

LEGAL CHALLENGES OF JUDICIAL REFERRALS TO THE CONSTITUTIONAL COURT IN THE REPUBLIC OF ARMENIA

Norayr Avagyan*

Abstract. This article examines legal challenges of judicial referrals to the Constitutional Court in Armenia. The analysis is not confined to procedural conditions, but focuses on public-law significance for the rule of law, constitutional supremacy and the constitutionalization of the legal order. The article argues that ordinary courts are not passive applicators of statutes in a centralized model of constitutional review. When a norm applicable in a concrete case raises a constitutionally reasoned concern, the court becomes the first institution capable of detecting that problem and transferring it to constitutional justice. Particular attention is paid to the standard of “reasonable doubt”, which has acquired a more substantive meaning in the recent procedural decisions of the Constitutional Court. The article uses doctrinal, comparative and statistical methods, including the annual reports of the Constitutional Court for 2006-2025 to assess the dynamics of judicial referrals and their relationship with individual applications. The conclusion is that reasonable doubt must be strict enough to exclude formal or unsubstantiated referrals, but not so demanding as to neutralize the constitutional initiative of ordinary courts.

Keywords - *judicial referrals to the Constitutional Court, concrete constitutional review, reasonable doubt, constitution-conforming interpretation, constitutionalization of the legal order, constitutional initiative of courts.*

Introduction

The mechanism through which courts may refer cases to the Constitutional Court holds a special place in the system of constitutional justice of the Republic of Armenia. On the one hand, it is connected with the protection of an individual’s rights to judicial protection and a fair trial in a concrete case; on the other hand, it

* **Norayr Avagyan** - Assistant at the YSU Department of Constitutional Law, Candidate of Legal Sciences, Email – n.avagyan@ysu.am ORCID: 0000-0002-1968-8074



is linked to the public-law requirements of constitutional supremacy, the rule of law, and the constitutionalization of the legal order.

The relevance of the topic is determined by several factors. First, despite its constitutional significance, the institution of judicial referrals to the Constitutional Court has for a long time been applied in practice in the Republic of Armenia only to a limited extent. Second, in recent years the case law of the Constitutional Court has shaped and gradually tightened the standard of “reasonable doubt”, which constitutes one of the key conditions for the admissibility and substantiation of a judicial referral. Third, the study of statistical data shows that the constitutional initiative of courts has changed significantly over different periods: it increased especially after Decision of the Constitutional Court DCC-1114, while after 2022 it began to decline to a certain extent.

