



In line with Resolution II adopted by the Circle of the Presidents at its meeting held on 13 June 2018 in Prague, the theme of the XVIIIth Congress of the Conference of European Constitutional Courts to be held in Prague from 26 to 29 May 2020 will be:

**HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS:
THE RELATIONSHIP OF INTERNATIONAL, SUPRANATIONAL AND NATIONAL CATALOGUES IN THE
21ST CENTURY**

**QUESTIONNAIRE FOR THE XVIIIth CONGRESS
OF THE CONFERENCE OF EUROPEAN CONSTITUTIONAL COURTS**

I. GENERAL PART: CATALOGUES OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

I.I International catalogues of human rights (ECHR, UDHR and ICCPR)

- In your country, what is the constitutional position/characteristic/legal force of international treaties protecting human rights?
- What mechanism is used to invoke the international treaties in national court decision-making?
- Is it possible to invoke the direct effect of the international catalogues of human rights? If so, please describe the mechanism.

• According to Article 5 (3) of the Constitution of the Republic of Armenia the norms of international treaties shall apply in case of contradiction between the norms of international treaties ratified by the Republic of Armenia and those of laws.

Article 81 of the Constitution of the Republic of Armenia provides,

“1. The practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions concerning basic rights and freedoms enshrined in the Constitution.

2. Restrictions on basic rights and freedoms may not exceed the restrictions prescribed by international treaties of the Republic of Armenia.”

- According to Article 6 (2) of the Judicial Code of the Republic of Armenia, when interpreting the provisions of the Constitution on fundamental rights and freedoms in the administration of justice, the practice of bodies acting under international human rights treaties ratified by the Republic of Armenia is considered.

According to Article 7 of the Civil Procedure Code of the Republic of Armenia, the judicial act is lawful if it complies with by the requirements of the Constitution, constitutional laws, international treaties ratified by the Republic of Armenia, other laws and bylaws, the norms of which are applicable when examining and resolving a given case.

- Such a possibility exists in the following situations: according to Article 157 3 (2) of the Constitutional Law on Judicial Code of the Republic of Armenia, the new circumstances serve as grounds for reviewing the decision on subjecting the judge of the Supreme Judicial Council to disciplinary liability if:

- a judicial act of the International Court of Justice with the participation of the Republic of Armenia has substantiated the violation of a judge's right under the international treaty of the Republic of Armenia.

I.II Supranational catalogues of human rights (the Charter)

- Is the Charter a point of reference to review the constitutionality of legal rules and/or decisions of public authorities, be it directly (a formal point of reference in some EU member states) or indirectly by “radiating” through the national catalogues (a substantive point of reference in other states)?
- Does the human rights case law of the Court of Justice of the European Union serve as guidance for the interpretation and application of the national catalogue in your country by general courts, or as a source for judicial law-making?
- Is the national impact of the Charter conditioned, in constitutional terms, by its essentially equivalent degree of protection afforded, or as the case may be in the EU member states, is it conditioned by making a request for preliminary ruling with the Court of Justice of the EU?

- As far as Article 81 of the Constitution of the Republic of Armenia provides that basic rights and freedoms and international legal practice of bodies operating on the basis of international treaties on human rights, ratified by the Republic of Armenia, shall be taken into account when interpreting the provisions

concerning basic rights and freedoms enshrined in the Constitution, and as, the limitations of the basic rights and freedoms prescribed in the international treaties, in each specific case, in determining the constitutionality of a legal act, inter alia, the principles enshrined in international human rights treaties are taken as a starting point.

- In number of cases, the judgments of the European Court of Human Rights are based on the decisions rendered by the courts. According to the Civil Procedure Code of the Republic of Armenia, the content of the judgment is defined in Article 192 4 (1) as follows: "The reasoning part of the judgment shall contain:

- 1) analysis of applicable law with reference to international treaties, laws and other legal acts of the bodies operating under international treaties ratified by the Republic of Armenia, as well as with reference to the decisions and judgments of the European Court of Human Rights, as well as the Constitutional Court, the Court of Cassation, which the Court of First Instance finds applicable."

- No, such a possibility is not envisaged.

I.III National human rights catalogues

- Is the catalogue of human rights part of the constitution of your country? If so, how is it incorporated (a separate constitutional charter, a part of the Constitution, a part of the constitutional order)? What is its structure?
- What is the historical background of the creation of the national catalogue of human rights in your country? Is the respective legislation in your country based on other legislation (previous or foreign), or is it original?
- What has been the development of your national catalogue of human rights over time? Is it undergoing a change? Are new rights included? Is there a constitutional procedure for its modification or amendment?

