Haroutyunyan – Former First Secretary of the CPA, Rafael Ghazaryan and Vazgen Manoukyan, both APNM leaders, and Parouyr Hayrikyan, Soviet time human rights activist and dissident. Ghazaryan and Manoukyan refused to accept the nomination, Haroutyunyan did not participate in the session of the parliament and Hayrikyan declared that would reject the nomination of an APNM representative ran for the position. Eventually, the contest took place between Movsisyan and Ter-Petrosyan, namely, the representatives of the old and the new regimes respectively. The voting that took place on August 4, 1990 secured majority to Ter-Petrosyan.

This transition in politics highlighted the national will for abolishing the Soviet system and brought about the challenge for creation of independent statehood. The formal beginning of the process started on August 23, 1990 when the Supreme Council of the Republic adopted the Declaration on the Independence of Armenia. The Declaration put grounds for the power separation principle, equality of all types of ownership, freedoms of speech, press, political pluralism, multiparty system, equality of parties, depolitization of military and law-enforcement bodies. The Declaration had the power of Constitutional Law. It contradicted the main provisions of the existing Soviet Constitution. However, the contradictions were solved in favor of the Declaration and the provisions of the still not discarded the Soviet Basic Law were declared invalid.

On August 24, 1990 the Supreme Council renamed the Armenian Soviet Socialist Republic (ArmSSR) into Republic of Armenia and the 12<sup>th</sup> session of the Supreme Council of ArmSSR into the first session of the Supreme Council of the Republic of Armenia. Thus, the new wave for radical changes of the legal-political life was embarked on. These changes were first of all cast onto the legal sphere when significant modifications started to be made to the Soviet Constitution of 1978. Although symbolic in nature, these changes marked the 'discontinuity'<sup>4</sup> with the old regime and were intended to launch the establishment of a new one. Articles of the Constitution of 1978 relating Armenia's membership in the USSR ceased to be effective. Also, the issue of adoption of a new Constitution was raised as an indispensable

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<sup>3</sup> The party was formed in 1988 firstly as a movement by a group of Armenian intelligentsia, trying to solve the Nagorno-Karabakh conflict. In 1989, it renamed itself as Armenian Pan-National Movement (APNM), turning into a party.

Nagorno-Karabakh being a historical part of Armenia, had become an enclave in the Soviet Socialist Republic of Azerbaijan in 1920 as a result of the territorial redrawing by Joseph Stalin. By the end of 1980s the autonomous region of Nagorno-Karabakh comprised three-fourth Armenian population.

<sup>4</sup> Arato, Andrew, "Constitution and Continuity in the East European Transitions", Part I: "Continuity and its Crisis", *Constellations*, vol. 1 (1994): 96

and urgent one for the new state.

Pursuant to the decision of the Supreme Council of Armenia, dated November 5, 1990, it was decided to form a Constitutional Commission<sup>5</sup>, which was to draft the text of the new Constitution. The Commission was composed of 20 members, including statesmen and political figures, members of parliament and legal experts. It was headed by Levon Ter-Petrosyan, Chairman of the Supreme Council of the Republic of Armenia, and Ara Sahakyan, Secretary of the Supreme Council as the Secretary of the Commission.

On January 16 and 30, 1991 the Armenian parliament made resolutions on the decision of the Supreme Council of the Soviet Union on the all-Union referendum for preservation of the Soviet Union, which took place in all the then already former Soviet republics. The Armenian parliamentarians made a decision not to participate in this referendum on March 1, 1991 and held a referendum on the territory of the Republic of Armenia. The referendum took place on September 21, 1991. The question on the ballots was the following: "Do you agree that the Republic of Armenia be an independent democratic state from the USSR?". 2,042,627 (about 93%) citizens out of 2,056,798 participated in the referendum. Only 10,002 gave a negative response and 4 129 ballots were declared invalid.

Other important decisions for a constitutional Republic were made on December 10, 1990 by passing the Constitutional Law on the Legislative Acts Adopted in Accordance with the Declaration of Independence of the Republic of Armenia and on September 25, 1991 - the Constitutional Law on the Fundamentals of Independent Statehood. These laws marked a vital point in the constitutional evolution of the Republic, covering not only issues concerning the organization of government structure and its functioning but also basic norms of public life. In line with the Declaration, they also both maintained that until the adoption of the new Constitution of the Republic of Armenia the existing Soviet Constitution and laws would be valid to the extent that they did not conflict with Constitutional Law on the Fundamentals of Independent Statehood. According to the latter, the same would apply to legislative acts, adopted by the Supreme Council on the basis of the Declaration of Independence of Armenia. Moreover, Article 16 of the Constitutional Law on the Fundamentals of Independent Statehood stated that no further changes were to be made to the existing Soviet Constitution.

## 1.2. Establishing New Institutional Arrangements

By the end of 1991 the Supreme Council adopted two principal laws On the President of the Republic of Armenia and On the Supreme Council of the Republic of Armenia. After the decision to found a presidential institution, the parliament assigned the Constitutional Commission and the two parliamentary standing committees - On Founding Independent Statehood and On Legal Issues - with the task of elaborating and presenting within twenty days the draft legislation on presidential elections and presidential office, as well as necessary constitutional amendments.

The Supreme Council decided to hold presidential elections on October 16, 1991. The discussion of the draft bill on the President of the Republic started on July 16, 1991. From the very beginning it was clear that there were two major camps within the parliament. The members of one were advocating the draft, elaborated by Constitutional Commission, which presented it as a law of balance between the President and the parliament. The other group, consisting of opponents to the mentioned draft, stated that it was in sharp contradiction with

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<sup>5</sup> Khachatryan, Henrik, *The First Constitution of the Republic of Armenia* (Yerevan: United Nations High Commissioner for Refugees, 1998), 17

The Constitutional Commission convened its first session on October 15, 1992. During the period from October 1992 to May 1995, it held 109 sessions.

the principle of the balance of powers and granted the President 'dictatorial'<sup>6</sup> prerogatives. These contradictions continued later when the parliament started to discuss the draft bill on the Supreme Council.

The main controversial issues concerned such questions as limitations of presidential authorities, the possibility of control over presidential actions, as well as the issue of appointment of government officials. Another dimension concerned the two options of institutional formulas: 'President - Vice-President' and 'President – Prime Minister'. The final version of the law gave a possibility for the existence of all the three offices of the President, Vice-President and Prime Minister. According to the draft, the Prime Minister and the members of government had to be appointed by the President who also enjoyed the right to dismiss them. The parliament by two-thirds majority could approve or object to the decision of the President. However, the parliamentarians rejected the version proposed by the Commission. Hayrikyan proposed to include a possibility of rejecting presidential nominees of Prime Minister and members of government by 50%+1 majority. Only if the President presented the same candidate for the second time would the parliament reject the nominee by two-thirds qualitative majority. Hayrikyan's proposal was accepted. Later a modification was introduced by the parliament: MPs were granted the right to reject the nominee by simple majority of votes cast by no less than one-thirds of all deputies. During the discussion on the control over the President's activities there was a proposal to establish an independent body that would be able to assess his activities and if necessary could suggest the parliament to recall the President. In the session that followed the majority of parliament supported the version presented by the Constitutional Commission.

The draft and later the law made the following provisions for the impeachment of the President. The President and the Vice President could be subject to impeachment in case of high treason, bribery or other crimes (Article 11 of the Law on the President of the Republic of Armenia). To start the process the parliament had first to discuss the issue on the floor and, if supported by the majority, present it to the Supreme Court. Based on the ruling of the Supreme Court the parliament could make a decision by two-thirds majority to impeach the President or the Vice President.

The debates on the Law on President were finalized on August 1, 1991, when the Supreme Council voted for the bill and on September 26, 1991 the Central Electoral Commission registered 12 candidates for presidential and vice presidential offices: P. Hayrikyan, A. Arshakyan, R. Ghazaryan, S. Zolyan, A. Navasardyan, G. Khachatryan, S. Sargsyan, V. Hovannisyan, L. Ter-Petrosyan, G. Haroutunyan, Zori Balayan and A. Marzpanyan. In October, 1991 Levon Ter-Petrosyan, leader of the APNM and the Chairman of the Armenian Supreme Council, became the first popularly elected President of the independent Republic of Armenia. He received 83% of votes or 58% of votes of all the citizens. The next two candidates P. Hayrikyan and S. Sargsyan received 7.2%, and 4.3% respectively, while all the others less than 1%.

The final relocation of the functions and authorities between the President and the executive, on the one hand, and the parliament, on the other hand, took place after the Law on the Supreme Council was adopted on November 19, 1991. The draft of the law was first discussed at the meeting of the Constitutional Commission and parliamentary standing committees and later at the session of the parliament. Again, two major drafts were presented. The first one was elaborated by the Constitutional Commission, standing committees on Founding Independent Statehood and on Legal Issues and the second draft was

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<sup>6</sup> Markarov, Alexander, PhD of Philosophical Sciences, Assistant Professor, Department of Political Science, Deputy Dean, Faculty of International Relations, Yerevan State University, *The Institutional Arrangements within Armenian Transition* (unpublished, 2000)

elaborated by three members of parliament – from the National Democratic Union party (NDU), namely, David Vardanyan, Shavarsh Kocharyan and Tigran Sargsyan. The principal differences between two drafts related the authorities of parliament and executive-legislative control. The second draft stressed the role of the parliament not only as a legislative authority but also as a political body with wide authorities to control the other branches. As it was also the case with the bill on the President, the draft elaborated by the Constitutional Commission received majority of votes in the parliament and after the President signed it, the draft became a law.

According to the legal norms set by these laws the President was elected for a five-year term by popular elections and was the head of the executive branch. He appointed and dismissed the Prime Minister and on the latter's advice also the members of the government. Both the Prime Minister and the members of the government were subject to the parliamentary vote of confidence. Significant changes took place in the decision-making process. After the initiation of the presidential institution the President was granted veto powers over the decisions of the parliament. The Supreme Council could vote for the bill by simple majority but some bills required qualified majority of two-thirds, like the amendment of the Constitution, the vote of no confidence, the recall of the Chairman and the First Deputy Chairman of the parliament. The bills voted by the parliament had to be signed by the President within two weeks. The latter could return it back to the parliament with suggestions and objections requiring a new debate and voting. The Supreme Council, in turn, could accept the presidential suggestions by simple majority of the deputies present but by no less than one-thirds of all the deputies or it could stand for its own version of the bill that required two-thirds majority. In the latter case the President had to sign the bill within five days. If the President neither returned the bill within two weeks, nor signed it within five days after the second voting the bill had to be published with the signature of the Chairman of the Supreme Council.

During the existence of the Supreme Council (1990 - 1995) the President used his veto powers 13 times. Within those years the parliament adopted 188 bills. Some of them were of extraordinary importance for the foundation of independent statehood since they introduced changes within almost all the spheres of the society. On November 5, 1990 the parliament issued a law on Depolitization of Governmental Bodies, Industry, Educational Institutions, Military Units, thus banning all Communist party structures. As a follow-up, on February 26, 1991 the Supreme Council voted for the law on Social-Political Organizations that established a multiparty system and guaranteed equality of parties in Armenia. Among other important laws one has to mention the Law on the Press and Other Means of Mass Media, adopted on October 8, 1991, and the Law on Freedom of Conscience and Religious Activities, adopted on June 17, 1991. The parliament also adopted laws that crucially changed the economic relations in the Republic. On October 10, 1991 it voted for the Law on Ownership that secured legality and equality of all types of ownership, and adopted the Law on the Principles of Privatization in the Republic of Armenia on February 13, 1991. According to the parliament decision Armenia adopted the UN Universal Declaration of the Human Rights, International Agreement on Civil and Political Rights, etc. Throughout 1990-1991 the Supreme Council ratified 151 international agreements.

After the adoption of a number of important laws by the Supreme Council in the first stage of transition, the major question for the independent Republic was the issue of adoption of a new Constitution. This new Basic Law, which was to encompass all the aspirations of the Armenian nation, however, during the constitution-making process was used to the advantage of one political force, who had already forced to follow his taste through the adopted laws.



## 2. Constitution-Making Process

The real changes regarding the organic part of the Constitution were introduced only during 1991-92 when the existing institutions of state power and administration were organized in accordance with the principle of separation of powers. The presidential institution was established, a proposal to create a Constitutional Court came forth and the electoral system was revised.

On June 24, 1993, the Constitutional Commission approved the first version of the draft of the Constitution and presented it for public consideration, which lasted for 9 months. More than 1000 comments and suggestions were proposed on the draft. Taking into account the high quality and the well-grounded character of some of the comments the Constitutional Commission integrated many of them into its own draft. The latter declared Republic of Armenia a sovereign, democratic state with the rule of law. State authority was based on the principle of the separations of the powers between the executive, legislative and judicial branches. The legislative body, National Assembly, had to become a permanently acting representative body. The dissolution of the parliament could be reached by the decision of the legislature or by a presidential decree. The President had to secure constitutional balance. The executive comprised the government, headed by the Prime Minister, both subject to parliamentary and presidential confidence. The proposed draft continued the existing logic of strong presidential authorities. Formally the draft could be assessed as establishing a semi-presidential form of government but if the President enjoyed majority support for his policies in the parliament his powers would become unlimited. As a result, the parliament would be automatically ratifying all the bills presented by the President and the government.

Besides the draft proposed by the Constitutional Commission several alternative ones by various political actors were also submitted. In December 1992 the first alternative draft, prepared by Henrik Khachatryan<sup>7</sup> was submitted to the Presidium of the Supreme Council of the Republic of Armenia, the Constitutional Commission and the staff of the Chairman of the Supreme Council. Many provisions of the draft were taken into account by the Constitutional Commission. The draft, presented by the Christian Democratic Union (CDU) of Armenia, declared Republic of Armenia a federal state with a presidential form of government. Another competitive alternative was the draft, proposed by a union of six political parties<sup>8</sup>, the so-called 'Draft of Six', received only 72 comments and suggestions from 7 organizations and 3 individuals, 17 of which were of a general nature and 55 related particular articles. The draft proposed a parliamentary form of government in Armenia with the President as a representative-nominal head of the state and not a real power holder.

Besides the issue of form of government, there were other controversial issues<sup>9</sup>. Markarov<sup>10</sup> notes that one of these issues concerned the 'Armenian Cause' ['Hai Dat'] problem, i.e. recognition of the Armenian massacre of 1915 in the Ottoman Empire as genocide and the problem of historical Armenian lands deprived of the Armenian nation. The other referred to

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<sup>7</sup> Head of the Department for Constitutional Research at the Institute of Philosophy and Law of Armenia's National Academy of Science

<sup>8</sup> Armenian Revolutionary Federation (ARF), Democratic Party, Peasant-Democratic Party, Republican Party, Armenian Ramkavar-Azatakan Party and Constitutional Justice Union

<sup>9</sup> Khachatryan, Henrik, *The First Constitution of the Republic of Armenia* (Yerevan: United Nations High Commissioner for Refugees, 1998), 16

Khachatryan calls these issues 'populist', incarnated in legally invalid phrases as "The Basic Law is the Constitution of All Armenians.", "No borders exist for Republic of Armenia's Citizenship", or constitutional provisions, mandating territorial demands or demands for recognition and condemnation of the suppression of Christianity, practiced by Armenians, their arrests, deportation and extermination as a genocide.

<sup>10</sup> Markarov, Alexander, PhD of Philosophical Sciences, Assistant Professor, Department of Political Science, Deputy Dean, Faculty of International Relations, Yerevan State University, *The Institutional Arrangements within Armenian Transition* (unpublished, 2000)

the question of dual citizenship. The draft of the presidential Commission was against Diaspora Armenians, spread all over the world as a result of the 1915 tragic event, obtaining a citizenship of the Republic of Armenia, while the 'Draft of Six' was strongly supporting it. The CDU allowed dual citizenship but with some restrictions on the rights, associated with gaining citizenship for the Diaspora Armenians. The ARF draft went even further to propose reestablishment of the pan-Armenian state. 20 members of the National Assembly were to be elected from among the citizens of other countries, domiciled in the Diaspora. The idea of the all-Armenian referendum, which would be initiated by the Diaspora Armenians, was proposed along with national referendum. Thus, the question about the Diaspora was becoming a constitutional category, aside from its practical relevance to the grievances of the Armenian nation.

