

YEREVAN STATE UNIVERSITY

Faculty of Law

STATE AND LAW

Scientific Journal

volume 102

YEREVAN 2026

The international scientific journal is published upon the decision of the Academic Council of Yerevan State University.

Editor-in-Chief

Gagik Ghazinyan, Doctor of Legal Sciences, Professor Emeritus, Yerevan State University; Academician of the National Academy of Sciences of the Republic of Armenia, Republic of Armenia

Craig Hoffman, Professor Emeritus, United States Legal Discourse Georgetown University Law Center, United States of America

Jane Ching, Professor, Nottingham Trent University, United Kingdom

Pamela Henderson, Senior Lecture, Nottingham Trent University, United Kingdom

Deputy Editor-in-Chief

Samvel Dilbandyan, Doctor of Legal Sciences, Professor, Yerevan State University, Republic of Armenia

Leonid Golovko, Professor, Moscow State University, Russian Federation

Editorial Board

Harutyun Khachikyan, Doctor of Legal Sciences, Professor, Yerevan State University, Republic of Armenia

Nikolay Stoyko, Professor, Saint Petersburg State University, Russian Federation

Gevorg Danielyan, Doctor of Legal Sciences, Professor, Yerevan State University, Republic of Armenia

Jakub Jan Zięty, Professor, University of Warmia and Mazury in Olsztyn, Republic of Poland

Artur Vagharshyan, Doctor of Legal Sciences, Professor, Yerevan State University, Republic of Armenia

Gurgen Petrosyan, Professor, International Nuremberg Principles Academy, Federal Republic of Germany

Taron Simonyan, PhD, Associate Professor, Yerevan State University, Republic of Armenia

Janez Kranjc, Professor Emeritus, University of Ljubljana, Republic of Slovenia

Anahit Manasyan, PhD, Associate Professor, Yerevan State University, Republic of Armenia

Martin Killias, Professor Emeritus, University of Zurich, University of Saint Galle, Swiss Confederation (Switzerland)

The Journal "State and Law" is a peer-reviewed scientific journal dedicated to publishing high-quality research in legal theory and practice, comparative law, constitutional studies, and public governance. With a strong focus on both Armenian and international legal developments, the journal seeks to foster scholarly dialogue across diverse legal systems and traditions. In addition to traditional legal scholarship, *The Journal "State and Law"* also welcomes interdisciplinary contributions that offer novel insights into the law and its broader societal implications.

Should you require any further information or have any queries regarding the submission process, please contact us via email at state_and_law@ysu.am.

CONTENTS

CONSTITUTIONAL LAW

<i>Gagik Harutyunyan</i>	
The Doctrine of a Stable State in the Light of Constitutional Immunity. <i>A Methodological Perspective</i>	5
<i>Sayad Badalyan</i>	
Protection of Community Interests by the Prosecutor’s Office: Constitutional and Legal Challenges	32
<i>Norayr Avagyan</i>	
Legal Challenges of Judicial Referrals to the Constitutional Court in the Republic of Armenia	47

ADMINISTRATIVE LAW

<i>Kristine Aleksanyan</i>	
Protection of Legitimate Expectations in the Context of Revocation of Unlawful Administrative ACTS	61

CRIMINAL LAW AND CRIMINOLOGY

<i>Anna Margaryan, Gevorg Barseghyan, Bagration Darbinyan</i>	
Contemporary Issues of the Illegal Circulation of Human Organs or other Objects Deemed Equivalent Thereto under the Criminal Code	74
<i>Melik Melikyan, Elina Khachatryan</i>	
Problems of the Protection of the Right to Life in the Armed Forces	96

PROCEDURAL LAW

<i>Dmitry Chekulaev</i>	
The Need for a Doctrine of Jurisdiction in Criminal Procedural Science (for the Post-Soviet States)	117
<i>Samvel Dilbandyan, Areg Yolchyan</i>	
Certain Observations Regarding the Classification of Criminal Procedural Sanctions among the Means of Procedural Coercion	131
<i>Sergey Meghryan, Gohar Avagyan</i>	
Issues of Classification of the Types of Actions in the Administrative Proceedings of the Republic of Armenia	142
<i>Tigran Markosyan, Satik Ghimoyan</i>	
Revocation of Interim Measures in Armenian Administrative Proceedings: Disrupted Procedural Balance and the Means of Restoring IT	165

THE DOCTRINE OF A STABLE STATE IN THE LIGHT OF CONSTITUTIONAL IMMUNITY: A METHODOLOGICAL PERSPECTIVE

Gagik Harutyunyan*

Abstract. This article is devoted to a comprehensive analysis of the conceptual foundations of the doctrine of resilient statehood and constitutional immunity. It is argued that the effectiveness of the republican form of government is determined not by the formal perfection of the constitutional text, but by the real capacity of the state system for self-regulation, self-restraint, and the reproduction of its institutional identity. The article introduces the concept of the "constitutional republic" as a social immune system, identifies the symptoms of constitutional imbalance — including institutional deformation, the erosion of trust, civic apathy, and the phenomenon of "managed immunodeficiency" - and examines partocracy as a pathological transformation of the republic. Special attention is devoted to the autoimmune effect; whereby protective mechanisms turn against the very foundations of the constitutional order they were designed to safeguard. The article advances a broad, system-functional understanding of constitutional immunity as the capacity of the constitutional order for self-preservation, the restoration of normative equilibrium, and the reproduction of public trust, and demonstrates that the guarantee of constitutional immunity constitutes the necessary and sufficient precondition for ensuring sustainable statehood.