- Chapter 2 entitled "Basic Rights and Freedoms of the Human Being and the Citizen" of the Constitution of the Republic of Armenia is dedicated to the provision of the fundamental rights and freedoms, and, simultaneously, Chapter 3 of the Constitution prescribes legislative guarantees and fundamental objectives of state policy in social, economic and cultural spheres.

- The Declaration of Independence of Armenia (23.08.1990) served as ground for processing the Constitution of the Republic of Armenia and the fundamental rights and freedoms enshrined therein. Both the international treaties ratified by the Republic of Armenia and the legislative regulations of different countries have a great impact on the formation of the national

legislation of the Republic of Armenia.

• Basic human and civil rights and freedoms were enshrined both in Chapter 2 of the Constitution of the Republic of Armenia adopted in 1995 and in Constitution of the Republic of Armenia amended in 2005 and 2015. Articles 14-48 of the Constitution of 1995 and 2005 envisage a number of fundamental rights and freedoms, moreover, by the amended Constitution of 2015, they partially amended, broadened and Articles 14.1, 27.1, 30.1, 30.2, 31.1, 33.1, 33.2, 42.1 were added. With the 2015 amendments to the Constitution, the scope of fundamental rights and freedoms is broadened, in particular Articles 23-81 of the Constitution establish such fundamental rights and freedoms, which include such rights not envisaged in the context of the previous constitutional regulations. In particular, for the first time the Constitution of 2015 established the following fundamental rights:

- Right to Physical and Mental Integrity (Article 25),
- Prohibition of Torture, Inhuman or Degrading Treatment or Punishment (Article 26),
- Legal Equality of Women and Men (Article 30),
- Inviolability of Private and Family Life, Honour and Good Reputation (Article 31),
- Protection of Personal Data (Article 34),
- Rights of the Child (Article 37),
- Right to Alternative Service (Article 41, Part 3),
- Right to Proper Administrative Action (Article 50),
- Right to Receive Information (Article 51),
- Right to Political Asylum (Article 54),
- Prohibition of Expulsion or Extradition (Article 55, part 1),
- Right to Compensation for Damage (Article 62),
- Right to Seek Pardon (Article 70),
- Principle of Guilt and Principle of Proportionality of Punishments (Article 71),
- Organisational Mechanisms and Procedures for the Exercise of Basic Rights and Freedoms /Article 75/,
- Principle of Proportionality /Article 78/,
- Principle of Certainty /Article 79/,
- Inviolability of the Essence of the Provisions on Basic Rights and Freedoms /Article 80/.

I.IV The mutual relationship between different catalogues of human rights

- Can you give examples from the case law of your court related to the use of any of the international catalogues?
- Has your court considered the relationship/hierarchy/competition of the catalogues of human rights in light of the protection afforded?
- Is there an established procedure for choosing a specific catalogue of human rights in cases where the right is protected under more catalogues (NB: The application of the Charter is binding in EU member states subject to compliance with Article 51(1), i.e. its application is not discretionary.)

- For instance, in a number of its decisions the Court of Cassation of the Republic of Armenia grounds its legal positions both on the principles of international treaties ratified by the Republic of Armenia and a number of the ECHR positions.

- The courts are functioning based on international treaties signed and ratified by the Republic of Armenia, and there is no other option for their application.

- No, not available.

II. SPECIAL PART – SPECIFIC ISSUES RELATED TO SELECTED FUNDAMENTAL RIGHTS

II.I Right to life

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- Article 24 (1) of the Constitution of the Republic of Armenia prescribes:
"Everyone shall have the right to life."

- According to Article 24 (2) and (3) of the Constitution of the Republic of Armenia:

- "No one may be arbitrarily deprived of his or her life.

- No one may be sentenced or subjected to death penalty."

- For instance, the Constitutional Court of the Republic of Armenia reiterates in its Decision DCC-715:

"The Convention was signed on May 16, 2005 in Warsaw, given the need to consolidate efforts of the States Parties to prevent terrorism. The Republic of Armenia signed the Convention on November 17, 2005.

The goal of the Convention is to contribute to the Parties' efforts to prevent terrorism, with a view to preventing its negative consequences on the right to life, in particular terrorism and human rights, both at national and international level, taking into account the multilateral or bilateral treaties and agreements between the Parties."

- Yes, for instance, unlike the Constitution of the Republic of Armenia, the European Convention prescribes that no one shall be subjected to intentional deprivation of his/her life other than in the execution of a judgment rendered by a court for the offense provided for by law to that punishment.

II.II Freedom of expression

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- According to Article 42 (1) of the Constitution of the Republic of Armenia, everyone shall have the right to freely express his or her opinion. This right shall include freedom to hold own opinion, as well as to seek, receive and disseminate information and ideas through any media, without the interference of state or local self-government bodies and regardless of state frontiers.