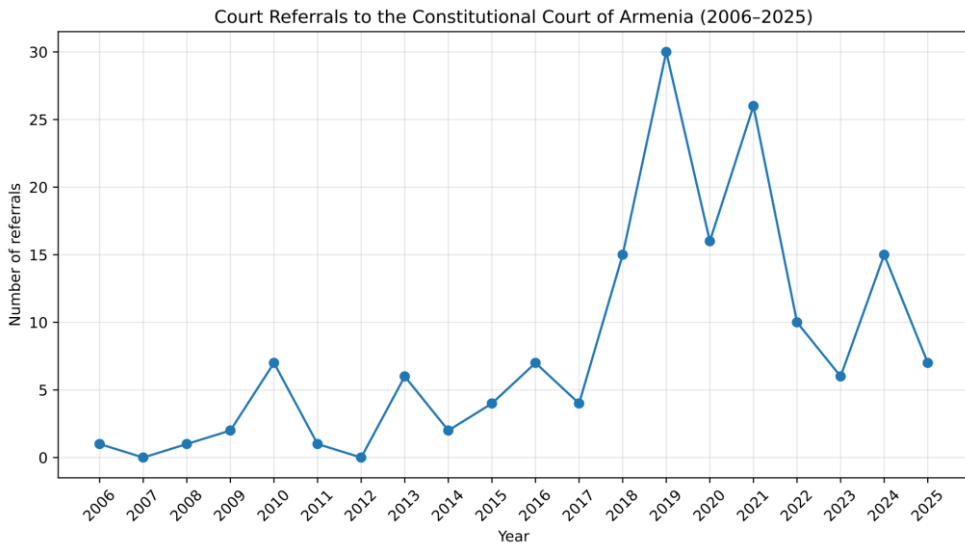


Figure 1. Court Referrals to the Constitutional Court of Armenia (2006–2025).¹

Judicial referrals to the Constitutional Court occupy a special place in the system of constitutional justice of the Republic of Armenia. It is not merely a technical procedural step by which proceedings are suspended. In public-law terms, it is connected with the practical operation of constitutional supremacy, the rule of law and the constitutionalization of the legal order².

¹ Compiled by the author on the basis of the annual reports of the Constitutional Court of the Republic of Armenia for 2006–2025. <https://www.concourt.am/constitutional-court/annual-reports>

² Kovalčík M., “Constitutional Referrals by Ordinary Courts: A Platform for Judicial Dialogue and Another Toolkit for Judicial Resistance?”, *European Constitutional Law Review*, - 2p.

The rule of law cannot be equated with the formal application of an existing statute. It presupposes legality, legal certainty, the prohibition of arbitrariness, access to independent courts and respect for human rights.³

The purpose of this article is to reveal the public-law significance of the mechanism of judicial referrals to the Constitutional Court, to examine the development of the standard of “reasonable doubt” in the case law of the Constitutional Court, and to assess the possible impact of that standard on the constitutional initiative of ordinary courts.

The article uses doctrinal, comparative and statistical methods. It relies on the Constitution and the Constitutional Law “On the Constitutional Court”, the case law of the Constitutional Court, the annual reports for 2006-2025, Venice Commission documents, and Armenian and comparative scientific literature.

The main thesis of the article is that the mechanism of judicial referrals to the Constitutional Court should not be viewed merely as a procedural power. It is an institutional mechanism for safeguarding the rule of law, constitutional supremacy⁴, and the constitutionalization of the legal order. At the same time, the effectiveness of this mechanism depends on an interpretation of the standard of “reasonable doubt” that prevents unsubstantiated referrals without neutralizing the constitutional role of ordinary courts.

The Main Research

The mechanism of judicial referrals to the Constitutional Court is of significant importance from the perspective of maintaining the rule of law. The rule of law cannot be equated with the formal application of an existing statute. It presupposes that a legal norm must operate not only by virtue of its formal validity, but also within the conditions and limits of constitutional supremacy.

Judicial referrals to the Constitutional Court should be analyzed within the broader relationship between constitutional text, real constitutionalism and the practical functioning of constitutional review. The existence of a written Constitution does not by itself guarantee constitutional legality. As G. Harutyunyan argues, constitutional values become effective only when they are continuously

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³ European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007, adopted at the 106th Plenary Session, Venice, 11-12 March 2016, paras. 5-10.

⁴ Romeo G., “The Conceptualization of Constitutional Supremacy: Global Discourse and Legal Tradition”, German Law Journal, 2020 – 916p.

implemented in public life and when constitutional deficits are revealed through constitutional monitoring and diagnosis⁵. In this sense, *a judicial referral may be understood as a concrete form of constitutional diagnosis*: while resolving a pending case, the court detects a possible discrepancy between the applicable norm and the Constitution and transfers that problem to the institution competent to give the final constitutional answer.

Therefore, if, during the examination of a concrete case, a court develops a reasonable doubt regarding the constitutionality of a provision of a normative legal act applicable to that case, ignoring such doubt may lead not only to a possible violation of an individual's rights, but also to a disruption of the constitutional structure of the legal order.