Despite the existence of different drafts, the one, elaborated by the Constitutional Commission was considered to be the official one, while being constantly revised by the working group. All the others were treated unequally as alternatives. Thus, on November 12, 1993 the Presidium of the Supreme Council of the Republic of Armenia made a decision that summary information (report) would be delivered by the Chairman of a special multiparty commission on the comments received for the official draft Constitution. This report would be sent to standing committees, MPs and political parties. On April 20, 1994 the Constitutional Commission approved the revised draft and submitted it to the Supreme Council of the Republic of Armenia.

In the parliament, there were controversial points of view as to the method of adoption of the new Constitution. Three possibilities sprang up. The first possibility was the adoption of the Constitution by the parliament, which was feasible, given the legal norms of Armenia at that time. Both the acting Constitution and the Law on the Supreme Council of the Republic of Armenia granted this right solely to the parliament. The second option was elaboration and ratification of the Constitution by the Constitutional Convention - the representative body with the legislative authorities elected directly by the citizens solely for the purpose of adoption of the Constitution. And the third option was adoption by referendum.

President Ter-Petrosyan during the meetings of the Constitutional Commission back on March 2 and 27, 1993 and later in his parliamentary speeches had suggested that the draft, elaborated and approved by the Constitutional Commission, be presented for parliamentary deliberation. The parliament would make necessary legal provisions that would allow presenting the draft Constitution for referendum.

The President did not exclude the possibility of introducing two drafts - one advocating a strong presidential government and the other – a parliamentary model. However, he found inappropriate to call for a Constitutional Convention, stating that the members of the parliament were competent enough to act as a substitute. Ter-Petrosyan's position was supported by the APNM faction in the parliament, but other political actors, namely, Armenian Revolutionary Federation (ARF)<sup>11</sup>, National Democratic Union (NDU), Democratic and Republican Parties were advocating the idea of a Constitutional Convention. First of all, they claimed that both the staff of the Constitutional Commission and the non-professional parliament were not competent to elaborate the draft Constitution. Secondly, the Supreme Council lacked the confidence of the people, since it was elected before independence according to the rules of the Soviet system<sup>12</sup>, while the Convention would bear the clear

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<sup>11</sup> The oldest political party in Armenia, the party dates from the period when Armenia briefly tasted independence before the Bolshevik takeover in 1919. It is perceived to be the most nationalistic party in the country and receives great financial support from the Diaspora, where it is very active.

<sup>12</sup> Markarov, Alexander. PhD of Philosophical Sciences, Assistant Professor, Department of Political Science, Deputy Dean, Faculty of International Relations, Yerevan State University, *The Institutional Arrangements within Armenian Transition* (unpublished, 2000)

The Supreme Council, which renamed the ArmSSR into Republic of Armenia, according to Markarov, could be already



mandate of the citizens of the democratic Armenia. Finally, the body that had to elaborate and adopt the draft Constitution had to be politically neutral but the staff of the Commission did not correspond to that principle. Thinking that the adopted draft would, hence, be the manifestation of the presidential will, given the parliamentary majority, the opposition decided to boycott the work of the Constitutional Commission, stating that it was under the direct pressure of the President and would adopt the draft designed for the President.<sup>13</sup>

This problem concerned the legitimacy issue, crucial in many post-communist societies, in terms of the fact that some actors, taking charge of the chaos, were trying to use the constitutional moment to their advantage. The old regime loosening its grip on the society, the struggle for power in Armenia was overtly displayed during the constitution-making process. This brings about contradictions, identified by Agh (1995) for Hungary, but also applicable to the Armenian case as well:

1. the contradiction between the conflicting short-term particular political demands of different actors and the needs of long-term democratic consolidation;
2. the contradiction between the drive of the new government to obtain full powers and the democratic principle of the division and limitation of powers asserted in the Constitution.

On June 1, 1994 the Supreme Council adopted a decision on the expansion of membership of the Constitutional Commission of the Supreme Council in order to recruit representatives of all the parliamentary political parties and the authors of all constitutional drafts. Babken Ararktsyan, the Chairman of the Supreme Council was appointed as Co-Chairman of the Constitutional Commission. From June 30, 1994 to April 13, 1995, the Constitutional Commission worked with its expanded membership of 32 members and held 66 sessions. These attempts of enlarging the Commission and gearing diverse points of view were aimed at attaining consensus. During the constitution-making process the freedom of presenting various versions for the new Constitution was allowed. Nevertheless, prevalence was given only to the one, elaborated by the Constitutional Commission.

In May 1995, the draft was subjected to detailed consideration at the Supreme Council long parliamentary sessions. The ratification of the draft Constitution of the Republic of Armenia by two-thirds parliamentary majority took place on May 12, 1995. Relying on Article 2 of the Constitutional Law as of March 27, 1995 and Article 14 of the Law on Referendum, the Supreme Council made a decision to hold a referendum on July 5, 1995 by putting the following question: "Do you agree to adopt the RA Constitution, approved by the RA Supreme Council?" 1,217, 531 of 2,189,804 citizens participated in the referendum. 828,370 voters answered 'yes' and only 349,721 people responded negatively. 39,440 ballots were recognized invalid. Thus, 55.66% of the total number of qualified voters participated in the referendum, while the majority of those, amounting to 68.04% voted in favor of the new Basic Law of the

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distinguished from the previously existing Soviet era Armenian parliaments.

The parliament was elected on concurrent basis. The Central Electoral Commission registered 1,511 candidates at 260 districts. Twelve of those were located in Nagorno Karabakh. Only five districts had per 1 candidate and thirty-six districts had two candidates registered each. On the day of elections 1,307 candidates were running for 259 mandates. The elections took place on the following basis: the candidate was elected, if he received more than 50% of the votes provided that more than 50% of the voters from the given district participated in the elections. If none of the candidates obtained the required majority of votes the district electoral commission made a decision for a second round for the two candidates who received the highest number of votes in the first round. After the second round the elections could be declared valid if more than 50% of the electorate of a district had participated in the elections. The second round had to take place within two weeks after the first round. The first round took place on May 20, 1990. Out of 2,137 210 citizens 1,286,464 (60.19%) participated. The first round provided the parliament with 99 members. After the second round that took place on June 3, 1990 and the re-voting on July 15 the parliament had 161 members. 45 more MPs were elected on July 26. By November 1, 1990 the parliament consisted of 236 MPs.

<sup>13</sup> *ibid.*

Republic of Armenia.<sup>14</sup>

There were two problems, connected with the results of the referendum. Firstly, the referendum was held on the same day as the parliamentary elections. This phenomenon undermined the whole legitimacy process.<sup>15</sup> Secondly, there were many accusations on the part of the opposition, notably, the ARF, that the results were forged.<sup>16</sup>

In spite of the accusations as to the illegitimacy of the referendum, Khachatryan maintains that the new Armenian statehood was founded in full compliance with the constitutional order, acknowledged as valid by international law. It did suffice the criterion of a democratic *beginning*, becoming a new guide for law making and law-application. The amendments of 1990-1995 were important since they had to assure transition of the legislation from party-bureaucratic system to democratization of the society, establishment of a diversified political and economic environment.

It is noteworthy that some of the important legislative acts adopted by the Supreme Council before constitutional enactment and both positive and negative aspects of their application have been reflected in the present Constitution. Moreover, the Armenian experience of constitutional development, i. e. the ideas of the historical legal manuscripts, namely, those of the Canon Code of Armenia of the 8<sup>th</sup> century, Code of Justice of 1184 by Mkhitar Gosh, National Constitution of Western Armenia of 1863<sup>17</sup>, "The Trap of Grandeur"<sup>18</sup> of 1760-1770, 100 of 521 Articles of which were devoted to issues of constitutional law, by Shahamir Shahamiryan, have also escorted the normative aspect of the constitution-making process. In addition, according to Khachatryan, the founding fathers of the RA Constitution have considered the fact that any Constitution should be viewed not as a political, but exclusively as a legal document, containing precise and short provisions so as to avoid infringement of constitutional principles and their repetitive amendment.

To sum up, the first challenges that Armenia faced were successfully handled in the legal vacuum that had appeared after the demise of the Soviet Union. The fact that democratic

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<sup>14</sup> Khachatryan, Henrik, *The First Constitution of the Republic of Armenia* (Yerevan: United Nations High Commissioner for Refugees, 1998), 19

<sup>15</sup> as expressed by Armen Zakaryan, Radio Free Europe/Radio Liberty - Armenia journalist in the interview at the Council of Europe; for more information please see Appendix 1

<sup>16</sup> Markarov, Alexander, *Armenian Constitutional Changes: Slight Amendments or Heavy Reform?* (unpublished, 2001)

<sup>17</sup> "The Catholicosate of the Great House of Cilicia", *Hye Etch*, accessed on May 2, 2002

[http://www.hyeetch.nareg.com.au/religion/h\\_see\\_p4.html](http://www.hyeetch.nareg.com.au/religion/h_see_p4.html)

Library of Congress Country Studies, "Armenia between Russia and Turkey", *Archaeology* (March 1994) accessed on May 2, 2002

<http://archaeology.about.com/library/atlas/blarmloc6.htm>

In the sixteenth century Western Armenia came under Ottoman rule, while the Persians ruled the Eastern half. Early in the nineteenth century part of Armenia was absorbed into the Russian Empire and became a scene of conflict between the Russians and the Ottomans. In Russian Armenia a church constitution called Polojenye was adopted governing the church.

In the mid-nineteenth century, a major movement toward centralization and reform, called the Tanzimat, swept through the Ottoman Empire. Armenian people benefited somewhat from these reforms; for instance, in 1863 a National Constitution was developed by the Armenians and approved by the Ottomans. When the reform movement ended in the 1870s by reactionary factions Ottoman policy toward subject nationalities became less tolerant, and the situation of the Armenians in the empire began to deteriorate. This basic Constitution, however, is still in use today governing the Cilician See and the Armenian communities in Lebanon, and other countries in the Middle East.

The Armenian National General Assembly, comprising 140 members, established by this document, began to convene its sessions, dealing with domestic, as well as national, religious, educational, cultural and other issues of the Western Armenian community.

<sup>18</sup> Being written in India by Madras group of Armenian patriots and published in 1773, the book lay down the platform of an Armenian representative Assembly, called "Armenian House".

legislative requisites were launched was a promising factor for looking forward to a democratic Constitution more realistically. The Laws on the President of the Republic of Armenia and the Supreme Council, based on the bills, proposed by the Constitutional Commission, were advancing the short-term demands of Ter-Petrosyan, Chairman of the Supreme Council, his own party - APNM, representing majority in the parliament and ensuring mechanical approval of his drafts. After the adoption of these two laws and the proposal to establish a presidential institution in Armenia the balance between the executive-legislative relations changed and moved towards presidential dominance. The laws established a strong presidential institution with a subjugated parliament. According to Markarov, these laws, being transferred into the Constitution of 1995 could be blamed for the further non-democratic political practice in Armenia.<sup>19</sup> This phenomenon was not unique for Armenia. Most of the CIS countries granted the President wide-ranging powers. The advocates of strong presidential office, basically politicians with grievances for this top position, claimed that there was a need for a strong President in situations of political and economic transitions the former communist countries were undergoing. Meanwhile, they believed that the newly created non-professional parliaments were unable to address the problems with equal efficiency.

The whole constitution-making process consisted of controversial debates on a number of diverse issues and there was no consensus. The Constitution was a subject of heated debate for wide extension of the President's powers.<sup>20</sup> The deliberation process at the sessions of the Supreme Council of the Republic of Armenia, according to Khachatryan, revealed the ambitions and contesting interests of the old versus the new and divisions of the new among itself as a struggle for power.<sup>21</sup> At the time the balance of political forces was very complicated. This conflictual situation resulted in a non-unanimous attitude toward the constitutional process and the method of adoption of the Constitution. The Armenian Constitution, which was adopted on the basis of the draft, proposed by the Constitutional Commission, chaired by Ter-Petrosyan, was intended not convey the will of the people and diverse political actors but that of the President.<sup>22</sup> The solution, which would be identified by Kis as the favorable one - 'coordinated transition'<sup>23</sup> - therefore, was not met in Armenia.

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<sup>19</sup> Markarov, Alexander, PhD of Philosophical Sciences, Assistant Professor, Department of Political Science, Deputy Dean, Faculty of International Relations, Yerevan State University, "Armenian Constitutional Changes: Slight Amendments or Heavy Reform?", *forthcoming in Sprawy Polityczne* [Political Affairs], (Poland, 2002)

<sup>20</sup> "Armenia 1995: Democracy and Human Rights", *British Helsinki Human Rights Group*, accessed on May 13, 2002 <http://www.bhhrg.org/armenia/armenia1995/elections.htm>

<sup>21</sup> Khachatryan, Henrik, *The First Constitution of the Republic of Armenia* (Yerevan: United Nations High Commissioner for Refugees, 1998), 256

<sup>22</sup> as also expressed by Armen Zakaryan, Radio Free Europe/Radio Liberty - Armenia journalist in the interview at the Council of Europe; for more information please see Appendix 1

<sup>23</sup> Kis, Janos, "Between Reform and Revolution", *East European Politics and Societies* (2/1998): 304

## Chapter Two Law in Book and Law in Action

This Chapter considers *firstly* whether the Constitution of the Republic of Armenia, which established a semi-presidential form of government, suffices the principle of separation of powers. I will, therefore, here expound the legal divergence from the normatively envisaged principle of separation of powers, essential for semi-presidential arrangements. This part of the thesis will be devoted to the Constitution of 1995. The Constitution will be unfolded by showing the interrelation of the branches of the executive, legislative and judicial powers. Attention will be paid to a number of legal problems, which harm the democratic principle of separation and balance of powers. *Secondly*, in order to understand the relations that were in play after the adoption of the RA Constitution the rivalry between political forces will be highlighted. I will, hence examine, the political disorder during 1995-2000.

### 1. Law in Book

#### 1.1. Constitution of 1995

The Armenian Constitution proclaims Armenia a sovereign, democratic state. The Constitution guarantees free development and equal legal protection for all forms of property and freedom of economic activity and competition. It also states that the constitutional provisions have immediate effect. Separation of powers, the principles of popular involvement in governance and democratic freedoms are all guaranteed by the Constitution. The Constitution provides a semi-presidential<sup>24</sup> form of government, i.e. one featuring a division between executive, legislative and judicial powers and similar to the French semi-presidential system.

Semi-presidentialism is a 'mixed'<sup>25</sup> political form that stands between presidential and parliamentary systems and draws from both. A political system is semi-presidential if the following properties or characteristics jointly apply:

1. The head of state (president) is elected by popular vote - either directly or indirectly - for a fixed term of office.
2. The president shares power with a Prime Minister, thus entering a dual executive structure.
3. The president is independent from parliament, but is not entitled to govern alone or directly and therefore his will must be conveyed and processed via his government.
4. Conversely, the prime minister and his cabinet are parliament-dependent: they are subject to either parliamentary confidence or no confidence (or both), and in either case need the support of a parliamentary majority.

These features ideally having to be innate to a semi-presidential model, once distorted, lead to imbalance between the branches of power and stray away from it. With this regard, Duverger points out three major ways of divergence deriving from the characteristic feature of semi-presidential government: 1) the tendency of the presidential institution to develop the figurehead characteristics, 2) extension of presidential powers in political and constitutional domains with a tendency towards 'hyper-presidentialism' and 3) politically determined executive 'dualism'.<sup>26</sup>

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<sup>24</sup> Some non-academic sources call the Armenian institutional model a presidential one, based on the departure from ideally foreseen semi-presidential democracy and characterized by executive dominance.

<sup>25</sup> Sartori, Giovanni, *Comparative Constitutional Engineering: An Inquiry into Structures, Incentives and Outcomes* (New York: New York University Press, 1994), 121

<sup>26</sup> Duverger, Maurice, "A New Political System Model: Semi-Presidential Government", *European Journal of Political Research* vol. 8, no. 2 (1980): 165-187.

