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THE RULE OF LAW AND CONSTITUTIONAL JUSTICE IN THE MODERN WORLD

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REPLIES TO THE QUESTIONNAIRE

ARMENIA

I. The different concepts of the rule of law

1. What are the relevant sources of law (e.g. the Constitution, case-law, etc.) which establish the principle of the rule of law in the legal system of your country?

Constitution

Article 1 "The Republic of Armenia is a sovereign, democratic, social state governed by the rule of law"

2. How is the principle of the rule of law interpreted in your country? Are there different concepts of the rule of law: formal, substantive or other?

There is single Rule of law concept

3. Are there specific fields of law in which your Court ensures respect for the rule of law (e.g. criminal law, electoral law, etc.)?

There is no specification. Rule of law is guaranteed for all branches of law

4. Is there case-law on the content of the principle of the rule of law? What are the core elements of this principle according to the case-law? Please provide relevant examples from case-law.

There is a relevant case law on the content of the principle of Rule of law.

Case Law

1. *DECISION DCC-630 ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE REGARDING THE CONFORMITY OF ARTICLE 218 OF THE CIVIL CODE OF THE REPUBLIC OF ARMENIA, ARTICLES 104,106 AND 108 OF THE LAND CODE OF THE REPUBLIC OF ARMENIA, DECISION OF THE GOVERNMENT OF THE REPUBLIC OF ARMENIA OF 2002, AUGUST 1, N-1151 "ON THE ACTIVITIES OF IMPLEMENTATION OF DEVELOPMENT*

PROGRAMMES WITHIN THE ADMINISTRATIVE BORDERS OF "KENTRON" COMMUNITY OF YEREVAN"

The Court carried out a constitutional analysis of Article 218 of the Civil Code, Articles 104, 106, 108 of the Land Code, the Decision of the Government of the RA 1151-N as well as its own law-enforcement practice. It ruled that the legal norms mentioned above do not result in guaranteed constitutional protection of property rights. They do not secure a fair balance between individual interests and property rights and public interests as defined according to the rule of law. Neither can the protection of property rights be guaranteed, based on the reasoning of "exceptional overriding public interests".

2. DECISION DCC-780 ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE REGARDING THE CONFORMITY OF ARTICLE 2 OF THE RA CIVIL CODE, ARTICLE 26 PART 5 OF THE RA LAW ON TAXES, ARTICLE 2 PART 2 OF THE RA LAW ON VALUE ADDED TAX, ARTICLE 115 AND ARTICLE 118 PART 1 OF THE RA ADMINISTRATIVE PROCEDURE CODE WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE CITIZEN ARAM SHMAVONYAN

The Constitutional Court emphasized that the provision in Article 115.1 of the Administrative Procedural Code underlined the inefficiency of the current two-instance system of administrative justice. Under this provision, the judgments of the Administrative Court deciding the case in point become binding from the moment they are handed down. The Constitutional Court found that taking administrative court judgments to the Cassation Court under such circumstances not only makes the protection of rights inefficient in the Cassation Court, but also violates the principles of legal certainty and security. These are elements of a democratic state governed by the rule of law, and are enshrined in Article 1 of the Constitution.

3. DECISION DCC-943 ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE REGARDING THE CONFORMITY OF POINT 4, PART 1, ARTICLE 426.3 AND POINT 1, PART 1, ARTICLE 426.4 OF THE CRIMINAL-PROCEDURE CODE OF THE REPUBLIC OF ARMENIA, PART 12, ARTICLE 69 OF THE RA LAW ON THE CONSTITUTIONAL COURT WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATIONS OF THE CITIZENS S. ASATRYAN AND A. MANUKYAN

The Constitutional Court took as a ground the fundamental position, according to which, the meaning of the constitutional justice is guaranteeing the supremacy of the Constitution and its direct action, and non of procedural norms or its inaccurate formulation can hinder the realization of the constitutional function and guaranteeing of the rule of law.