In this sense, *a court's referral to the Constitutional Court functions as an institutional instrument for ensuring the rule of law*. A court, as an independent body administering justice, is required to act not only according to the logic of statutory legality, but also according to the logic of constitutional supremacy. If the court sees that the outcome of a concrete case may depend on a constitutionally problematic norm, its passivity may turn into a manifestation of formal legality, which does not correspond to the substantive meaning of the rule of law. This approach makes it possible to argue that the mechanical application of an existing statute by a court cannot be considered sufficient where the court has a reasonable doubt regarding the constitutionality of that statute or one of its provisions.

From the perspective of public law, a court is a body of state power that not only resolves an individual dispute, but also participates, through its activity, in safeguarding constitutional supremacy. The function of a court is not limited to applying the law in force. The administration of justice by a court is constitutional only when the normative basis underlying the resolution of a concrete case is compatible with the Constitution. Therefore, *the mechanism of judicial referrals to the Constitutional Court functions as an institutional bridge between ordinary adjudication and constitutional justice*.

This contributes to strengthening constitutionalism. The constitutionalization of the legal order is one of the central concepts of modern constitutionalism. It presupposes the subordination of the entire legal system to the Constitution, whereby the norms of different branches of law, their interpretation, and the practice of their application gradually acquire constitutional quality. Constitutionalization cannot be limited merely to the inclusion of certain provisions

⁵ G. G. Harutyunyan, *Constitutional Monitoring*, Yerevan, Njar, 2016, 13 p.

in the text of the Constitution. It is a broader process through which constitutional values, principles, and norms penetrate all areas of the legal system.

In the course of applying the law in concrete cases, it is ordinary courts that most directly encounter situations in which the formal validity of a legal norm and its practical effect may come into conflict with the requirements of the Constitution. For this reason, a court may act as the first institution to detect a constitutional problem, while its referral to the Constitutional Court may serve as an institutional signal transferring that problem from a concrete case to the sphere of constitutional justice.

The Constitutional Court has a special role in ensuring the constitutionalization of the legal field. The Constitutional Court, as a constitutional supervisory body, is called to ensure the supremacy of the Constitution, which is carried out within the framework of concrete and abstract control. As a result of the constitutional reforms of 2015, the role and importance of the Constitutional Court were emphasized in terms of ensuring the constitutionalization of the legal field⁶.

From this perspective, *the mechanism of judicial referrals to the Constitutional Court may be viewed as a practical mechanism for the constitutionalization of the legal order*. When a court detects a constitutional problem in a concrete case, it does not itself finally resolve the issue of the constitutionality of the norm; rather, it transfers the issue to the Constitutional Court as the body competent to provide the final resolution of that question. The Constitutional Court, in turn, may recognize the challenged provision as compatible with the Constitution, reveal its constitution-conforming interpretation, or declare it unconstitutional. Thus, a judicial referral may contribute not only to removing an unconstitutional norm from the legal order, but also to shaping the constitution-conforming interpretation of that norm.

This role of courts is of particular importance from the perspective of constitutional culture. Constitutional supremacy cannot be effectively ensured solely through the activity of the Constitutional Court if ordinary courts remain passive in relation to constitutional problems arising in concrete cases. An effective system of constitutional justice presupposes not only the existence of a body authorized to provide the final constitutional assessment, but also a judicial environment in which every court recognizes its role in safeguarding constitutional supremacy.

⁶ N. Davtyan, "Contemporary Matters of Constitutionalization of Legal Norms in the Republic of Armenia", *Bulletin of Yerevan University: Jurisprudence*, 2023, No. 2, - 39 p.