According to Markarov, although the Armenian Constitution 'proclaims the principle of power separation... in fact it provides a little if any means for the real checks and balances as well as guarantees for independent functioning of the branches of power'.<sup>27</sup> (sic) The new constitution greatly expanded the powers of the executive branch and gave it much more influence over the judiciary and legislature.<sup>28</sup>

By the Constitution, the executive power is represented by a nationally elected President, government appointed by the President and bodies of territorial governance (governors) appointed by the latter. The President is elected to office for a five-year term, no more than twice successively. The President represents the country in international negotiations, signs agreements and treaties, appoints the chief prosecutor, and is the commander-in-chief of the armed forces. He also appoints the Prime Minister and upon the receipt of the list of the candidates by the Prime Minister appoints the members of the cabinet – the ministers. The head of state may upon consulting the Prime Minister and the Speaker of the National Assembly decide to dissolve the parliament and call for new elections. The President formally has no right to initiate new legislation but he has power to endorse or veto legislation. According to Article 55 of the Constitution, he proclaims and signs new legislation within 21 days from its enactment by the National Assembly. Within this time frame he can return the law to the parliament. In this case majority vote of the representatives or, for routine procedural issues, majority vote of those present would be required to pass the law. The President has the authority to use armed forces in the case that the Parliament fails to declare war and also when an imminent danger threatens the Republic's constitutional order.

The government is authorized by the Constitution to issue decrees, while the same authority is vested with the Prime Minister for solving routine operational issues. The government's authority is defined not only by the Constitution but also by laws. To ensure timely oversight of the executive branch by the National Assembly, the Prime Minister and members of the government must account for their activities before the deputies, as provided by the Constitution.

Legislative powers in Armenia rest with the National Assembly (NA), which consists of 131 deputies (75 elected by majority poll, and 56 by proportional poll). NA members cannot occupy any state paid post or engage in any other paid employment, except for scientific, educational and artistic work. Laws in the parliament are adopted by the majority of the votes cast by the present delegates. The parliament can express 'no confidence' in the government by presenting to the National Assembly a resolution drafted by at least one-thirds of the total number of delegates and adopted by the majority. At the President's request it ratifies the international agreements and treaties signed by the head of state. In case of state treason or other crimes, the President of the Republic can be removed from office after the National Assembly by a simple majority approval refers the matter to the Constitutional Court and receives the latter's ruling. The National Assembly has to confirm its intention for the second time by two-thirds majority. It may at any time terminate a state of emergency or martial law proclaimed by the President of the Republic by revoking the exercise of presidential measures upon the determination of the Constitutional Court.

The adoption of the Constitution finally laid the foundations for reforms in the judicial system that had remained unchanged after independence. Judicial power includes first instance courts, courts of appeal, cassation courts, economic and military courts, a Constitutional Court, as well as the Prosecutor's office. The Constitution established a Constitutional Court responsible for judging the constitutionality of 'the laws, the resolutions of the National

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<sup>27</sup> Markarov, Alexander, PhD of Philosophical Sciences, Assistant Professor, Department of Political Science, Deputy Dean, Faculty of International Relations, Yerevan State University, "Armenian Constitutional Changes: Slight Amendments or Heavy Reform?", *forthcoming in Sprawy Polityczne* [Political Affairs], (Poland, 2002)

<sup>28</sup> "Armenia", *Travel Document Systems*, accessed on May 22, 2002 <http://www.traveldocs.com/am/govern.htm>



Assembly, the orders and decrees of the President of the Republic, and the decisions of the government<sup>29</sup>. It also passes final decisions on the results of elections and referenda, if requested. The President of the Republic is entitled to appoint the President of the Constitutional Court and four out of nine members. The remaining five members are nominated by the National Assembly, based on a list proposed by the Speaker. The President of the Republic presides over the Council of Justice with Minister of Justice and Prosecutor general, appointed by himself as Vice-Presidents of the Council. He selects 14 members of the Council of Justice, nine of which are judges, for a five-year term. He also terminates the powers of the judges, so possessing immense supervision authority over the functioning of the Council.<sup>30</sup>

The Constitution, overall, contributed to the establishment of the classical triad of powers, with the President playing the role of an arbiter. This foundation for separation of state powers was still reflected in the historical Armenian manuscripts, the tradition of which was cast onto the new Basic Law. However, there were a number of problems, which would have to be highlighted since they undermined the legal validity of the assured separation of powers, making the model a hyper-presidential one.

## 1.2. Problems with the Separation of Powers

The Constitution exhibits some problems as to the principle of separation of powers, manifesting a hyper-presidential design. It does not make reference to the President being the head of state. However, the powers vested in him<sup>31</sup> are vast, which allows categorizing him as the highest authority. The clause on dissolution of the National Assembly gives the President a possibility to manipulate the parliament steering it in the desired direction. This is a strong factor that drives the National Assembly agenda. A drawback of this provision is that the Constitution does not stipulate the conditions under which the President could dissolve the National Assembly. Moreover, in spite of the fact that he does not possess legislative powers, the right to endorse or veto the laws, submitted by the parliament provides him with the final say over new laws. This disrupts the principle of checks and balances.

As said previously about the President, the government also has some prerogatives, which assure its dominance over the legislative branch. In accordance with Article 75 of the Constitution, the government stimulates the discussion of the proposed bills and can demand that they be put to a vote only with amendments agreeable to the government. Thus, chances for the unconstrained development of the National Assembly's legislative agenda are not very probable. Moreover, the National Assembly is restrained in proceeding with the discussion and adoption of a number of laws without the expressed consent of the government. This situation arises because the adoption and implementation of most laws and policies are dependent upon commensurate budgetary decisions and allocation of resources, which require government approval. Although, the Constitution specifies that the government members should account for their activities before the National Assembly, the latter is not reciprocally empowered to address the queries raised by the deputies. As a result, the government is effectively not accountable to the National Assembly with respect to any such inquiry.<sup>32</sup>

As to the judicial power, Article 94 of the Constitution maintains that the President is the guarantor of the autonomy of the judicial entities. This is already the major violation of the

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<sup>29</sup> Constitution of the Republic of Armenia, Article 100

<sup>30</sup> Constitution of the Republic of Armenia

<sup>31</sup> I use the personal pronoun 'he' when referring to the President of Armenia since so far the Presidents have been men.

<sup>32</sup> Mkrtchyan, Nerses and Sadoyan, Bagrat "Armenia's Constitution and the Separation of Powers Among the Executive, Legislative and Judicial Branches of Government: the New System of Separation of Powers" *North Atlantic Treaty Organization (NATO)*, accessed on May 7, 2002  
<http://www.nato.int/acad/fellow/96-98/hovannis.pdf>

separation of powers, upheld by the Constitution. Article 97 at the same time in the same text proclaims that judges and members of the Constitutional Court are independent of any other authority and are subservient solely to the law. Their irreversible appointment and exclusion of administrative dependency, except for cases prescribed by the Constitution and laws (Article 96) are the safeguards for their neutrality. With respect to this, then, the Constitution is concluded to contain contradictory clauses, which should not be the case. In addition, the fact that the Constitution integrates provisions that allow presidential influence over the autonomy of the Constitutional Court creates dichotomy. Two problems should be foreshadowed with this regard:

- 1) If there is a presidential majority in the parliament these five members also become susceptible to presidential pressure.
- 2) The President is authorized to terminate the authorities vested in those members who he has appointed or subject them to administrative or criminal prosecution. The same prerogative is ascribed to the National Assembly.

The dominating role of the President over the judiciary, and especially in case of a semi-presidential system in Armenia with ensured parliamentary support of presidential policies, casts a gloom on the system of checks and balances.

The Constitution, having been the outcome of the presidential will and interest, in general, leaves much to be desired. It does not guarantee the independence of the branches of power from each other. The newly established constitutional system accords far-reaching discretionary authority of the executive vis-à-vis the other two branches. The necessity for a strong presidential system is justified by the fact that in transition and also, throughout Armenian history, a strong executive has been the image of stability. However, by the merits of consolidated democracies this should not happen. When there is an obvious dominance of the executive power the counterbalance of the branches of power and their mutual supervision cannot be ensured. The inequality between the branches of power drives directly to a hyper-presidential system as a natural outcome of legal engineering.

The institutional design of semi-presidentialism, then, does not ensure legal division of powers of the branches, allowing encroachment of the government, the legislature and the judiciary by the President. This is further aggravated by politics where presidential ascendancy becomes apparent. Therefore, in order to understand the relations that were in play after the adoption of the Armenian Constitution the rivalry between political forces should be highlighted. In the political game the Constitution had a leading role, being both in the core of political disarray and the utmost goal of devastation of the former elite.

## 2. Law in Action: The Political Disarray during 1995-2000

The new constitutional system was formed in complicated political, economic and socio-psychological conditions in the Republic, while the adoption of the Constitution could not automatically change those conditions. The constitutional development had entered a new significant phase since now the respect of constitutional norms would have to be displayed by the political parties and the readiness of the branches of government to function in accordance with the Constitution. "Such situation, when the operation of the Constitution depends upon discretion of the official involved, minimizes the role and significance of constitutional norms and makes evident that the Constitution is viewed exclusively from the political standpoint, to the detriment of its legal role".<sup>33</sup> What was the impact of legal advancement on the political domain? The answer to this question requires understanding of the political reality during 1995-2000.

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<sup>33</sup> Khachatryan, Henrik, *The First Constitution of the Republic of Armenia* (Yerevan, Republic of Armenia: United Nations High Commissioner for Refugees, 1998), 22

In July 1994, the ARF staged anti-government demonstrations in Yerevan. The idea was to reject government efforts to introduce market reforms in the economy and oppose the APNM proposals for a new Constitution that envisaged broadened powers for the President. On December 28, 1994, President Ter-Petrosyan charged a secret organization called DRO within the ARF leadership with illegal activities, namely, assassinations, drug running, and corruption, and suspended the entire party. On January 13, 1995 the Supreme Court put a ban on the ARF for six months. The ARF denied the allegations, claiming together with other opposition parties that the ban on the party was to eliminate a rival party from participation in a key election and to ensure the dominance of Petrosyan's ruling Republican bloc, a coalition led by the APNM.<sup>34</sup> On March 31, 1995 the Law on Elections was passed. On July 5, 1995, the same day when the referendum for the Constitution was held, a new parliament was elected in Armenia's first parliamentary election since independence. According to officially reported figures, 54% of the voters cast ballots in the election.

However, the conclusions drawn on the legitimacy of the referendum were not unanimous. The delegation of inter-parliamentary summit of CIS countries noted that both the parliamentary elections and the referendum were held in conformity with democratic principles. Meanwhile, UN-OSCE bulletin, dated August 2, 1995 expressed concern that there were a number of breaches in the counting of votes and other serious violations of the Electoral Law. The OSCE mission also stated that the numbers did not correspond to the number of voters or the number of ballot tickets handed out, as well as expressed concern as to the missing votes. Moreover, several candidates were denied participation and the findings of the election committees were not openly accessible.<sup>35</sup>

Armenia's new parliament had 190 legislators, of whom 150 were elected by majority voting in single-mandate constituencies. Thirteen parties/blocs filled the remaining 40 seats, which were allocated proportionally, based on party lists. The Republican bloc, led by President Ter-Petrosyan's APNM, won a decisive victory to claim two-thirds of the seats.

The elections were monitored for fairness by the Organization for Security and Cooperation in Europe (OSCE) Parliamentary Assembly delegation. According to their observation, the election was a multi-party, multi-candidate contest. The enrolled parties and candidates represented widely divergent points of view in their appeal to voters. Opposition parties frequently organized public rallies to make their case and to criticize the government and the incumbent President Ter-Petrosyan, and did so in the press as well. Nevertheless, the ban imposed previously on the opposition party the ARF cast a shadow over the election and the constitutional referendum. Based on this criterion, the OSCE Parliamentary Assembly observer delegation assessed the Armenian election and referendum as 'free, but not fair'. The evaluation also cited many reports by opposition candidates of intimidation and pressure to withdraw their candidacy, the Central Electoral Commission's arbitrary registration of candidates, and the pro-presidential position of the state-run mass media.<sup>36</sup>

In the 1996 presidential election, Ter-Petrosyan defeated former Prime Minister Vazgen Manoukyan, the leader of the National Democratic Union (NDU), supported by three ideological forces, namely, liberal – the Republican bloc, social – the CPA, and national – the alliance NDU-NSDU-DPA-ARF-Compatriot Union 'Artsakh'. The programs of the candidates being quite similar, they ran on an individual rather than party platform. The state-appointed Central and

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<sup>34</sup> "Armenia" *Freedom in the World*, *FreedomHouse*, accessed on May 8, 2002

<http://www.freedomhouse.org/research/freeworld/2001/countryratings/armenia.htm>

<sup>35</sup> "Armenia 1995: Democracy and Human Rights", *British Helsinki Human Rights Group*, accessed on May 13, 2002

<http://www.bhhrg.org/armenia/armenia1995/armenia1995.htm>

<sup>36</sup> "Armenia's Parliamentary Election and Constitutional Referendum", Commission on Security and Cooperation in Europe (Yerevan, Armenia: July 5, 1995), accessed on May 27, 2002

[http://www.csce.gov/pdf.cfm?file=1995ArmeniaElectionsRport.pdf&pdf\\_id=170](http://www.csce.gov/pdf.cfm?file=1995ArmeniaElectionsRport.pdf&pdf_id=170)

Regional Electoral Commissions, which included 160 of Ter-Petrosyan's loyalists among their 240 members, announced that the President had won 51.75% of the vote, thereby avoiding a runoff election. Ter-Petrosyan was reelected to a second term amid widespread allegations of vote fraud. The opposition also condemned the state TV programs for having expressed favoritism for the President. The results sparked three days of riot as a result of premature announcement of the preliminary election results of 55-56% votes to have been cast on Manoukyan's behalf. This situation escalated into a violent crackdown between the government and the opposition.

From 1996, the APNM, which enjoyed nation-wide support and carried the slogan of national will, started to crack from within. Losing political support within his own party, Ter-Petrosyan had no other choice but to rely on the military support under the control of the Defense Minister Vazgen Sargsyan. In March 1997 Ter-Petrosyan appointed the elected President of Nagorno-Karabakh, Robert Kocharyan, as Prime Minister of Armenia. The two of them later became the organizers of the velvet coup against Ter-Petrosyan.

In 1998 Ter-Petrosyan was accused by the Armenian people, government ministers and parliament of having accepted the OSCE Lisbon Summit principles<sup>37</sup> for the resolution of Nagorno-Karabakh conflict under the pressure of the OSCE Minsk group<sup>38</sup>, led by Russia, France and the US. The President announced that he was prepared to accept a compromise solution proposed by the international community, which would have left Nagorno-Karabakh formally within Azerbaijan but would have granted de facto control to the local Armenians. He was in favor of a step-by-step approach for the solution of the Karabakh issue since he believed that the enclave could not realistically be expected to have full independence or union with Armenia. As a result of his gradualist stance, confidence in him dropped and Ter-Petrosyan was forced to resign in February 1998 by hard-line supporters of Nagorno-Karabakh's ultimate secession from Azerbaijan<sup>39</sup>. When the soft coup, supported by 'Land-Defense' forces, took place, the prevailing ideologies in Armenia that were cutting across party lines were those of social-nationalists<sup>40</sup> and pragmatic-rationalists<sup>41</sup>. Social-nationalists,

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<sup>37</sup> <http://www.osce.org/docs/english/1990-1999/summits/lisbo96e.htm#Anchor-ANNE-32721>

The Summit took place during December 2-3, 1996. Three principles for the settlement of the Nagorno-Karabakh conflict were recommended by the Co-Chairmen of the Minsk Group and were supported by all member States of the Minsk Group.

-territorial integrity of the Republic of Armenia and the Azerbaijan Republic;

-legal status of Nagorno-Karabakh defined in an agreement based on self-determination, which confers on Nagorno-Karabakh the highest degree of self-rule within Azerbaijan;

-guaranteed security for Nagorno-Karabakh and its whole population, including mutual obligations to ensure compliance by all the parties with the provisions of the settlement.

Yerevan in spite of Ter-Petrosyan's approval refused to abide by the principles, arguing against restoration of Azeri control over the disputed enclave.

In 1996, Ter-Petrosyan himself had admitted that Armenians were being asked to concede their victories, taking for granted Azerbaijan's promises. Meanwhile, his government believed that international community would not be able to consistently ensure effective monitoring out of deference to Caspian oil.