- According to Article 42 (3) of the Constitution of the Republic of Armenia, freedom of expression of opinion may be restricted only by law, for the purpose of state security, protecting public order, health and morals or the honour and good reputation of others and other basic rights and freedoms thereof.

- Yes, in a number of decisions (DCC-1374, DCC-1399, DCC-1396) the Constitutional Court expressed legal positions on the right to freedom of expression, revealing its constitutional legal content.

- Yes, there are differences, such as the Constitution of the Republic of Armenia, unlike the European Convention for the Protection of Human Rights and Fundamental Freedoms, does not provide a basis for restricting freedom of expression such as the authority of justice.

II.III Right to privacy/right to respect for private life/right to private life

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- According to Article 31,(1) of the Constitution of the Republic of Armenia, „Everyone shall have the right to inviolability of his or her private and family life, honour and good reputation“.

- According to Article 31 (2) of the Constitution of the Republic of Armenia, „the right to inviolability of private and family life may be restricted only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the basic rights and freedoms of others“.

- In its decisions DDC-997, DCC-1360 the Constitutional Court of the Republic of Armenia expressed legal positions revealing the constitutional legal content of the right to immunity of private and family life.

- No.

II.IV Freedom of religion

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- According to Article 41 (1) of the Constitution of the Republic of Armenia, „everyone shall have the right to freedom of thought, conscience and religion. This right shall include the freedom to change religion or belief and, either alone or in community with others and in public or in private, the freedom to manifest them in preaching, church ceremonies, other rites of worship or in other forms“.

- According to Article 41 (2) of the Constitution of the Republic of Armenia, „the expression of freedom of thought, conscience and religion may be restricted only by law for the purpose of state security, protecting public order, health and morals or the basic rights and freedoms of others“.

- In its Decision DCC-1244, the Constitutional Court of the Republic of Armenia stated the legal positions on freedom of thought, conscience and religion, revealing the constitutional legal content of that freedom.

- No, there are no discernible differences in the legislative regulations on the protection of this right.

II.V Prohibition of discrimination

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in more detail? If so, please provide practical details and list the catalogues of human rights applied.
- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- In accordance with Article 29 of the Constitution of the Republic of Armenia, „discrimination based on sex, race, skin colour, ethnic or social origin, genetic features, language, religion, world view, political or other views, belonging to a national minority, property status, birth, disability, age, or other personal or social circumstances shall be prohibited“.

- No, it is not possible.

- In a number of decisions (DCC-991, DCC -1316, DCC-1424, DCC-1262, DCC-1426), the Constitutional Court of the Republic of Armenia expressed legal positions on the constitutional provision stipulating the prohibition of discrimination.

- No, there are no discernible differences in the legislative regulations on the protection of this right.

II.VI Right to liberty

- What is the original wording of the provision protecting this right in your national catalogue?
- Is it possible to restrict the right? If so, how and under what conditions?
- Has your court considered this right/its interpretation or enshrinement in

more detail? If so, please provide practical details and list the catalogues of human rights applied.

- Is there a difference between the case law of your court and the case law of international courts with respect to the protection of this right?

- In accordance with Article 27 (1) of the Constitution of the Republic of Armenia, „everyone shall have the right to personal liberty. No one may be deprived of personal liberty otherwise than in the following cases and as prescribed by law:

- (1) the person has been sentenced by a competent court for committing a criminal offence;

- (2) the person has failed to obey a legitimate court order;

- (3) for the purpose of ensuring the fulfilment of a certain obligation prescribed by law;

- (4) for the purpose of bringing a person before a competent authority where there exists a reasonable suspicion that the person has committed a criminal offence, or a justified necessity of preventing the committal of a criminal offence by the person or his or her fleeing after having done so;

- (5) for the purpose of placing a minor under educational supervision or bringing him or her before a competent authority;

- (6) for the purpose of preventing the spread of contagious diseases dangerous for the public, as well as the danger posed by persons with mental disorder, drug addicts and alcoholics;

- (7) for the purpose of preventing the unauthorised entry of a person into the Republic of Armenia, or for deporting or extraditing a person to another state“.

- In a number of decisions (DCC-827, DCC -913, DCC -1059, DCC -1295, DCC-1387), the Constitutional Court of the Republic of Armenia expressed legal positions on the right to personal liberty, revealing the constitutional legal content of that right.

- Unlike the European Convention, the Constitution of the Republic of Armenia prescribes the restriction of the above-mentioned right in order to ensure a certain commitment prescribed by law.