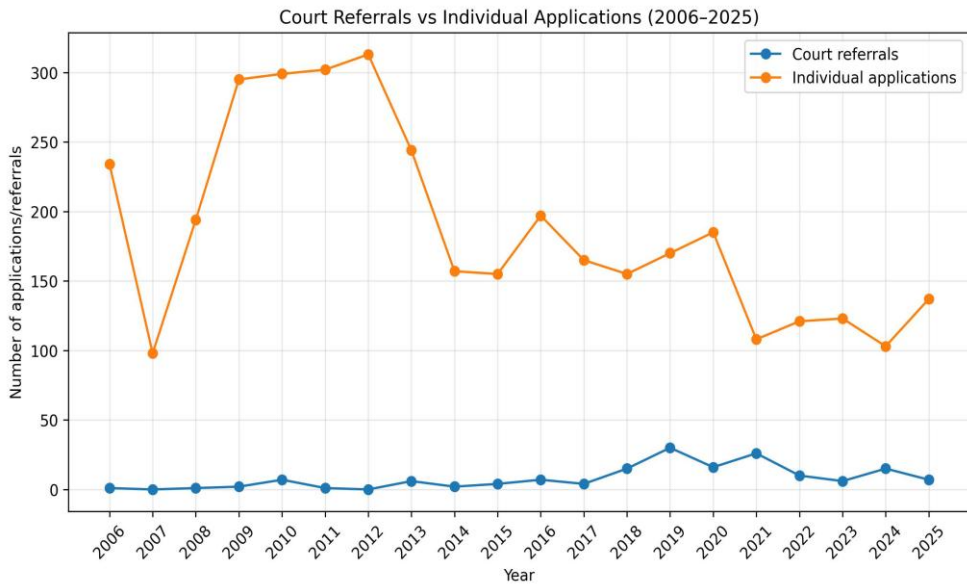
The mechanism of judicial referrals to the Constitutional Court performs a dual function. First, it has a rights-protective function, since it prevents the application of a potentially unconstitutional norm to a concrete individual. Second, it has an objective public-law function, since it serves the safeguarding of constitutional supremacy and the constitutional coherence of the legal order.

Although an individual does not possess an independent subjective right to compel a court to refer a matter to the Constitutional Court, ignoring a reasonable doubt regarding the constitutionality of a norm applicable in a concrete case may lead to a situation in which the individual's legal position is determined on the basis of a potentially unconstitutional norm. In this respect, a judicial referral to the Constitutional Court has a preventive rights-protective significance. It allows the constitutionality of the applicable norm to be clarified before the concrete dispute is finally resolved.

At the same time, from the perspective of public law, the second, objective constitutional function of a judicial referral is of greater importance. In the course of applying the law in concrete cases, ordinary courts are often the first to reveal legal regulations that, through their practical effects, raise constitutional concerns. For this reason, judicial referrals to the Constitutional Court operate as institutional signals through which problems arising in concrete cases are transferred to the sphere of constitutional justice.

These two functions are not in conflict with each other. On the contrary, they complement each other. Preventing the application of a potentially unconstitutional norm simultaneously protects the concrete individual and serves the constitutionalization of the entire legal order. In this sense, a judicial referral to the Constitutional Court should not be viewed as a narrowly procedural instrument, but as a combined mechanism for safeguarding constitutional supremacy and protecting rights.

However, it should be noted that its primary goal is not the protection of individual rights, since within the framework of this procedural authority of the court, a person participating in the case is not endowed with subjective rights.



The protection of the individual and the constitutional coherence of the legal order are mutually reinforcing, since the prevention of the application of a potentially unconstitutional norm simultaneously serves both the litigant and the public interest in constitutional legality. Article 169, Part 4 of the Constitution of the Republic of Armenia empowers courts to apply to the Constitutional Court regarding the constitutionality of normative legal acts applicable in cases pending before them.⁷ This power cannot be reduced to absolute discretion. At the same time, it cannot be understood as an automatic duty to refer every argument raised by a party. An individual does not have an autonomous subjective right to compel a court to make a referral; however, where a party raises a serious constitutional issue, the court must examine it independently and give reasons for its position. The decisive point is not whether the constitutional concern arose from the court's own initiative or from a party's motion, but whether the court itself has formed a reasoned doubt concerning an applicable norm.