Although, compliance with the international requirements seemed crucial at the time, they were not imposed afterwards.

<sup>38</sup> Since cease-fire signed in May 1994, the contending Armenian and Azeri sides have been negotiating a comprehensive political agreement. Armenia has been taking part in OSCE Minsk Group talks about a peaceful resolution of the conflict. President Ter-Petrosyan had pledged to continue this policy.

<sup>39</sup> Gevork Ter-Gabrielian, "Explaining Armenia: an Insider's View" (Armenian News Network/Groong, 1998) <http://groong.usc.edu/ro/ro-19980207.html>

The hard-liners had emerged both within the APNM, which ceased to support Ter-Petrosyan's policy toward Nagorno-Karabakh as a parliamentary majority, headed by the incumbent Prime Minister Robert Kocharyan, the Defense Minister Vazgen Sargsyan and the Security Minister Serge Sargsyan who had created the Land-Defense and wanted to come to power.

<sup>40</sup> *ibid.*, The policies of this group were ad hoc, based on misidentification with Ter-Petrosyan's administration.

headed by Vazgen Sargsyan, Defense Minister, Robert Kocharyan, Prime Minister and Serj Sargsyan, Security Minister, promised consistency instead of the 'maneuver' that pragmatic-rationalists, headed by Ter-Petrosyan, displayed.

In campaigning for the March 1998 presidential elections, the newly legalized ARF and the 'Land-Defense' bloc<sup>42</sup>, the Liberal-Democratic and the Republican party lined up and endorsed Kocharyan. Nonetheless, the parties also named their own candidates<sup>43</sup> for president. Kocharyan defeated Karen Demirchyan, who ruled Soviet Armenia from 1974 to 1988, by 60% in the second round. Thus, Kocharyan, who did not have any party affiliation and was not constitutionally eligible to run in the elections<sup>44</sup>, was elected to succeed Ter-Petrosyan. Lesage calls this election an orderly power transfer to the opposition in comparison with the other two Caucasian countries.<sup>45</sup> OSCE noted irregularities in the first round, but found that they did not affect the outcome. The second round was deemed an improvement, but some observers cited significant flaws.<sup>46</sup>

In April, President Kocharyan appointed men from Ter-Petrosyan's circle, as well as several other key opposition figures to high-ranking positions in order to ensure opposition support of presidential policies<sup>47</sup>. On May 30, 1999 parliamentary elections were held, in which 56% of the electorate participated. A new Electoral Law was adopted by the Armenian parliament on February 5, 1999. However, although the balance has been redressed: 56 MPs were elected by the proportional system and 75 by first-past-the-post system. 21 parties contested in the 1999 parliamentary elections – 8 more than in 1995. 1002 candidates were on the majoritarian ballot paper, 627 on the list. The parties that took part in the elections

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<sup>41</sup> *ibid.*, Ter-Petrosyan and his supporters from the APNM wanted to have peaceful relations with Azerbaijan and Turkey. They believed that one must look forward rather than backward trying to redress national and historical injustices, which would only harm the small Armenia. However, readiness to unilateral concessions was costly for Armenia national dignity. The second branch of this group was and is represented by Grzo, a multimillionaire, and Telman Ter-Petrosyan, brother of the President, an industrialist and businessman who strongly advocated developing trade relations with Turkey. They were resentful to such categories as national mission, history, or destiny but were interested in business and wealth. Being apolitical they needed strong political support for their enterprises to succeed. For this purpose, they were trying to convince the populace to abandon some substantial elements of its identity for the sake of peace in the country.

<sup>42</sup> Richard Giragosian "Pre-Election Analysis: the New Armenian Parliament – June 1999", *Armenian National Committee* (San Francisco – Bay Area), accessed on May 13, 2002  
[http://www.ancsf.org/essays\\_analyses/post\\_election/unity\\_block.htm](http://www.ancsf.org/essays_analyses/post_election/unity_block.htm)

A Union of Volunteers of the Karabakh war in Armenia, Land Defense was led by Defense Minister Vazgen Sargsyan.

<sup>43</sup> Lange, Yasha, "Media in the CIS: Armenia/Political Background", *Internews Russia* (The European Commission: 1997), accessed on March 30, 2002

[http://www.internews.ru/books/media/armenia\\_1.html](http://www.internews.ru/books/media/armenia_1.html)

Vazgen Manoukyan for NDU, Parouyr Hayrikyan for National Self-Determination Union (NSU), Aram Sargsyan for Democratic Party of Armenia (DPA), Sergey Badalyan for the Communist Party of Armenia (CPA), while the APNM, together with the allies in the Republican bloc, abstained from naming its own candidate, Ashot Manoucharian for Scientific Industrial Civil Union (SICU), Lenser Aghavolyan for Compatriot Union "Artsakh"

<sup>44</sup> Due to Article 50 of the Armenian Constitution, "Every person having attained the age of thirty five, having been a citizen of the Republic of Armenia for the preceding ten years, having permanently resided in the Republic for the preceding ten years, and having the right to vote is eligible for the Presidency". Whereas, Kocharyan, until his appointment as a Prime Minister of Armenia, was a citizen of Nagorno-Karabakh.

<sup>45</sup> Lesage, Michel, "Government Structure: Relations between the President and the Government" in "The Constitutional Development in Caucasus States: Separation of Powers" International Seminar Reports Collection (Yerevan, October 14-15, 1998)

In Georgia and Azerbaijan, once the presidents, elected by universal suffrage lost power, a crisis situation close to a civil war took place.

<sup>46</sup> "Armenia: All Above Board: On the Ground, Observation of Elections", *The Europeans*, accessed on May 12, 2002  
<http://stars.coe.fr/Magazines/Europeans/1998/te0498/OnTheGround1.htm>

<sup>47</sup> "Survey: Country Reports, Armenia", *Freedom House* (1999), accessed on January 25, 2002  
<http://freedomhouse.org/survey99/country/armenia.html>



were as follows: the Unity bloc<sup>48</sup>, ARF, NDU<sup>49</sup>, APNM, NSDU, Law and Unity bloc<sup>50</sup> and CPA. The new government was formed by the Unity bloc and the ARF, having the most seats in the parliament<sup>51</sup>.

Both the OSCE and the National Democratic Institute (NDI) criticized the conduct of the election, the situation with the registers, in particular. However, the OSCE was more positive in its conclusions than the NDI.<sup>52</sup> The OSCE Election Observer Mission preliminary report stated that the elections 'demonstrated an improvement over prior elections' and were conducted in a generally peaceful and orderly manner, which was free of intimidation. It characterized the elections as representing a relevant step towards compliance with OSCE commitments. However, improvements in the electoral process had to be undertaken. The NDI report also acknowledged some improvements over previous elections but concluded that this latest round failed to break from Armenia's troubled electoral history and to meet the international standards and commitments Armenia had accepted as the basis for organizing genuinely democratic elections. Both reports noted problems with out-dated and inaccurate voter lists, formation of election commissions, and presence of unauthorized individuals in polling stations.<sup>53</sup>

In addition to the political crisis of Ter-Petrosyan's resignation another one was the assassination of the Unity bloc leaders. The parliamentary shootings of October 1999, as a result of which Prime Minister Vazgen Sargsyan and Speaker Karen Demirchyan and six other highly ranking political officials were assassinated<sup>54</sup>, shook the political realm. The political

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<sup>48</sup> The 'Unity' bloc resulted from a merger between the Republican Party with its parliamentary 'Land Defense' (Yerkrapah) supporters who had joined with Republican Party in January 1999 and the People's bloc of Karen Demirchyan, former First secretary of the ArmSSR. The formation of the bloc represented a rapprochement between the right (Republican Party) with the left (Peoples Party).

<sup>49</sup> "Armenia 1999: Parliamentary Elections" *British Helsinki Human Rights Group*, accessed on May 13, 2002  
<http://www.bhhrg.org/armenia/armenia1999/armenia1999.htm>

NDU was reputed to have run a weak campaign and only surmounted the 5% barrier on 30th May.

<sup>50</sup> Ibid.

It comprises a group of organizations with strong connections to the Karabakh Defense Minister, Samvel Babayan. The party gained support especially in Yerevan where it ranked second in the list.

<sup>51</sup> "The World Factbook 2001:Armenia", *Central Intelligence Agency*, accessed on May 8, 2002

<http://www.cia.gov/cia/publications/factbook/geos/am.html>

The parliament comprised the Unity Bloc of the Peoples' Party (led by the former Soviet ruler of Armenia Karen Demirchyan) and the right-wing Republican Party (led by Minister of Defense Vazgen Sargsyan), which gained 55 of the 131 seats, becoming the dominant force in Armenian politics. The second largest group was the Communist Party with 11 seats, then ARF with 9 seats, the Rights and Accord group, supported by the Nagorno-Karabakh Minister of Defense with 7 seats. The National Democratic Union, led by former Prime Minister Vazgen Manukyan, and the Country of Law group, backed by the Minister of Interior and National Security Serge Sargsyan, each held 6 seats. The other competing parties did not pass the threshold, but another 44 independents gained a seat in the National Assembly.

<sup>52</sup> International Observers" <http://www.bhhrg.org/armenia/armenia1999/observers.htm> in "Armenia 1999:

Parliamentary Elections" *British Helsinki Human Rights Group*, accessed on May 27, 2002

<http://www.bhhrg.org/armenia/armenia1999/armenia1999.htm>

<sup>53</sup> "US State Department: Armenian Parliamentary Elections", *The International Foundation for Election Systems* (May, 1999), accessed on May 9, 2002

[http://www.ifes.am/elections/us\\_state.htm](http://www.ifes.am/elections/us_state.htm)

<sup>54</sup> "Chief Defendant in Armenian Shootings Case Says Plans Went Awry from Start"(May 15, 2001), *Eurasianet*, accessed on May 7, 2002

<http://www.eurasianet.org/resource/armenia/hypermail/200202/0044.shtml>

The terrorists were led by Nairi Hounanyan, a former journalist and expelled member of the ARF. He was accompanied by his brother, his uncle, and two other accomplices. The terrorists surrendered to authorities following negotiations with President Robert Kocharyan. Kocharyan had summoned police and military units who surrounded the Parliament building. The gunmen were believed to have been acting alone with no support from any outside group. Nonetheless, the terrorists claimed that when they stormed the Parliament building that they were conducting a political coup. They

atmosphere had been highly charged following the assassinations. The Defense Ministry and the allies of the slain Prime Minister had demanded resignations of the Ministers of National Security and Interior, and the Prosecutor General<sup>55</sup>, and all were replaced by politically neutral people. The outgoing Minister of National Security, Serge Sargsyan, a close ally of President Kocharyan, was named as Chief of Staff to the President. Almost all other members of the prior cabinet were retained. President Kocharyan was reported to have been threatened to resign. For some period Yerevan remained in a state of anomie. The slaying was a severe blow to the political stability and democracy in the country.

On May 2, 2000 Kocharyan sacked Prime Minister Aram Sargsyan who had succeeded his slain brother Vazgen Sargsyan, justifying that the move was designed to reestablish a balance of power between the executive and legislative branches of government that had been lacking since the October parliament shootings. Some analysts say Sargsyan became a target for dismissal because of a perception that he had triggered the battle against Kocharyan in the parliament. Therefore, a major target of Kocharyan's action, however, was the legislative branch, which initiated impeachment<sup>56</sup> proceedings against the President on April 25. Saying that the impeachment was directly weakening the foundations of the state, Kocharyan vowed to take a firm action to restore stability after the opposition factions backed away from their intention.

However, by April 28, the leader of the 'Unity' faction denied the existence of a list of charges. In seeking to oust the President, however, parliament leaders appeared to react impulsively. Almost immediately after initiating the impeachment process, deputies began to yield, realizing that not only did they lack the votes for impeachment, but also that Kocharyan's actions would not be found by the Constitutional Court to meet the legal definition of an impeachable act. Thus, the unrest was successfully ridden out.

The 1995-2000 period was very complicated in terms of political turmoil in Armenia. After the adoption of the Constitution, which foreshadowed the will and the interest of the first President, Armenia was toddling towards a democracy with undemocratic flaws in the parliamentary and presidential elections. According to the co-author of the 'Draft of Six', Vardan Poghosyan, the present Constitution is that of a totalitarian state since the power is concentrated in the hands of one person, as a result of which the elections are always falsified.<sup>57</sup> He, thus, maintains that the fraud during the elections was a result of the hyper-presidential system.

Preuss maintains that 'a constitution based on will can only endure as long as these persons whose will backed the document' since a Constitution means making new order and involves the idea of an authority whose willpower is the ultimate cause of the polity.<sup>58</sup> By the same token, the legitimacy of the Armenian initially 'democratic' regime could be thought of as having expired when President Ter-Petrosyan, the leader of the APNM was forced to resign in 1998. The country suddenly appeared to be without a head of state that used to be the legitimate bearer of the slogan of independence during 1988-1991. The opposition headed by

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said they had taken their action because of deteriorating conditions in the country. The slaying of the Prime Minister was deliberate, but that the other victims were killed or wounded by accident after security guards fired on them.

<sup>55</sup> They were Carlos Petrosyan, National Security Minister, Haik Haroutounyan, Minister of Interior, and Boris Nazaryan, Prosecutor General.

<sup>56</sup> The constitution states that a president can be removed from office only for 'high treason' or 'grave crimes'. A two-thirds parliamentary majority and the approval of the Constitutional Court are required to impeach the president.

<sup>57</sup> Department of Public Affairs at the National Assembly of the Republic of Armenia, "'Vetzyaki' sahmanadrakan nakhagitse" ["The Constitutional Draft of the 'Six'"], *Hayastani Hanrapetoutyoun* [Republic of Armenia] (March 6, 2002, Wednesday, # 40 (2933))

<sup>58</sup> Preuss, Ulrich K. *Constitutional Power-Making of the New Polity: Some Deliberations on the Relations between Constituent Power and Constitution* in Rosenfeld M., ed., *Constitutionalism, Difference and Legitimacy* (Durham and London: 1994), 143-165

Defense Minister Sargsyan who supported Prime Minister Kocharyan, used the situation for seizing power, spreading doubt on the legitimacy the APNM in the 1991 elections. Stating that Ter-Petrosyan was trying to usurp power, they promised to act in accordance with the national interest. Moreover, the country experienced another major shock within this time frame, which was also luckily successfully overcome. This was the assassination of Vazgen Sargsyan, a strong military leader, Defense Minister and later Prime Minister, and Karen Demirchyan, former first Secretary of the CPA, National Assembly Speaker, them being the leaders of the newly formed 'Unity' faction. These leaders also being legitimate because of Sargsyan's affiliation with the Nagorno-Karabakh war as a commander of military forces and Demirchyan's association with the Soviet regime when Armenia was prospering. In addition, the aftermath of this attack was also threatening for the constitutional state when the legislative branch made a decision to raise the issue of impeachment against the President. It should be stated that the solutions, which were found to these crises, were political decisions of the actors. Nonetheless, the role of the Constitution cannot be neglected in both cases since it provided the solid legal rules for addressing the problems. To specify, the constitutional provisions in the first case allowed presidential resignation and in the second case because of the rigidity of impeachment procedure, the initiative of its implementation was overcome.

## Chapter Three Constitutional Revisions from 1998 to Present

Having analyzed the Armenian Constitution, enacted in 1995 and the political disorder underway during 1995-2000, the next step is to outline the recent process of Constitutional revision. This process has proceeded in close collaboration with the European Commission for Democracy through Law (Venice Commission of the Council of Europe)<sup>59</sup>, which among other tasks, such as to strengthen the constitutional guarantees of human rights, safeguard the independence of the judiciary and improve the sphere of local-self-government, aims to breed a more balanced system of separation of powers<sup>60</sup>. The reasons for constitutional revision initiative on the part of the Presidential Commission on Constitutional Reforms and the 'workable solutions'<sup>61</sup>, proposed on the part of the Venice Commission, followed by deliberation process in the Armenian parliament, will be investigated.