The Constitutional Court has mentioned that proceeding from the current legislative formulations, the judicial practice by not recognizing as a new circumstance the decisions of the Constitutional Court, in the operative part of which it is stated that the norm is recognized as constitutional in the frames of the legal positions, does not provide with opportunity of restoration and protection of the violated human rights and freedoms. Such decisions concern the cases, when a non-constitutional situation occurs not because of lacuna or ambiguity of the norm, but because of implementation of the norm with an interpretation contradicting the Constitution. In such a situation the implementation of the principle of guaranteeing the rule of law, as well as the supremacy of Constitution, is put into the spot.

4. DECISION DCC-1142 ON THE CASE OF CONSTITUTIONALITY OF ARTICLES 5, 7, 8, 37, 38, 45, 49 AND 86 OF THE FUNDED LAW OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF THE DEPUTIES OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA

2. To declare Part 1 Article 49, of the Law of the Republic of Armenia on Funded

Pensions contradicting the requirements of Article 1, Part 2, Article 3 and Point 1, Article 83.5, of the Constitution of the Republic of Armenia and void, based on the circumstance of not stipulating certain guarantees for protection of rights equivalent to the principles of the rule of law and legal certainty and not clarifying the margins of discretion of executive power in the given legal relations.

5. Has the concept of the rule of law changed over time in case-law in your country? If so, please describe these changes referring to examples.

There is no change but rather clarification on the content including interrelation of the rule of law with the principle of legal certainty and so on (See para. 4)

6. Does international law have an impact on the interpretation of the principle of the rule of law in your country?

Yes, International law standards in the field of rule of law are applicable.

II. New challenges to the rule of law

7. Are there major threats to the rule of law at the national level or have there been such threats in your country (e.g. economic crises)?

The recent constitutional amendments were intended to eliminate all possible treats towards the rule of law on the constitutional level

8. Have international events and developments had a repercussion on the interpretation of the rule of law in your country (e.g. migration, terrorism)?

No

9. Has your Court dealt with the collisions between national and international legal norms? Have there been cases of different interpretation of a certain right or freedom by your Court compared to regional / international courts (e.g. the African,

Inter-American or European Courts) or international bodies (notably, the UN Human Rights Committee)? Are there related difficulties in implementing decisions of such courts / bodies? What is the essence of these difficulties? Please provide examples.

No

III. The law and the state

10. What is the impact of the case-law of your Court on guaranteeing that state powers act within the constitutional limits of their authority?

The Constitutional Court decisions are binding to all the state bodies

11. Do the decisions of your Court have binding force on other courts? Do other / ordinary courts follow / respect the case-law of your Court in all cases? Are there conflicts between your Court and other (supreme) courts?

Yes, Constitutional Court Decisions are binding for all the other courts.

12. Has your Court developed / contributed to standards for law-making and for the application of law? (e.g. by developing concepts like to independence, impartiality, acting in accordance with the law, *non bis in idem*, *nulla poena sine lege*, etc.).

Yes, see in particular (Para. 4)

13. Do you have case-law relating to respect for the rule of law by private actors exercising public functions?

No

14. Are public officials accountable for their actions, both in law and in practice? Are there problems with the scope of immunity for some officials, e.g. by preventing an effective fight against corruption? Do you have case-law related to the accountability of public officials for their actions?

Public officials are accountable for their actions both by law and in practice. The Constitutional Court did not deal with the problems of scope of immunity of officials.

IV. The law and the individual

15. Is there individual access to your Court (direct / indirect) against general acts / individual acts? Please briefly explain the modalities / procedures.

Yes, individuals have direct access against general acts.

In accordance with Article 169.1(8) of the Constitution (with 2015 amendments) the following may apply to the Constitutional Court:

everyone — under a specific case where the final act of court is available, all judicial remedies have been exhausted, and he or she challenges the constitutionality of the relevant provision of a regulatory legal act applied against him or her upon this act, which has led to the violation of his or her basic rights and freedoms enshrined in Chapter 2 of the Constitution, taking into account also the interpretation of the respective provision in law enforcement practice;

16. Has your Court developed case-law concerning access to ordinary / lower courts (e.g. preconditions, including, costs, representation by a lawyer, time limits)?

Yes

17. Has your Court developed case-law on other individual rights related to the rule of law?

Yes, Court has developed case law on the legal certainty

18. Is the rule of law used as a general concept in the absence of specific fundamental rights or guarantees in the text of the Constitution in your country?

No