The Venice Commission's position is relevant here: where direct individual access to constitutional justice is limited, preliminary questions by courts acquire

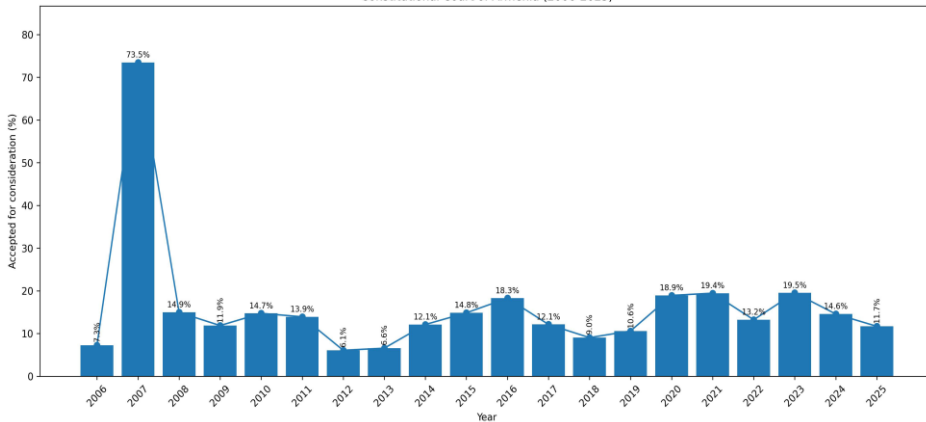
⁷ Constitution of the Republic of Armenia, as amended by the referendum of 6 December 2015, Article 169, Part 4.

particular significance, and the judge’s conviction or doubt concerning unconstitutionality may be sufficient to activate constitutional justice⁸.

Decision of the Constitutional Court DCC-1114 demonstrates why judicial passivity is constitutionally problematic. The Constitutional Court noted that in dozens of cases legal provisions previously applied by ordinary courts were later declared unconstitutional on the basis of individual applications, while the courts themselves had not raised constitutional concerns even where parties had requested a referral. This finding reveals the practical risk of a purely formal understanding of adjudication: if the court mechanically applies a norm despite a serious constitutional concern, the individual may suffer the consequences of an unconstitutional rule and the legal order may lose an opportunity for constitutional correction.

From the perspective of strengthening constitutionalism and forming a high-quality constitutional culture, this is problematic, because although individual applications are significantly more numerous than judicial applications, however very few individual applications are considered by the Constitutional Court.

Individual Applications Accepted for Consideration as a Percentage of Submitted Individual Applications
Constitutional Court of Armenia (2006-2025)



We have already noted that after Decision of the Constitutional Court DCC-1114⁹ the number of court applications addressed to the Constitutional Court registered a significant increase, but later the picture changed, which may also be due to certain requirements presented by the Constitutional Court to the court applications.

One of the key conditions for a court’s referral to the Constitutional Court is the existence of “*reasonable doubt*”. This standard defines the threshold at which a

⁸ Venice Commission, Study on Individual Access to Constitutional Justice, CDL-AD(2010)039rev, adopted at the 85th Plenary Session, Venice, 17-18 December 2010, para. 216.

⁹ https://www.concourt.am/decision/decisions/63402520ac4d3_sdv-1114.pdf

court's constitutional vigilance turns into a legal basis for making a referral to the Constitutional Court.

The recent case law of the Constitutional Court shows that "reasonable doubt" cannot be equated with any doubt, a judge's general disagreement, or a subjective assumption. It must have an objectified, reasoned, and concrete constitutional basis. A judge's inner conviction that the applicable norm may contradict the Constitution must be formed as a result of legal analysis and must be expressed in the referral with sufficient reasoning.

In its PDCC-83¹⁰ of 6 May 2022, the Constitutional Court stated that a judge's subjective position regarding the constitutionality of the challenged norm cannot be based merely on assumptions or unreasoned judgments. A court's decision to refer a matter to the Constitutional Court must contain legal analysis substantiating the alleged unconstitutionality of the challenged legal provision, which has served as an objective basis for the formation of the judge's inner conviction.