### 1. Domestic Initiatives for Constitutional Changes

The process of constitutional amendments, aimed mainly at decreasing the range of presidential prerogatives, took its origin in the pre-election campaign of President R. Kocharyan.<sup>62</sup> After being elected as President on May 19, 1998 Kocharyan signed a decree, forming a special multi-party Commission on Constitutional Reforms<sup>63</sup> under the President of

<sup>59</sup> "The Work of the European Commission for Democracy through Law" Council of Europe, accessed on January 2, 2002

<http://www.coe.fr/venice/venice.htm>

Reports, Opinions, Comments, Memoranda, *European Commission for Democracy through Law (Venice Commission)/Council of Europe*, accessed on January 17, 2001

<http://www.venice.coe.int/site/interface/english.htm>

The European Commission for Democracy through Law (Venice Commission) has been set up within the Council of Europe to provide legal assistance to the newly democratizing countries of the East. The Commission has been cooperating with the Armenian authorities at the request of the latter and been involved with revision of the Armenian Constitution, Electoral Code, Law on Political Parties, Law on the Ombudsman, Law on Television and Radio. For more information please see Appendix 3.

Still the accession reports into the CoE were obliging Armenia to abolish death penalty, adopt a law on the High Commissioner for Human Rights/Ombudsman, new laws on mass media, non-governmental organizations, alternative military service, accomplish the reform of the judiciary, introduce, citizens' right to appeal to the Constitutional Court, etc.

<sup>60</sup> CDL (2000) 88, "Basic Provisions for the Concept of reforming the Constitution of the Republic of Armenia" (Strasbourg, 23 October, 2000)

<sup>61</sup> as expressed by Simona Granata-Menghini, Head of Division II: Constitutional Rights and Litigation, Secretariat of the Venice Commission, Council of Europe; for detailed information see Appendix 1

<sup>62</sup> Five mostly center-left Armenian parties joined forces to support Prime Minister and acting President Robert Kocharyan in the presidential election. The alliance, named "Justice and Unity" and dominated by the ARF (Dashnaksoutyoum) and the 'Land Defense' (Yerkrapah) union said in a statement released on March 4, 1998 it would stand behind Kocharyan's efforts to "consolidate the entire Armenian nation," resolve the Nagorno-Karabakh conflict and establish democracy and social justice.

Leaders of the alliance, which also comprises three other small groups, the Scientific Industrial and Civic Union, the Union of Socialist Forces and the Ramkavar Azatakan Party, told reporters it will continue its existence even after the election. They said the new bloc will put a particular emphasis on "guaranteeing every Armenian citizen a worthy and prosperous life." They denied seeking a number of key government posts in the event of a Kocharian victory.

<sup>63</sup> © 1996, IRTEK, (03/06/02) 030.0048.190598 "Hayastani Hanrapetoutyan Nakhagahi hramanagire Hayastani Hanrapetoutyan Nakhagahin arnter Sahmanadrakan popokhoutyouner nakhapatrastvogh handznajoghovi nor kazme hastatelou masin", HH Sahmanadrakan dataran, 19 mayisi, 1998 t., NH-48 ["Decree of the President of the Republic of Armenia on Establishing the Membership of the Commission on Constitutional Reforms of the President of the Republic of Armenia", RA Constitutional Court, Presidential Decree # 48] (May 19, 1998)

According to the 1998 presidential decree the Commission lawyers who occupied senior governmental posts, especially experts on different branches of constitutional law, as well as representatives of different political parties, represented in the National Assembly.

the Republic of Armenia. It comprised representatives from some influential political parties, which submitted proposals for the re-establishment of the balance between the three branches of power.<sup>64</sup> Along with the Presidential Commission, an ad hoc Committee on Constitutional Reforms<sup>65</sup> was formed in the National Assembly to deal with the amendment process. The fact that the revisions originated from the election campaign supports the argument that they were primarily meant to revise the system, 'concocted' by Ter-Petrosyan.

There has been a broad discussion on the possibility of introducing new changes within the current RA Constitution. The goal of the presidential allies is explained by the need to shift on the one hand, the existing pseudo-democracy towards a liberal one, on the other hand, the existing hyper-presidentialism to a balanced semi-presidential system.<sup>66</sup> According to Vladimir Nazaryan, the drafter of the Armenian Constitution of 1995, constitutional changes became of ultimate importance in order to reduce the tension and strengthen the democratic stability. Legal transformations had to be the premises for political guarantees. The reform had to improve the three major elements of the Constitution, namely a) the guarantee of fundamental human rights and freedoms, b) the relationship between the branches of power and c) the strength of the local self-government.<sup>67</sup> According to President Kocharyan, "The people of Armenia feel that this living document does not currently provide for basic rights and responsibilities in order for the three branches of government to coexist independently and yet equally - by this I mean our Constitution does not provide sufficient checks and balances among the three branches of government"<sup>68</sup>.

In contrast, the opponents were against any constitutional changes, pointing out that they were not a legitimate necessity. Myasnik Malkhasyan<sup>69</sup>, head of the parliamentary 'Hayastan' ['Armenia'] group<sup>70</sup> pointed out that the Constitution must not be changed by the wish of this or that political force or individual, but in case it is demanded by the whole nation and in the conditions of public trust. Otherwise, he said, the new version of the Constitution would have the same destiny as the present one, which was called illegal by some forces since 1995. The members of the 'Hayastan' group were against any Constitutional reforms since they believed that the current Constitution had not created any insurmountable problems, instead providing

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© 1996, IRTEK, (03/06/02) 030.0354.230799 "Hayastani Hanrapetoutyan Nakhagahi hramanagire Hayastani Hanrapetoutyan Nakhagahin arnter Sahmanadrakan popokhouthounner nakhapatrastvogh handznajoghovi masin", HH Sahmanadrakan dataran, 23 houlisi, 1999 t. ["Decree of the President of the Republic of Armenia on the Membership of the Commission on Constitutional Reforms of the President of the Republic of Armenia", RA Constitutional] Court, Presidential Decree # 354] (July 23, 1999)

In 1999 the composition of the Commission was changed and it was formed solely on professional grounds with 16 lawyers, headed by Felix Tokhyan, member of the Constitutional Court. For detailed information about the composition of the Commission please see Appendix 4.

<sup>64</sup> "Interview with Paruir Hairikian", conducted by Onnik Krikorian, *Oneworld Multimedia* (June, 1998), accessed on May 3, 2002

<http://www.oneworld.am/journalism/yezidi/hairikian.html>

<sup>65</sup> According to the decision made on November 23, 2001 the temporary committee was supposed to last for 4 months and deliberate on the proposed three drafts: the first one submitted by the President, the second one by the Communist Party and the third one by Shavarsh Kocharian. The Committee also had to express its preference for one of the drafts.

<sup>66</sup> "Caucasus News: 'Hayastan' Deputy Group against Constitutional Reforms" *Georgian Times* (March 11, 2002), accessed on May 5, 2002

<http://www.geotimes.ge/gt5/news.htm>

<sup>67</sup> Yesayan, Margarit, "Founder of Armenian Constitution Doesn't Want Increase in President's Powers" *Eurasianet* (January 13, 2000), accessed on May 9, 2002

<http://www.eurasianet.org/resource/armenia/hypermail/200001/0011.html>

<sup>68</sup> Robert Kocharian, "Armenia's Role in the International Community", *Los Angeles World Affairs Council* (September 28, 1998), accessed on May 13, 2002

<http://www.lawac.org/speech/kocharian.html>

<sup>69</sup> member of the Standing Committees on Defense, National Security and Internal Affairs

<sup>70</sup> founded on May 16, 2000 and comprising 12 members



mechanisms for solving the two political crises of 1998 and 2000. These concerned the deadlocks of Ter-Petrosyan's resignation and political chaos after the terrorist attack on the Armenian parliament, respectively.

In addition to the debate whether Armenia needs constitutional changes at the time, another dimension for discussion concerned the form of government the amended Constitution would generate. According to Khosrov Haroutyunyan, Speaker of the National Assembly, during the election, especially the run-off, even the forces backing Robert Kocharyan had different ideas on the future structure of the state: some spoke of a parliamentary model, others of a necessity to balance the branches without eradicating the current semi-presidential model.<sup>71</sup>

Since 1998 many changes have been proposed to the existing Constitution. There have been disagreements in this process. According to Vladimir Nazaryan the draft, proposed by the Presidential Commission, headed by Parouyr Hayrikyan, ex-leader of the NSDU, was directed towards strengthening the presidential authorities. Other critics of the draft also objected to the amendments proposed by the Presidential Commission arguing that the changes did not proceed in the direction of reducing the President's sweeping powers, and that the present semi-presidentialism should be abolished so that Armenia becomes a parliamentary republic. President Kocharyan backed long-discussed plans for ceding some of his constitutional powers to the Parliament and changing some of the Constitution's clauses to prevent potential political deadlock.<sup>72</sup>

The changes proposed by Kocharyan would somewhat curtail extensive presidential powers but would not alter the existing government system. According to Khosrov Haroutyunyan, the constitutional changes should extend some powers of the National Assembly to return the parliament its authority and establish rules for the legislature to be a real counterbalance to the executive branch. In addition, on the one hand, the independence of the judicial power had to be guaranteed, and on the other hand, this independence would have to be kept within limits not to become uncontrollable.

## 2. The New Door to/of the West

Similar internal legal questions relating the refurbishing of the legal domain, which had emerged in all the countries of the former Soviet Union and Eastern Europe, did not go unnoticed by the West. This attention was firstly manifested by such international organizations, like the CoE, EU, NATO, etc., which demand different stages of democratic development for integration into world decision-making. According to Schimmelfennig, Western democracies were interested in 1) the retreat of competing cultural and normative systems as a proof of their superiority, 2) reduction of conflict, which could harm their own peace, and improvement of security, 3) economic expansion. In their turn, Eastern countries are looking for 1) recognition as rightful holders of sovereign rights, 2) vote in international decisions and access to internationally distributed material gratifications, 3) international legitimacy. In line with these benefits, he claims that poor and weak states are more prone to be internationally pressured.

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<sup>71</sup> "Khosrov Haroutyunyan: It is Urgent to Transform Parliament into a Representative and political Authority", *National Press Club* (Yerevan: May 15, 1998), accessed on May 13, 2002  
<http://npc.nt.am/meet/1998/05/ae140506.htm>

<sup>72</sup> "President Calls for Constitutional Amendments, Electoral Reform" *Armenia This Week: Armenian Assembly of America* (November 17, 2000), accessed on May 5, 2002  
[http://www.aaainc.org/armenia\\_week/archive00/11-17-00.htm](http://www.aaainc.org/armenia_week/archive00/11-17-00.htm)

According to Carothers, Western countries that rushed to help the governments of Eastern Europe and former Soviet Union bombarded the latter with fervent but contradictory legal and institutional advice.<sup>73</sup> This Western advice was believed by many analysts to be unneeded by the East. Sajo is pessimistic about Western interference with Eastern engineering, claiming that institutions, otherwise applicable 'in mature conditions of fully developed capitalism', cannot work in transition societies. 'The foreign missionary is seen as someone who wants to enforce alien values on the host country' since programs to impart them cannot be turned fully 'local' but will remain as transplants<sup>74</sup>. According to Carothers, Western advisers do not know that foreign legal and institutional aid must support domestically rooted processes of change and not attempt to artificially reproduce pre-selected results.<sup>75</sup> Though the Western democracies have strong hopes for the legal acts of the post-communist regimes to get closer to 'normalcy'<sup>76</sup>, 'local capacities may not be proportional to the aims in view'<sup>77</sup>. The cause of this result, as identified by Sajo, is that the formal constitutional protections, which were imposed in an institutional vacuum and without necessary preparation, may turn out to be highly volatile, hence, counter-productive.

Meanwhile, the idea of European identity having become the prevalent concern of the countries on the European continent, has opened up a new vicinity, known as Council of Europe, where different values and norms are hosted, them mainly encompassing democratic and legal domains. Schimmelfennig states that internationalization, set off by the West, 'does not require that deviant desires or behavioral preferences be completely absent, only that internal sanctioning mechanisms are sufficiently effective to prevent deviant preferences from becoming norm-violating actions'<sup>78</sup>. Internationalization, which is defined as 'integration of international norms into the state constitution and their translation into domestic laws by effective domestic sanctioning mechanisms'<sup>79</sup> is indispensable of the current world order. The huge shortcoming of internationalization, however, is that the states try to keep the adoption of the standards at a superficial level by formally subscribing to, but not really acting according to, the international values and norms. Thus, in the mentioned sense, compulsory adoption of Western legal norms by Eastern states with 'raw' democracies, undoubtedly, impedes constitutionalism.

Nonetheless, liberal statehood having become a precondition of European community membership, it is quite natural that the emerging European democracies turned to Council of Europe (CoE) for assistance on their way to 'genuine' democracy. Indeed, the stated aim of the organization is to achieve greater unity between its members for the purpose of realizing the ideals and principles that are the 'European constitutional heritage'. As expressed by Walter Schwimmer, Secretary General of the Council of Europe, 'Armenia, Georgia and Azerbaijan are part of Europe because they wanted it'<sup>80</sup>. No state is compelled to become an entity in a supranational organization, like the CoE. However, as was rightly pointed out by Christian Tomuschat, Professor at Humboldt University, Robinsonian existence has become a utopia and sovereignty is being buried. Europeaness, achieved through 'cosmetic improvements' is the

<sup>73</sup> Carothers, Thomas, "The Rule of Law Revival", *Foreign Affairs*, Mar/Apr98, Vol. 77 Issue 2, (Mar/Apr98): 95

<sup>74</sup> Sajo, Andras, "What is Wrong with Western Support for East European Legal Reform: Universal Rights, Missionaries, Converts, and Local Savages", *East European Constitutional Review* (winter, 1997): 44

<sup>75</sup> Carothers, Thomas, "The Rule of Law Revival", *Foreign Affairs*, Mar/Apr98, Vol. 77 Issue 2, (Mar/Apr98)

<sup>76</sup> Sajo, Andras, "What is Wrong with Western Support for East European Legal Reform: Universal Rights, Missionaries, Converts, and Local Savages", *East European Constitutional Review* (winter, 1997): 44

<sup>77</sup> *ibid.*, 45

<sup>78</sup> Schimmelfennig, Frank "International Socialization in new Europe: Rational Action in an Institutional Environment" *European Journal of International Relations*, Vol. 6, Issue 1 (Mar2000): 119

<sup>79</sup> *ibid.*

<sup>80</sup> Council of Europe, Committee of Ministers, Resolution (2000)13, "Invitation to Armenia to Become a Member of the Council of Europe" (Adopted by the Committee of Ministers on 9 November 2000 at its 107th Session), accessed on May 27, 2002, <http://www.cm.coe.int/ta/res/2000/2000x13.htm>  
Armenia became a CoE member on January 25, 2000.

destination of sovereignties, which is unknown, as well as its travelers, who are often irresolute and violent.<sup>81</sup> Schimmelfennig also states that unless the Eastern states prove their willingness and ability to internalize the Western liberal values and norms, they cannot be socialized in the European community.<sup>82</sup>

### 3. Presidential Commission on Constitutional Reforms and Venice Commission/Council of Europe

Having requested membership in the Council of Europe and volunteered to meet the challenges put forth by the Council of Europe, Armenia has been cooperating with the Venice Commission. It should be noted that the established agreements with the states on the part of the Council of Europe are not statutory but are made according to the necessity, which is estimated on the basis of the extent of existence of democratic grassroots. Therefore, the revisions to the Armenian Constitution have been encouraged and monitored as a precondition for integration into the international arena by the Council of Europe when the country obtained a guest status Council of Europe membership in 1996<sup>83</sup>. Since then the Parliamentary Assembly of the Council of Europe has been preparing opinion reports on the accession of these countries. The lawyers of the European Court of Human Rights and members of parliamentary committees had been previously conducting on-the-spot investigations and prepared reports on the conformity of the applicant's national legislation with Council of Europe standards.

In an attempt to shift the Constitution towards a more balanced system of separation of powers the Commission on Constitutional Reforms under the President of the Republic of Armenia appealed to the Venice Commission on the improvement of its normative framework. According to the speech made by Antonio la Pergola, President of the Venice Commission, a lasting solution for democracy can only be found on the basis of stable and workable institutions, capable of functioning for the welfare of the people. The major mission of the Venice Commission, therefore, is to be concerned with constitutional engineering by setting up such institutions and ensuring that they work for the people<sup>84</sup>.