In its PDCC-98¹¹ of 18 June 2024, the Constitutional Court reaffirmed that the meaning of concrete constitutional review based on judicial referrals lies in preventing the resolution of a concrete dispute on the basis of an allegedly unconstitutional norm. Under these conditions, special significance is attached to the comprehensive reasoning presented by the court, which must reveal the existence of "reasonable doubt" within the meaning of Article 169, part 4, of the Constitution.

In its PDCC-36 of 20 March 2026¹², the Constitutional Court further developed this standard in another important direction. The Constitutional Court noted that the court must be convinced that it is impossible to overcome, through judicial interpretation, the reasonable doubt concerning the contradiction of the applicable norm with the Constitution. In other words, the court must demonstrate that the challenged norm cannot be interpreted in a manner that would make its application compatible with the Constitution.

This approach gives the judicial referral to the Constitutional Court a certain *ultima ratio* character. The court must first attempt to interpret the legal norm in a manner consistent with the Constitution, and only in the absence of such a possibility may it refer the matter to the Constitutional Court. This approach is theoretically justified insofar as it contributes to improving the quality of referrals submitted to the Constitutional Court and prevents unsubstantiated referrals.

¹⁰ https://www.concourt.am/decision/decisions/627a608079937_sdav-83.pdf

¹¹ https://www.concourt.am/decision/decisions/66755bf24a90d_sdav-98.pdf

¹² https://www.concourt.am/decision/decisions/69c148df73034_sdav-36.pdf

Nevertheless, an overly strict application of this standard may also generate the opposite risk. If “reasonable doubt” turns into a requirement of almost preliminary proof of unconstitutionality, courts may refrain from referring matters to the Constitutional Court out of concern that their referral will be deemed insufficiently reasoned. In that case, the judicial referral may lose its preventive rights-protective and public-law significance.

Accordingly, the standard of “reasonable doubt” must be interpreted in a balanced manner. It must be sufficiently strict to prevent formal, general, or unreasoned referrals, but not so high as to neutralize the constitutional initiative of courts and their institutional function of transferring constitutional problems to the Constitutional Court.

Constitution-conforming interpretation is an important instrument in the process of constitutionalizing the legal order. It allows a court to apply a legal norm in accordance with the requirements of the Constitution without immediately referring the matter to the Constitutional Court. However, this instrument has its limits.

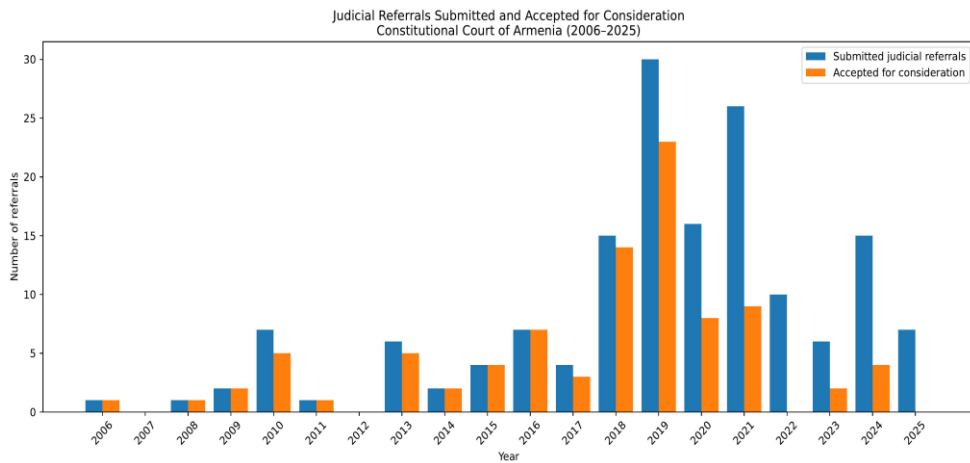
A court may apply constitution-conforming interpretation only where the challenged or applicable norm allows such interpretation. If the text, structure, legal context, or binding practice of application of the norm leads to a meaning that cannot be reconciled with the Constitution, the court cannot overcome the constitutional problem through interpretation. In such a case, it is necessary to refer the matter to the Constitutional Court.

The relationship between constitution-conforming interpretation and referral to the Constitutional Court should be constructed not on the logic of mutual exclusion, but on the logic of sequence. An ordinary court must first assess whether the norm can be applied through an interpretation consistent with the Constitution. If this is possible, the court may resolve the case without referring the matter to the Constitutional Court. However, if such interpretation is impossible or would result in an obvious rewriting of the norm, the court must raise the issue before the Constitutional Court.

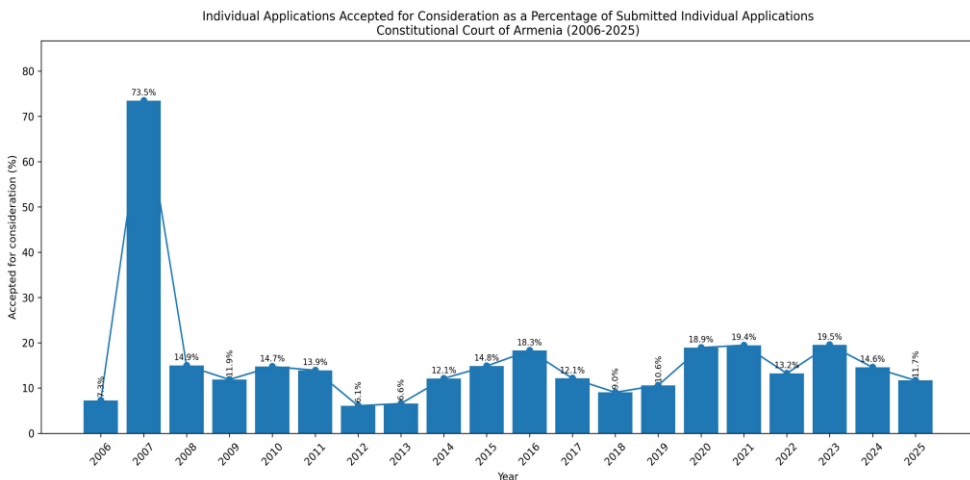
In this context, it is important to distinguish between two situations. In the first situation, the norm allows several possible interpretations, one of which is compatible with the Constitution. In that case, the court may choose the constitution-conforming interpretation. In the second situation, the norm, in its final meaning, allows only such an application that gives rise to reasonable doubt regarding its contradiction with the Constitution. In this case, the court cannot limit itself to interpretation and must activate the mechanism of referral to the Constitutional Court.

Thus, the necessity of referring a matter to the Constitutional Court should arise not in every case involving a constitutional question, but where the court demonstrates in a reasoned manner that the problem cannot be overcome through constitution-conforming interpretation. However, this requirement must not turn into such a burdensome obligation of reasoning that it makes referral to the Constitutional Court practically almost impossible for the court.

It is precisely these criteria that, in our view, account for the fact that a substantial proportion of applications submitted by courts are admitted for examination by the Constitutional Court.



At the same time, the statistical data reveal a persistently low admission rate for individual applications.



Conclusion

Judicial referrals to the Constitutional Court in the Republic of Armenia should be understood as more than a procedural instrument. They are an institutional mechanism for safeguarding the rule of law, constitutional supremacy and the constitutionalization of the legal order. Ordinary courts, by applying law in concrete cases, are often the first to encounter the practical constitutional consequences of normative legal acts. Their referral is therefore a means of transferring a constitutional problem from the sphere of ordinary adjudication to constitutional justice.

The mechanism performs a dual function. It protects the individual from the possible application of an unconstitutional norm and at the same time serves the objective constitutional order by enabling the Constitutional Court to remove unconstitutional norms or reveal their constitution-conforming meaning. These two functions are not opposed; they are mutually reinforcing.