As an outcome of the meetings with the Venice Commission the proposals and amendments, elaborated by the Presidential Commission on Constitutional Reforms, received expert assessment and the proposed changes were reviewed. Later concrete amendments and their justification were presented for each changed part of the Constitution. The cooperation with the Armenians authorities had taken the form of several meetings between an Armenian delegation headed by Mr. Haroutyounyan, (President of the Constitutional Court and member of the Venice Commission), Mr. Torosyan (Vice Chairman of the Armenian National Assembly), and Venice Commission Rapporteurs, Mr. Gerard Batliner (Member, Liechtenstein), Mr. Aivars Endzins (Member, Latvia), Mr. Vital Moreira (Member, Portugal), Mr. Kaarlo Tuori (Member, Finland).

After the fourth meeting of the Venice Commission Working Group with the Armenian authorities in June and the discussions held on the basis of the drafts and explanatory notes presented by the Reporters, the Venice Commission proposed substantial changes on the

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<sup>81</sup> in speeches, uttered in a colloquy, organized by the Secretary General of the Council of Europe and revolving around the Committee of Ministers' chair, held by Latvia, Liechtenstein, Lithuania and Luxembourg (Strasbourg, 2001-2002); for more information please see Appendix 1

<sup>82</sup> Schimmelfennig, Frank "International Socialization in new Europe: Rational Action in an Institutional Environment" *European Journal of International Relations*, Vol. 6, Issue 1 (Mar2000)

<sup>83</sup> "Parliamentary Election in Armenia: Commitment to Democracy Confirmed" (Council of Europe Press, 1999), accessed on January 17, 2001, [http://press.coe.int/cp/99/301a\(99\).htm](http://press.coe.int/cp/99/301a(99).htm)

<sup>84</sup> "Introduction: Venice Commission", *Council of Europe*, accessed on January 17, 2001 <http://www.venice.coe.int/site/interface/english.htm>

matter, largely, endorsing the presidential amendments. The provided revisions take into account the legal, political and social traditions of Armenia but also the European constitutional heritage, the tendencies of modern constitutional law and the standards of the Council of Europe, particularly, the provisions of the European Convention of Human Rights.

The complete working group of the Presidential Commission unveiled its recommendations to the Venice Commission in July 2001. They reflect Kocharyan's basic argument that, while he is prepared to give up some of his presidential powers, the semi-presidential system as such should be preserved because Armenia needs a powerful head of state to complete its decade-long transition to democracy and free market economy.

According to the Venice Commission Report, "The RA Constitution, adopted in 1995 has played an essential role in the development of democracy and its irreversibility, in finding constitutional solutions in critical situations, in the gradual establishment of state power institutions and in the provisions of the guarantees for human rights protection." However, "at the same time the current processes in the social domain, the constitutional practice, the new problems of social relations development and the enhancement of democracy demand certain constitutional reforms".<sup>85</sup>

Another Report<sup>86</sup> states that the present Constitution lacks a clearly defined approach to human rights as an ultimate value; besides, human dignity is not stipulated as an object of criminal and civil law. The enrichment and reinforcement of the so-called human dimension in the Constitution, as well as the supremacy of right and the rule of law are regarded as the main direction of constitutional reform. The objective of human rights reform is 'to achieve the ultimate goal of ensuring maximum implementation of human rights and freedoms in the Republic of Armenia through procedure and structure of state governance and political system'. The Universal Declaration of Human Rights, the European Convention on Human Rights (ECHR) have been taken into account. Moreover, dual citizenship has been introduced by Article 11, while capital punishment is reserved only in times of war in accordance with Protocol 6 of the ECHR. The office of the Human Rights Defender/Ombudsman is also provided.

The constitutional Section on Territorial Governance and Local Self-Government, as the report states, must be fundamentally reviewed in order to become an independent democratic institutional system of the society and to ensure that local self-government is not considered a subordinate link of governance derived from state governance. The provisions should be based on the European Charter of Local Self-Government.

There is inconsistency in the implementation of the principles of separation of powers, the existence of separated, and mutually checking and balancing legislative, executive and judicial powers is deficiently ensured. One of the main ideas behind the reforms is, as stated earlier, to strengthen the separation of powers and to achieve a better equilibrium in the distribution of competencies between the President, the parliament and the government. This will be done on the basis of the principle of cooperation of branches, balanced power sharing and effective exercise of parliamentary control over the executive. Guarantees for judicial independence will also be given strong emphasis when making major amendments.

In particular, the place of the President should be made clear in the system of state power, as well as the President's responsibility in the sphere of the executive power. Also, there is a need to specify the place and the role of the institution of Prime Minister in the system of

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<sup>85</sup> CDL (2000) 88, "Basic Provisions for the Concept of Reforming the Constitution of the Republic of Armenia" (Strasbourg, 23 October, 2000)

<sup>86</sup> CDL (2000) 24, "Basic Provisions for the Concept of Reforming the Constitution of the Republic of Armenia" prepared by Mr. Gagik Harutunian (Member, Armenia), Mr. Vladimir Nazarian (Armenia) (Strasbourg, 11 April, 2000)

executive power<sup>87</sup>. The efficiency of lawmaking and the actual supervisory role of the National Assembly with reference to the possibility of adopting organic constitutional laws are not high. Essential improvements should be made by granting greater independence, by overruling the exclusive right of the President to dissolve the National Assembly (Article 84) and by reinforcing the counter-balancing influence of the National Assembly when other branches of powers perform their actions. It is necessary to overcome drawbacks and shortcomings in the implementation of the principle of separation of powers by means of clarifying

- a) the place of the RA President in the system of state power;
- b) President-National Assembly-Government relations, to complete the framework of functions, powers, and checks and balances in these relations;
- c) President-judicial power relations, in order to enhance the constitutional guarantees for the independence of judicial power;  
and discussing
- d) the issue of establishment of other institutional structures of state power (independent magistrate (judicial) council, the ombudsman institution, etc.) from the point of view of reinforcement of institutional pre-requisites for the implementation of the principle of separation of powers;
- e) the problems of improvement of the activities of the National Assembly and the reinforcement of its supervisory authorities, in particular, with reference to the possibility to adopt organic constitutional laws.<sup>88</sup>

To overcome problems of constitutional guarantees for the operational, institutional, financial and social independence of judicial power Articles 94<sup>89</sup>, 95<sup>90</sup>, 101<sup>91</sup> and 103<sup>92</sup> in the

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<sup>87</sup> CDL (2000) 24 considers it a problem that since a decade of independence 10 Prime Ministers have been replaced in Armenia, impeding the government stability.

<sup>88</sup> *ibid.*

<sup>89</sup> The President of the Republic shall be the guarantor of the independence of the judicial bodies. He or she shall preside over the Judicial Council. The Minister of Justice and the Prosecutor General shall be the Vice Presidents of the Council. The Council shall include fourteen members appointed by the President of the Republic for a period of five years, including two legal scholars, nine judges and three prosecutors. Three Council members shall be appointed each from among the judges of the courts of first instance, the courts of review and the court of appeals. The general assembly of judges shall submit three candidates by secret ballot for each seat allocated to judges. The Prosecutor General shall submit the names of candidates for the prosecutors' seats in the Council.

<sup>90</sup> The Judicial Council:

- 1) shall, upon the recommendation of the Minister of Justice, draft and submit for the approval of the President of the Republic the annual list of judges, in view of their competence and professional advancement, which shall be used as the basis for appointments.
- 2) shall, upon the recommendation of the Prosecutor General, draft and submit for the approval of the President of the Republic the annual list of prosecutors, in view of their competence and professional advancement, which shall be used as the basis for appointments.
- 3) shall propose candidates for the presidency of the court of appeals, the presidency and judgeship positions of its chambers, the presidency of the courts of review, courts of first instance and other courts. It shall make recommendations about the other judicial candidates proposed by the Ministry of Justice;
- 4) shall make recommendations regarding the candidates for Deputy Prosecutor proposed by the Prosecutor General, and the candidates for prosecutors heading operational divisions in the Office of the Prosecutor.
- 5) shall make recommendations regarding training programs for judges and prosecutors;
- 6) shall make recommendations regarding the removal from office of a judge, the arrest of a judge, and the initiation of administrative or criminal proceedings through the judicial process against a judge;
- 7) shall take disciplinary action against judges. The president of the court of appeals shall chair the meetings of the Judicial Council when the Council is considering disciplinary action against a judge. The President of the Republic, the Minister of Justice and the Prosecutor General shall not take part in these meetings;
- 8) shall express its opinion on issues of pardons when requested by the President of the Republic. The operational procedures of the Judicial Council shall be prescribed by law.

<sup>91</sup> The Constitutional Court may hear cases submitted by: 1) the President of the Republic; 2) at least one-thirds of the Deputies; 3) Presidential and parliamentary candidates on disputes concerning election results; 4) the Government in



Judicial Power Section of the Constitution are in need of revision. As a result of reforms an administrative court may be created; its mission must be the provision of compliance of government decrees and other secondary legislation acts to laws by means of their overruling, in case of their contradiction to law. Equally important is the creation of specialized courts (economic, military, revenue, etc.) the need for which must be clearly specified in the Constitution. The necessity arises to establish a representative body and independently functioning magistrate council to guarantee the self-governance of the judicial power. The system of constitutional justice must become more efficient by completing and summarizing the list of subjects and objects of constitutional supervision.<sup>93</sup>

The package of amendments proposed by the Presidential Commission and assessed in written form by the Venice Commission in its Report<sup>94</sup> are aimed at inspiring horizontal accountability between the branches of power and making their roles discrete. The draft goes some way toward curbing the President's powers. The President would need the parliament's consent to appoint a Prime Minister. If his candidates for Prime Minister and government are twice rejected by the legislature, then he must accept for that post the nominee proposed by the Chairman of the National Assembly (Article 85). Meanwhile, in the existing Constitution there are no mechanisms that grant the National Assembly an authority to take an active role in the formation of the executive branch when the parliament is at odds with the President with regard to this issue.

The President would also forfeit the right to dismiss Constitutional Court judges. The President's right to dissolve the parliament, present in the existing Constitution, has been replaced by a 'reduction of the term of the authorities'<sup>95</sup> of the National Assembly only in cases provided by the Constitution and after consultations with the Chairman of the National Assembly and the Prime Minister. He would, however, acquire greater freedom in naming senior military and Interior Ministry commanders, and in declaring martial law or a state of emergency. The provision according to which the President was given certain legislative powers in areas until the National Assembly took legislative action, according to the Venice Commission, has to be discarded from the Constitution since it was extending the presidential prerogatives. Although, due to the opinion of the Commission, this could be justified in transition societies, it should not be a constitutional component, in general.

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cases prescribed by Article 59 of the Constitution. The Constitutional Court shall only hear cases that have been properly submitted.

<sup>92</sup> The Office of the Prosecutor General in the Republic of Armenia represents a unified, centralized system, headed by the Prosecutor General.

The Office of the Prosecutor General:

1) shall initiate criminal prosecutions in cases prescribed by law and in accordance with procedures provided by law; 2) shall oversee the legality of preliminary inquiries and investigations; 3) shall present the case for the prosecution in court; 4) shall bring actions in court to defend the interests of the state; 5) shall appeal the judgments, verdicts and decisions of the courts; 6) shall oversee the execution of sentences and other sanctions.

The Office of the Prosecutor General shall operate within the powers granted to it by the Constitution and on the basis of the law on the Office of the Prosecution.

<sup>93</sup> CDL (2000) 24 considers it a problem that since a decade of independence 10 Prime Ministers have been replaced in Armenia, impeding the government stability.

<sup>94</sup> CDL-INF (2001) 14, "Report of the Venice Commission on the Revised Constitution of the Republic of Armenia, adopted by the Venice Commission at its 47<sup>th</sup> Plenary Meeting, (Venice, 6-7 July 2001) on the basis of comments by Mr. Gerard BATLINER (Member, Liechtenstein), Mr. Aivars ENDZINS (Member, Latvia), Mr. Vital MOREIRA (Member, Portugal), Mr. Kaarlo TUORI (Member, Finland)

<sup>94</sup> expressed in an interview at the CoE

<sup>95</sup> CDL-INF (2001) 14, "Report of the Venice Commission on the Revised Constitution of the Republic of Armenia, adopted by the Venice Commission at its 47<sup>th</sup> Plenary Meeting, (Venice, 6-7 July 2001) on the basis of comments by Mr. Gerard BATLINER (Member, Liechtenstein), Mr. Aivars ENDZINS (Member, Latvia), Mr. Vital MOREIRA (Member, Portugal), Mr. Kaarlo TUORI (Member, Finland), Article 55

In contrast with the present Constitution, the revisions suggest that the operation of government be determined by law and presidential decree. Moreover, the government sessions would not be chaired by the President. Another strength the amendments propose is that the President would no longer be able to approve or veto the government decisions (Article 85). Furthermore, in the same place the Report maintains that 'the Government shall adopt decisions on the basis of the Constitution, international treaties, laws of the Republic of Armenia and ensure their execution...'

The National Assembly is empowered to assess the necessity of measures with regard to emergency situations and martial law, decide to revoke the declaration of martial law or state of emergency after taking into consideration the conclusion of the Constitutional Court. This provision according to the Venice Commission experts prevents from deliberate use of emergency powers, formerly granted to the President of the Republic.

The parliament, however, has been deprived of the power to dismiss the President of the Republic. According to Giakoumopoulos<sup>96</sup>, this is a non-democratic clause since the parliamentary power to dismiss the legitimate President is rich with dangerous outcomes. This can be done only in cases of treason and high crime and after a conclusion, held by the Constitutional Court. The constitutional clause about mutual dissolution of the President and the parliament has been conceived by the Commission as breeding a confrontational political climate and thus hampering adherence to the principles of democracy. Article 58 states that the resignation of the President, if not supported by the National Assembly for the first time, would have to be accepted the second time after 10 days, whereas the existing Constitution allowed the National Assembly not to accept the resignation of the President. This situation, which, fortunately, did not happen in Armenia in 1998 would paralyze the political sphere when the President, becomes a figurehead, while the Prime Minister constitutionally cannot become an equally strong political actor. The parliament is also granted powers to pose questions to the government requiring political responsibility of the latter (Article 80), this clause missing in the present Constitution. Parliamentary professionalism and the constitutional status of the deputies would be ensured, prohibiting the deputies to be included in the bodies of self-government, as well as carry out any business activities, except for scientific and creative work. In addition, the number of the Deputies would be curtailed from 131 to 101, elected by proportional system, while the number of standing parliamentary committees would rise from six to nine.<sup>97</sup> The draft also lengthens the duration of the parliamentary sessions.

The independence of courts is guaranteed instead of presidential supervision of judicial independence. This can also be observed in Article 94, which states that the Council of Justice will comprise seven judges, elected by the general meeting of the judges of the Republic of Armenia for three years through secret ballot and three legal scholars, appointed by the President of the Republic of Armenia. The Armenian opposition in the parliament, according to Rustamyan, however, is not satisfied with the clause, proposing that the President and the National Assembly select two members each, while the Council retains its right to electing seven members, the number totaling to eleven.<sup>98</sup>

According to Giakoumopoulos, not the choice of a system but coherence of the coherence of it was considered by the Venice Commission. Moreover, it was revision of the existing one and not making of a new one that was in question. Markarov claims, however, that the amendments are an incentive for a radical change and not mild reform.<sup>99</sup> The nature of the

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<sup>96</sup> expressed in an interview at the Venice Commission, for more information please see Appendix 1

<sup>97</sup> as stated in the temporary parliamentary committee session on January 24, 2002

<sup>98</sup> as expressed in the interview at the Council of Europe; for more information please see Appendix 1

<sup>99</sup> Markarov, Alexander, "Armenian Constitutional Changes: Slight Amendments or Heavy Reform?", *forthcoming in Sprawy Polityczne* [Political Affairs], (Poland, 2002)

proposed amendments allows to call the draft a completely 'new version' of the existing Constitution.<sup>100</sup>

The procedure of constitutional revision, in spite of providing a system, compatible with the Council of Europe practice, has been burdened with two problems. Firstly, according to its statute, Venice Commission does not take any initiatives and acts only when the governments of the member states ask for advice on certain issues. Therefore, the only draft that has been examined is the one proposed by the Presidential Commission on Constitutional Reforms. According to Caroline Martin, the semi-presidential system has been taken for granted since the request has been received by the Presidential Commission, while the competing alternative, proposing to switch to a parliamentary form of government, has not been considered.<sup>101</sup> This problem, undoubtedly, reminds of the one still existing at the brink of 1995 when the only valid version for the Armenian Constitution was regarded to be the one, elaborated by the presidential Commission, headed by Ter-Petrosyan. Secondly, according to Giakoumopoulos, the advice of the Commission is only of technical character and other advice, for example, which system would be better for a country to adopt cannot be given<sup>102</sup>.