The standard of reasonable doubt is central to the effectiveness of this mechanism. It must be substantive, reasoned and connected with the applicable norm and the concrete case. It must also require the court to examine whether the problem can be overcome through constitution-conforming interpretation. However, it must not become so demanding that it discourages judicial referrals and weakens the constitutional initiative of ordinary courts.

The statistical data for 2006-2025 show that the activity of courts in referring matters to the Constitutional Court has fluctuated considerably. These data, together with the development of the Constitutional Court's case law, demonstrate the need for a balanced approach.

The comparison between judicial referrals and individual applications reveals an important institutional asymmetry. Individual applications constitute the numerically dominant channel of access to the Constitutional Court, yet their admission rate remains persistently low. Judicial referrals, by contrast, are fewer in absolute numbers, but a relatively substantial part of them is admitted for examination¹³. This difference suggests that the judicial referral mechanism performs a filtering and institutionalizing function: the constitutional issue reaches the Constitutional Court after being identified and legally framed by a court. Therefore, the effectiveness of this mechanism depends not only on the formal right of courts to refer constitutional questions, but also on the quality of judicial

¹³ Chekhovich T., "Institute of Constitutional Complaint in the Republic of Kazakhstan: Some Issues of Theory and Practice", *Legality*, No. 135, 2024, - 68 p.

reasoning and the willingness of courts to treat constitutional doubts as matters of public-law significance.

The future development of the Armenian model should aim at ensuring the quality of referrals while preserving the role of ordinary courts as active participants in the protection of constitutional supremacy.

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

Reference list

1. Constitution of the Republic of Armenia, as amended by the referendum of 6 December 2015.
2. Constitutional Law of the Republic of Armenia of 17 January 2018 “On the Constitutional Court”.
3. Decision of the Constitutional Court of the Republic of Armenia DCC-1114 of 18 September 2013.
4. Procedural Decision of the Constitutional Court of the Republic of Armenia PDCC-83 of 6 May 2022.
5. Procedural Decision of the Constitutional Court of the Republic of Armenia PDCC-98 of 18 June 2024.
6. Procedural Decision of the Constitutional Court of the Republic of Armenia PDCC-36 of 20 March 2026.
7. Annual Reports of the Constitutional Court of the Republic of Armenia, 2006–2025.
8. European Commission for Democracy through Law (Venice Commission), Rule of Law Checklist, CDL-AD(2016)007, adopted at the 106th Plenary Session, Venice, 11–12 March 2016.
9. European Commission for Democracy through Law (Venice Commission), Study on Individual Access to Constitutional Justice, CDL-AD(2010)039rev, adopted at the 85th Plenary Session, Venice, 17–18 December 2010.
10. Harutyunyan G. G., *Constitutional Monitoring*, Yerevan, Njar, 2016.
11. Davtyan N., “Contemporary Matters of Constitutionalization of Legal Norms in the Republic of Armenia”, *Bulletin of Yerevan University: Jurisprudence*, 2023, No. 2, pp. 36–43.
12. Sargsyan A. G., “Constitutional Submissions by Courts in the Context of the Human Right to Constitutional Justice”, *Scientific article*.
13. Chekhovich T., “Institute of Constitutional Complaint in the Republic of Kazakhstan: Some Issues of Theory and Practice”, *Legality*, No. 135, 2024, pp. 59–76.

14. Kelsen H., “Judicial Review of Legislation: A Comparative Study of the Austrian and the American Constitution”, *The Journal of Politics*, 1942.
15. Kovalčík M., “Constitutional Referrals by Ordinary Courts: A Platform for Judicial Dialogue and Another Toolkit for Judicial Resistance?”, *European Constitutional Law Review*, 2024.
16. Romeo G., “The Conceptualization of Constitutional Supremacy: Global Discourse and Legal Tradition”, *German Law Journal*, 2020.