#### 4. The Parliamentary Draft and the Deliberation Procedure in the Armenian Parliament

In November, 2001 the ad hoc parliamentary Committee on Constitutional Reforms began reviewing the package of constitutional amendments proposed by the Presidential Commission together with another alternative draft Constitution, prepared by a group of six opposition parties. It proposed a parliamentary form of government. The draft declares Armenia a sovereign, democratic, social and legal state where power is exercised on the basis of separation between the executive, legislative and judicial branches and their mutual checks and balances. The draft includes a number of clauses, which are absent from the present Constitution, for example the issue of dual citizenship, the office of Ombudsman and the abolition of death penalty. The legislature belongs to the parliament, consisting of 101 deputies, elected by proportional representation for 4 years, which adopts the state budget and supervises the executive branch. The parliament can be recalled by different means of national initiative/referendum. The President of the Republic is elected by an Electoral College, comprising parliamentary deputies and local self-government representatives of an equal number according to a representation quota, determined by law. The parliament elects a Prime Minister by majority of the whole number of votes and forms the government within 14 days. If the parliament is unable to elect a Prime Minister, a second round is held. In the case that the election fails the second time the parliament is declared dismissed.<sup>103</sup> As to the judicial branch its proper financing has to be foreseen by the Constitution. Judicial professionalism should also be guaranteed by appointing as a judge a citizen who is no less than 30 years old with higher education and seven years of practice in law. The members of the Council of Justice should be appointed by the parliament by selecting 2 members from each of the courts: first instance, cassation, appeal, economic, administrative, etc. The Council then elects a president.<sup>104</sup>

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<sup>100</sup> Tokhyan, Felix, member of the Constitutional Court, Council Chairman of the Center for Law and information (NGO), *Constitutional Reforms in Armenia* (unpublished, 2001)

<sup>101</sup> as expressed in the interview at the Council of Europe; for more information please see Appendix 1

<sup>102</sup> as expressed in the interview at the Council of Europe; for more information please see Appendix 1

<sup>103</sup> Department of Public Affairs at the National Assembly of the Republic of Armenia, "'Vetzyaki' sahmanadrakan nakhagitse" ["The Constitutional Draft of the 'Six'"], *Hayastani Hanrapetoutyoun* [Republic of Armenia] (March 6, 2002, Wednesday, # 40 (2933))

<sup>104</sup> Doulinyanyan, Irina, "Paykarelou ban chmnatz. Arayjm?" ["Nothing is Left for Struggle. Yet?"], *Hayastani Hanrapetoutyoun* [Republic of Armenia] (March 7, 2002, Thursday, # 41 (2934))

According to Shavarsh Kocharyan<sup>105</sup>, the parliamentary system is characterized by more democratic participation and accountability on the part of the branches of power. In comparison, in a semi-presidential system the head of state does not have any obligations but 'his own program, his own government and his own parliament'. Karen Karapetyan, head of the 'People's Deputy' group, said that the parliamentary draft does not correspond to the current situation in the country. Only when the people absorb a certain level of legal knowledge, may it become possible to make a transition to a parliamentary form of governance. The fact that the president is a symbolic figure and all his prerogatives are to be endorsed by the National Assembly cannot be thought of as ensuring a balance between the branches.<sup>106</sup> Moreover, according to him, although the referendum for dissolving the parliament could be thought of as enhancing responsibility on the part of the deputies, if the national initiative becomes recurrent, Armenia would at best remain in a state of stagnation. Tigran Torosyan<sup>107</sup> stated that the power can not be put in the hands of people, which would be the case if Armenia adopted a parliamentary form of government. He also mentioned that the parliamentary draft has a lot of weak points, namely, the procedure of dissolution of the parliament by its two-thirds majority, granting the same level of power to the President and the parliament.<sup>108</sup> He later also stated that the parliamentary form of government would not be a good solution for the current situation in Armenia and would cause chaos.<sup>109</sup>

On December 14, 2001 Kocharyan affirmed unequivocally that only the package of amendments proposed by the Presidential Commission would be offered for public approval. The President admitted that if several alternatives were put to a referendum, it would be unlikely that his amendments would be backed by the majority of voters,<sup>110</sup> and none of the drafts would receive the approval of the required minimum one-thirds of all registered voters. Kocharyan referred to the present Constitution, which empowers him to veto the parliamentary decision, may the deputies decide that one of the alternative variants should be put to a popular vote. Moreover, the constitutional requisite that the legislature would need a two-thirds majority to override a presidential veto on an issue related to the Constitution would be very unlikely considering the number of MPs supporting the President. President Kocharyan hinted that rejection of the amendments he had endorsed would negatively impact on his bid for re-election in March 2003. The President also stated that the process of constitutional reform was indispensable to the unfolding election campaign. Kocharyan suggested that to draw larger public participation, the constitutional referendum should coincide with either local, parliamentary or presidential elections.<sup>111</sup>

On December 18, 2001 six opposition parties, including the Communists, the NDU, and the Republican bloc issued a statement accusing Kocharyan of 'jeopardizing the constitutional process' by insisting that alternative draft constitutions should not be put to a referendum. They said they would continue to campaign in parliament for a referendum on all three

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<sup>105</sup> Chairman of the standing parliamentary committee on Science, Education, Culture and Youth

<sup>106</sup> Abrahamyan, Gor, "Who Puts the Cart before the Bulls?", *Azg Armenian Daily* (February 19, 2002), accessed on May 22, 2002

[http://www.azg.am/\\_AM/20020219/2002021905.shtml](http://www.azg.am/_AM/20020219/2002021905.shtml)

<sup>107</sup> Deputy President of the National Assembly

<sup>108</sup> "News", *National Assembly of the Republic of Armenia*, (December 14, 2001) <http://www.parliament.am/Am/>

<sup>109</sup> "News", *National Assembly of the Republic of Armenia*, (December 17, 2001) <http://www.parliament.am/Am/>

<sup>110</sup> Ruzanna Khachatryan, "Armenia Report: Parliament Set for Constitutional Debate after Procedural Deal", *Armenia Liberty: RFE/RL* (March 4, 2002), accessed on May 5, 2002

<http://www.armenialiberty.org/ar-report/2002/03/20020304084447.asp>

<sup>111</sup> "President Kocharian Outlines 2002 Plans", *Armenia This Week: Armenian Assembly of America* (February 15, 2002), accessed on May 9, 2002

[http://www.aaainc.org/armenia\\_week/02-15-02.htm](http://www.aaainc.org/armenia_week/02-15-02.htm)

alternatives.<sup>112</sup> NDP leader Shavarsh Kocharyan who co-authored the alternative amendments, said that 'the President... cares more about his re-election than about reform of the Constitution'.<sup>113</sup> Opposition politicians including National Unity Party Chairman Artashes Geghamyan accused President Kocharyan of planning to delay the referendum until after the presidential elections due in March, 2003.<sup>114</sup>

On February 19, 2002 the leading factions in the Armenian parliament announced an agreement ending a legal deadlock that delayed long-awaited debates on conflicting proposals to amend the country's Constitution. The deadlock was a result of the fact that there was no unanimity as to what form of government would be more workable for Armenia. A coalition of major opposition parties, backing a proposal that calls for an overhaul of the government into a parliamentary system, refused to cooperate with the pro-government majority in amending the presidential draft. They sought special rules that would give them additional time to make their case for Armenia's transformation into a parliamentary republic. On March 19, 2002, deputies voted to postpone a vote both on the amendments proposed by the presidential Commission and their own draft Constitution, anticipating the latter's almost certain rejection by the majority of deputies loyal to President Kocharyan. The main author of the opposition draft, Shavarsh Kocharyan, said that the opposition would reintroduce its draft at an opportune moment. The opposition reaffirmed its position that the National Assembly put their draft on a referendum along with the President's constitutional amendment package. They proposed that simultaneous votes be held on the two conflicting versions of constitutional reform. The President was no longer pushing for the holding of the constitutional referendum in 2002 either.

The process of constitutional reforms would be lengthy, depending on the parliamentary decision-making. Even if compromise is reached the changes might remain elusive as to the separation of powers. The whole process of constitutional changes, as shown above, has been used as an instrument for expression of the presidential demands and Western advice. The scenario of unsuccessful constitutional legitimacy might take place again if the issue is put at the disposal of politicians, bargaining for their will advancement. At the same time, the Council of Europe being more interested in its member states' adherence to democracy is not well aware of the domestic political hindrances. Many Armenian politicians, meanwhile, claim that constitutional changes would not ensure separation of powers and their balance unless democracy becomes a cultural value. Only in this case would the authorities become independent of one another and accountable to the citizenry. The Armenian President and his allies, on the one hand, and the opposition, on the other, consider the Constitution a document, which should be altered to express their interests. At the same time the Venice Commission considers it an act, which should be a democratic incarnation since peace in the West largely depends on stability in the East.

True, the revisions are urgent because the character of the 1995 Constitution in terms of separation of powers does not explicitly define the limits and the areas of their mutual influence. However, it is still under doubt whether the application of the separation of powers would be changed in practice with the same forces retaining power and democratic merits still falling behind the legal ones. Carothers rightfully states that respect for law will not easily take

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<sup>112</sup> "Armenian Opposition Pledges to Continue Fight for Constitutional Change" *Caucasus Report, RFE/RL*, Volume 4, Number 42 (December 20, 2001), accessed on April 8, 2002  
<http://www.rferl.org/caucasus-report/2001/12/42-201201.html>

<sup>113</sup> "Armenian Opposition Angered by President's Comments on Constitutional Reform", *Eurasianet*, (February 15, 2002), accessed on May 7, 2002  
<http://www.eurasianet.org/resource/armenia/hypermail/200202/0044.shtml>

<sup>114</sup> "Transcaucasia & Central Asia: Opposition Postpones Vote on Alternative Armenian Draft Constitution", *Newsline RFE/RL* (April 4, 2002), accessed on May 13, 2002  
<http://www.rferl.org/newsline/2002/04/2-TCA/tca-040402.asp>



root in systems rife with corruption and cynicism, since 'entrenched elites cede their traditional impunity and ceased interests only under great pressure'<sup>115</sup>. Thus, political factors are strongly decisive for democratic consolidation in Armenia.

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<sup>115</sup> Carothers, Thomas "The Rule of Law Revival", *Foreign Affairs*, Vol. 77, Issue 2, (Mar/Apri98): 95

## Conclusion

Constitutional refurbishment started in Armenia after it gained independence in 1991. This process, which aimed at the establishment of democracy as a corner-stone for development, was very important for the new statehood. However, it was dissensual in nature and did not result in an outcome, beneficial for all parties. Moreover, the very first laws on the President of the Republic of Armenia and the Supreme Council, which were later largely transferred into the body of the Constitution, were the expression of the presidential will.

The Constitution, adopted in 1995, marked a new significant point in Armenian history. It established a new type of governance, system of state authorities and the definition of basic relations between the state and a citizen. Thus, it legalized democracy as a sole legitimate polity in Armenia and established a semi-presidential form of government. However, the Constitution itself contained contradictory provisions, which violated the existing motto of checks and balances.

The political disarray, which took hold of the country from 1995 to 2000, was devastating. The struggle for power manifested unlimited passions and resulted in fraud during elections. Further, it took a more violent form of party ban, a velvet coup against the President and terrorist attacks on the Prime Minister and Speaker of the National Assembly. All these crises were successfully overcome since the Constitution proved sufficient to provide necessary mechanisms.

However, the Constitution was believed to be the container and the major determinant of the hyper-presidential system, flaws in all the chapters and specifically that of State Organs and the Separation of Powers and the Judiciary. Therefore, after a decade of independence there is still a need in Armenia for reshaping the constitutional model.

In these terms, it has been identified that the causes of departure from the constitutional provisions were legal, being immediately reflected on the political arena. Therefore, the substantive outcome of legal engineering mostly depends on politics. The same actors retaining power, the Constitution might still remain as a text, not becoming a profound legal document. Furthermore, the fact that the Constitution is used as an instrument both by domestic and international actors for advancing their preferences, might impede the legitimacy of amendment as well.

Moreover, the issue also falls within the trajectory of democracy. Therefore, unless independence and accountability of branches are ensured and law becomes an essential component of state life the country would still remain only superficially democratic in spite of the constitutional provisions and the other laws, drafted by the domestic authors and improved by the Venice Commission. The lack of cultural understanding of rule of law and the role of the Constitution is vital for making constitutional changes 'feel at home'.

Constitutionalism follows only after the nation has reached acknowledged the essence of democracy and when the society is prepared for the change. Democracy does not come as a ready-made product, it is a matter of practice and acknowledgment, perception of it as better than any other system. The new Constitution can have a progressive public impact if it is recognized as an expression of fundamental social values capable to contribute to the renovation process and the development of the entire legislation, strengthening law and order, promoting stability of the nation state and institutions.

Legal rules can be revived as long as they enjoy legitimacy and are followed in practice by the political authorities. However, law is a pre-condition but not a support for democracy. It is only politics that can have the ultimate say. The political dimension as the super-structure also presupposes not only political but also economic and social changes as a platform for political

progress. According to Giakoumopoulos, Armenia is making progress with democracy; it should wait, democracy will come, although it is a gradual and long process. Nevertheless, Armenia, according to the opinion of international observers, is the most stable country in the region.

Constitutional revisions, even if coupled with escorting amendments of all the possible legal acts on electoral system, party apparatus, media, NGOs, etc. might still remain on paper as long as the domestic forces, involved with revisions do not reach consensus. They would stay unobserved as long as the Council of Europe advocates high democratic standards without existing liberal grassroots in the country. Without harmony between the basic constitutional principles, on the one hand, and the norms and mechanisms providing for their implementation, on the other hand, there is little hope for any advancement. Unless these conditions are met legitimately, only subscription and not abidance to Western values will be the case. Meanwhile, only if constitutionalism is the lantern for Armenia, will the path to democratic evolution be illuminated.

## Appendix 1

### Methodology

#### 1. ANALYSIS OF DOCUMENTS

- a) Archival documents and library resources, available only in hard-copy format and accessible to general public at the Council of Europe.
- b) Restricted resources, i.e. opinions and comments by the Venice Commission members and experts, available neither online nor open to the public within a year; Intranet resources on the Venice Commission

#### 2. INTERVIEWS with

##### a) members of the Secretariat:

- Mr. Rudolf Schutz Durr, Head of Constitutional Justice Section, Division II: Constitutional Rights and Litigation
- Christos Giakoumopoulos, Director of the Office of the Commissioner of Human Rights, former Deputy Secretary of the Venice Commission
- Mr. Pierre Garrone, Head of Elections and Referendums Section, Division I: Constitutional Cooperation and Elections
- Ms. Simona Granata-Menghini, Head of Division II: Constitutional Rights and Litigation
- Ms. Caroline Martin, Administrative Officer, Constitutional Justice Section, Division II: Constitutional Rights and Litigation
- Mr. Sergey Kooznetsov, Administrative Officer, Division II: Constitutional Rights and Litigation

Interviewing the members of the Secretariat before starting the research of the documents helped me to convey a comprehensive picture as to

- § why changes in the legal system constitutional framework are considered essential for democratic grassroots,
- § how preliminary country assessments on constitutional developments are being made,
- § how cooperation with state governments is being established,
- § on what grounds are new revisions introduced,
- § how the proposals on revisions are being written and assessed,
- § how is the revisions process being tracked.

b) members of the Armenian parliament (National Assembly), visiting the 2002 parliamentary session of the Council of Europe, namely Armen Rustamyan from the Armenian Revolutionary Federation faction, Vahagn Atabekyan, Director of the standing Committee on Foreign Affairs, Hovhannnes Hovhannisyan, representative of the 'People's Deputy' group, Chairman of the standing Committee on Foreign Affairs, Ashot Galoyan, representative of the 'Unity' faction, as well as Christian Ter-Stepanian, Armenian Representative to the Council of Europe, Armen Zakaryan, Chairman of Ararat Press Club, journalist of Radio Free Europe/Radio Liberty – Armenian Service.

The interviews have been based on the Questionnaire, encompassing the following questions:

- § Why was the Constitution of 1995 considered irrelevant to convey the 'shape' law and politics had obtained in the Republic?
- § How far is the current Constitution from democratically envisaged principles?
- § In your opinion, what are the reasons for the non-workability of the existing Constitution?
- § By what means had the Constitution created obstacles for implementing the principle of separation of powers in political practice?
- § What constitutional issues deserve primary importance in the Republic of Armenia at the time: social rights, human rights, separation of powers, etc.?
- § What extra-constitutional conditions that could again impede the proper democracy-building process in the Republic of Armenia are of utmost significance now?
- § How do you think constitutional changes will be reflected in practice?

- § Given the fact that the Constitution of the Republic of Armenia has been in the process of being refurbished as far as the relations between executive, legislative and judicial branches are concerned do you think that
1. This testifies to the fact that the adopted one was not a 'right' one and could be justified in this sense by claiming that 'unintended circumstances' were lying in its core?
  2. The recently proposed draft by the Constitutional Reforms Preparation Committee is an efficient one?
- § Would constitutional revisions result in a change of the political practice with the same authorities retaining their power?
- § To what extent do you think the Nagorno-Karabakh conflict strengthens the position of the president, thus contributing to a hyper-presidential system?
- § To what extent could the *de facto* duality of the executive branch make a change in the Armenian political realm?



## Appendix 2

### Parliamentary Parties<sup>116</sup>

In conformity with Article 29 of the Rules of Procedure of the National Assembly, the members of Parliament who have been elected to the National Assembly by the proportional vote registered in party or election bloc lists, set up parliamentary factions irrespective of the number of members of parliament. Other factions cannot be set up in the National Assembly.

From among the deputies of the second convocation of the Republic of Armenia's National Assembly, 44 are included in "Unity", 8 in "Communist Party of Armenia" (CPA), 9 in the "Armenia Revolutionary Federation" (ARF), 7 in "Law and Unity", 4 in the "National Democratic Union" (NDU), 5 in the "Rule of Law" factions, 12 in "Agro-Industrial Popular Union" (AIPU), 12 in "Hayastan" [Armenia], 16 "People's Deputy" and 12 are not included in any faction or group in conformity with Article 31 of the Rules of Procedure of the National Assembly's.

Unity faction - Miasnoutyoun

The bloc resulted from a merger between the Republican Party with its parliamentary

"Land Defense" - Union of Karabakh War Veterans [Yerkrapah] - supporters and the Peoples Party of Karen Demirchyan.

Head: Sahakyan Galoust

"Land Defense" - member of the Unity Bloc

Founded in 1997, "Land Defense" supported candidate Kocharyan in the presidential elections. Most of its members are former APNM members who left their party because of the APNM support of the former president, Ter-Petrosyan.

Republican Party (RP) - member of the Unity Bloc

RP was founded in 1988, belonged to the Republican block, but went into opposition after the resignation of Ter-Petrosyan.

Communist Party of Armenia (CPA) faction

CPA used to be the leading force in Armenia until communism fell and the Soviet Union disintegrated. CPA stopped functioning in 1991, but the party was re-established in August 1994. The party is the second largest formation in the country and still has loyal grass-roots membership.

Head: Kharatyan Frunze

Armenian Revolutionary Federation (ARF) faction

ARF dates back to the period when Armenia briefly experienced independence before the Bolshevik takeover in 1919. The party was banned from functioning in 1995 and many of its leaders were imprisoned with terrorist charges. One of Robert Kocharyan's first acts as president was to release the party by allowing it to return to active political life.

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<sup>116</sup> "Members of the Parliament: National Assembly of the Republic of Armenia", *National Assembly of the Republic of Armenia*, accessed on May 28, 2002

<http://www.parliament.am/En/>;

"Parties and Candidates" *British Helsinki Human Rights Group*, accessed on May 13, 2002

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*Head:* Vardanyan Aghvan

#### Law and Unity faction

Law and Unity comprises a group of organizations with strong connections to the Karabakh Defense Minister, Samvel Babayan. It supports the presidential policies.

*Head:* Geghamyan Artashes

#### National Democratic Union (NDU) faction [Azgayin Zhoghovrdavarakan Miavoroum]

The faction was founded in 1991 and is a very lively opposition party. Party-leader Vazgen Manoukyan, who worked as Prime Minister during 1990-1991, founded the party in 1991 when he split from the APNM. The party opposes privatization of large enterprises. The party is perceived to be liberal and pro-Western. Manoukyan was the rival of Levon Ter-Petrosyan in the flawed 1996 presidential election.

*Head:* Baghdasaryan Simon

#### Rule of Law faction

*Head:* Baghdasaryan Artur

#### Agro-Industrial Popular Union group

*Head:* Hovhannisyan Hmayak

#### 'Hayastan' [Armenia] parliamentary group

*Head:* Malkhasyan Myasnik

#### 'People's Deputy' group

*Head:* Karapetyan Karen

#### Parliamentary Standing Committees<sup>117</sup>

In conformity with article 73 of the Constitution of the Republic of Armenia and articles 35 and 36 of the Rules of Procedure of the National Assembly six Standing Committees must be set up in the National Assembly. The composition of standing committees indicates the quantitative ratio of political forces represented in the National Assembly, but not included in any faction.

Standing committees are set up for the initial deliberation of draft laws and other proposals and submitting their conclusion to the consideration of the National Assembly. The standing committees are as follows:

Standing Committee	Chairman
Defense, National Security and Internal Affairs	Hovhannisyan Vahan
Financial, Credit, Budgetary and Economic Affairs	Minasyan Gagik
Foreign Relations	Hovhannisyan Hovhannes
Science, Education, Culture and Youth	Kocharyan Shavarsh

<sup>117</sup> "Members of the Parliament: National Assembly of the Republic of Armenia", *National Assembly of the Republic of Armenia*, accessed on May 28, 2002  
<http://www.parliament.am/En/>

Social Affairs, Health Care and Environment	Tadevosyan Gagik
State and Legal Affairs	Dallakyan Viktor

### *Non-Parliamentary Parties*

#### Women's Party 'Shamiram'

Founded in 1995 by the Ministry of the Interior in an attempt to 'unite' women's votes. The name Shamiram derives from a mythical figure (an Assyrian princess, who seduced the strong and handsome Armenian King Ara).

#### Azagadan Ramgavar Party [Liberal Democratic Party] (LDP)

Founded in 1994, the party split at the start of 1995 over the issue of the suspension of the ARF. The party advocates overall economic restructuring along the lines of Western economies. The party took part in the formation of the Republican bloc.

#### Ramgavar Azagadan Party [Democratic Liberal Party] (DLP)

The party was founded in 1921 and re-established in 1991. Used to be an opposition party in the parliament.

#### Christian Democratic Union (CDU)

Holds a moderate position with regard to Nagorno-Karabakh, suggesting peace-talks with Azerbaijan over the issue. On social issues the CDU's ideas have not yet crystallized. The party was part of the Republican block, then went into the opposition.

#### Armenian Pan-National Movement (APNM) [Hayotz Hamazgayin Sharjoum (HSH)]

Founded in 1989, it holds a moderate stance to the Nagorno-Karabakh conflict. Maintenance of national independence is among the prime issues of the APNM. The party is considered to be of liberal-democratic orientation. APNM advocates large-scale privatization, and radical economic reform. With 65 seats the HSH was a major force in the Republican Bloc and the backbone of the former government of Ter-Petrosyan. In 1997, depletions took place when "Land Defense" was founded, leaving APNM a marginal role in politics.

#### Union for National Self-Determination (UNSD) [Azgayin Inknoroshman Miavoroum (AIM)]

Founded in 1987 but only registered after independence in 1991, UNSD is ideologically unclear in its orientation, led by former dissident and Karabakh Committee member Parouyr Hayrikyan. The party received 42,987 votes and 3 seats in parliament in 1995 but failed to get more than 5% of the vote on 30th May. The party's platform has always been somewhat remote from ordinary Armenians with its emphasis on getting proper international recognition for the 1915 genocide and the regaining of Armenian territories in Turkey.

Chairman: Parouyr Hayrikyan

#### Intellectual Armenia (IA)

Founded in 1993 by a small group of Armenian intellectuals. Used to be a member of the Republican bloc and is now an opposition party, but is of no political importance anymore.

#### Scientific-Industrial & Civil Union (SICU)

Founded in 1991, the party supports the government.

#### Social Democratic Hnchak Party (SDHP)

Founded in 1887 and re-established in 1991, SDHP is the oldest party in Armenia. The party used to be a member of Republican bloc, but since the 1998 presidential elections SDHP plays

no political role anymore. Its ideology is a strange mixture of social-democratic values and nationalist ideas.

### Appendix 3

#### European Commission for Democracy through Law (Venice Commission)/Council of Europe<sup>118</sup>

The idea of creating the Venice Commission had been floated before the fall of the Berlin Wall but its fall made the Commission an obvious necessity. At the instigation of Antonio la Pergola, Italy's Minister for European Affairs at the time, the formal decision to set up the Venice Commission was taken at a conference of European Ministers of Foreign Affairs in Venice in January 1990. Its statute was adopted in May 1990 under a partial agreement concluded within the Council of Europe. According to this agreement only member States of the Council of Europe which have acceded to the agreement take part in activities and contribute to the budget. As Mr. Kooznetsov stated in an interview at the CoE, however, at the March 2002 plenary session in Venice the agreement was enlarged, meaning that not only the participating states can have a vote but also the countries outside Europe. The non-members, being granted only an observer role, contribute less to the budget than the insiders.

The Venice Commission comprises 'independent experts who have achieved international fame through their experience in democratic institutions or by their contribution to the enhancement of law and political science' (Article 3 of the Statute<sup>119</sup>). They are university professors, specializing in constitutional or international law, supreme or constitutional court judges, members of national parliaments or senior officials. Members are appointed by the member states of the partial agreement, to which nearly all member states (44 in total) of the Council of Europe have joined.

The work of the Venice Commission is geared to the Council of Europe's three basic principles: democracy, human rights, and rule of law. The Commission is concerned with specific issues relating to one State; more general topics, taking a comparative approach; setting up a documentation center for constitutional case-law.

As regards specific issues concerning one State, the Commission provides assistance, advice and a 'constitutional breakdown service' at states' request. It does not impose a solution but its opinions are often heeded in the preparation of a final text. The Commission favors exchanges of views, dialogue and persuasion. The following are some of the Commission's main areas of work: Constitutions; legislation on constitutional courts; other laws concerning democratic State institutions; legislation on national minorities; political parties; electoral systems.

The Commission's activities focus in particular on Central and Eastern Europe and the Commonwealth of Independent States (CIS).

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<sup>118</sup> "The Work of the European Commission for Democracy through Law" Council of Europe, accessed on January 2, 2002 <http://www.coe.fr/venice/venice.htm>

<sup>119</sup> Resolution (90) 6 on a Partial Agreement Establishing the European Commission for Democracy through Law, adopted by the Committee of Ministers on 10 May 1990 at its 86th Session, accessed on January 2, 2002 <http://www.coe.fr/venice/statute.e.htm>



## Appendix 4

### Composition of the Commission on Constitutional Reforms of the President of the Republic of Armenia

According to the Presidential Decree, issued on May 19, 1998<sup>120</sup> the composition of the Commission on Constitutional Reforms of the President of the Republic of Armenia was as follows: Parouyr Hayrikyan, Advisor to the President of the Republic of Armenia, Chairman of the Commission on Constitutional Reforms; Hovhannes Asryan, Chief Expert of Staff of the Advisor to the President of the Republic of Armenia; Shahen Avagyan, Director of the Department of Law at the Ministry of the Foreign Affairs; Artur Baghdasaryan, Chairman of the Standing Committee on State and Legal Affairs at the National Assembly of the Republic of Armenia; Vrej Gasparyan, Head of the Legal Department of Staff of the President of the Republic of Armenia; Gyouloumyan Alvina, President of the Lawyers' Union; Mikayel Grigoryan, Advisor to the Minister of Internal Affairs and National Security, Head of the Department of Public Affairs and Media; Edouard Yegoryan, National Assembly Deputy; Felix Tokhyan, Center for Law council Chairman; Manouk Topouzian, Deputy Minister of Justice; Armen Haroutyounyan, Deputy Dean of the Faculty of Law at the Yerevan State University; Gevorg Matevosyan, Deputy president of the Supreme Court; Gevorg Malkhasyan, Head of the Department of Legislative Affairs at the Ministry of Justice; Hovhannes Manoukian, Deputy Minister of Justice; Armen Khachatryan, Deputy prosecutor General; Armen Martirosyan, National Assembly Deputy; representatives of the Armenian Democratic Party, NDU, NSDU, "Land defense", ARF, SICU, ACP, APNM, Republican party, DLP, 'Shamiram', Law & Unity.

In 1999<sup>121</sup> the Commission's members were replaced to integrate lawyers who occupied senior government posts, among them Davit Haroutyounyan, Minister of Justice; Norayr Ayzazyan, Head of the Chair of the of Constitutional and International Law at the Faculty of Law/Yerevan State University; Shahen Avagyan, Director of the Department of Law at Ministry of the Foreign Affairs; Vrej Gasparyan, Head of Staff of President at the State and Legal Affairs

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<sup>120</sup> © 1996, IRTEK, (03/06/02) 030.0048.190598 "Hayastani Hanrapetoutyan Nakhagahi hramanagire Hayastani Hanrapetoutyan Nakhagahin arnter Sahmanadrakan popokhoutyouanner nakhapatrastvogh handznajoghovi nor kazme hastatelou masin", HH Sahmanadrakan dataran, 19 mayisi, 1998, NH-48 ["Decree of the President of the Republic of Armenia on Establishing the Membership of the Commission on Constitutional Reforms of the President of the Republic of Armenia", RA Constitutional Court, Presidential Decree # 48] (May 19, 1998)

<sup>121</sup> © 1996, IRTEK, (03/06/02) 030.0354.230799 "Hayastani Hanrapetoutyan Nakhagahi hramanagire Hayastani Hanrapetoutyan Nakhagahin arnter Sahmanadrakan popokhoutyouanner nakhapatrastvogh handznajoghovi masin", HH Sahmanadrakan dataran, 23 houlisi, 1999 t. ["Decree of the President of the Republic of Armenia on the Membership of the Commission on Constitutional Reforms of the President of the Republic of Armenia", RA Constitutional] Court, Presidential Decree # 354] (July 23, 1999)

Department; Gyouloumyan Alvina, member of the Constitutional Court; Mikayel Grigoryan, Advisor to the Minister of Internal Affairs, Head of the Department of Public Affairs and Media, PhD Candidate of Legal Sciences; Felix Tokhyan, member of the Constitutional Court, PhD Candidate of Legal Sciences; Manouk Topouzyan, Head of Staff at the Legal Department of the RA Government; Mher Khachatryan, Head of the Department of Criminal and Military Affairs at the Court of Appeal, Candidate of Legal Sciences; Armen Haroutyounyan, Deputy Dean of the Faculty of Law at the Yerevan State University, PhD of Legal Sciences; Gevorg Malkhasyan, Deputy Minister of Justice; Havhannes Manoukyan, President of the Court on Economic Issues; Rafik Petrossyan Head of the Chair of Civil Law at the Faculty of Law/Yerevan State University; Gagik Jhangiryan, Military Prosecutor, Deputy Prosecutor General, PhD Candidate of Legal Sciences; Vahe Stepanyan, Head of the Department of State and Legal Research at the Institute of Philosophy and Law at the National Academy of Sciences, PhD of Legal Sciences; Vigen Kocharyan, Professor of Constitutional and International Law at the Faculty of Law/Yerevan State University.

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<sup>123</sup> Public information before 2002

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