Keywords - *“Constitutional republic”, Constitutional immunity, Resilient statehood, governance system, constitutionalism, constitutional responsibility, social immune system, institutional immunity, Society’s immunodeficiency, Partocracy as a pathological transformation of the republic, deformation of constitutional balance, autoimmune effect.*

1. Introduction

The millennia-long history of nations and peoples shows that, for sustainable development, what is fundamentally important above all is the institutional formation of the state. This idea, in concentrated form, also runs through the study

* **Gagik Harutyunyan** – Doctor of Law, Professor, Chairman of the Board of the International Analytical Center "Constitutional Culture", email – ggharut@yahoo.com, ORCID: 0009-0004-0241-1425



by Daron Acemoglu and James Robinson, *Why Nations Fail*, which has received broad international resonance¹.

However significant a country's geographic location, climate, culture, religion, and the personality of a political leader may be, the decisive factor of sustainable development remains precisely the quality of the state's institutional design. What is at issue is the necessary and sufficient inclusiveness of political and economic institutions. A proportionate culture of interaction that excludes arbitrariness and one-man rule. Rule of law, decision-making on the basis of consensus in the presence of an effective system of checks and balances. By contrast, any persistent forms of dictatorial regime, in the long run, predictably lead to institutional failure.

This fundamental approach underlies our doctrinal proposals formulated over decades and oriented toward the institutional formation of resilient statehood within the paradigm of evolutionary development.

A key practical question arises – how can obstacles to the institutional formation of the state be overcome, social life be endowed with resilience, and development be ensured on the basis of the paradigm of evolutionary change?

Our principled conviction is that the way out lies in entrenching the concept of the “constitutional republic,” endowed with a necessary and sufficient constitutional immunity system, with its full value-based and procedural-structural integrity.

From this perspective, constitutional immunity should be understood as a dynamic mechanism that secures the harmony of the constitutional system across all manifestations of social development. It refers to the capacity of the constitutional system, operating in a mode of continuity, to identify, assess, and overcome any deviations from regulation of constitutional law that arise in real social and political practice.

2. Resilient statehood as a new and real form of the existence of republican governance

In contemporary constitutional discourse, the republican form of government is often presented as an institutionally complete and normatively self-sufficient model whose effectiveness is allegedly guaranteed by the existence of principles and structures entrenched in the constitutional text. However, historical and comparative-legal experience shows that the formal establishment of republican governance, by itself, does not yet ensure the viability of statehood and the resilience of the governance system. On the contrary, in many states the classical

¹ Daron Acemoglu and James A. Robinson, *Why Nations Fail*, New York, 2012.

institutions of republican rule have been preserved externally, while their real functioning has undergone substantial deformation.

In this context, it is necessary to distinguish between the normative model of republican governance and its real form of existence. The latter is not reducible to the presence of separation of powers, electoral mechanisms, or representative bodies; rather, it is expressed in the state system's capacity for self-regulation, self-restraint, and the reproduction of its own institutional identity in conditions of crisis. It is precisely this capacity that defines the content of resilient statehood.

Resilient statehood should not be understood as a state free of crises. On the contrary, resilience is characterized not by the absence of shocks, but by institutional resistance to them. A resilient republic is a governance system in which political, social, or security crises do not lead to the deformation of the constitutional order, pathological growth in the concentration of power, or the privatization of public authority. In such a system, constitutional institutions function not as formal attributes, but as real counterweights.

In this sense, resilient statehood functions as the real form of the existence of republican governance, in which legal norms are supplemented by institutional memory, and institutional memory, in turn, by the continuity of values. Without these components, a republic becomes an imitative system in which the constitutional order preserves an external form but loses its self-regulating potential.

An important characteristic of a resilient republic is that subjects of power act not only in conditions of legal coercion, but also within a culture of self-restraint. This presupposes that political power recognizes its limits not only because they are entrenched in the constitution, but also because they are perceived as a necessary condition for preserving public trust and statehood. Such self-restraint is formed through long institutional practice and a developed constitutional culture.

Accordingly, the effectiveness of republican governance cannot be measured exclusively by the "precision" of the legal model or by the quality of the constitutional text. It must be assessed based on how capable a given state is of reproducing the essence of republican governance from generation to generation, resisting the temptation to usurp power, and preventing the transformation of public authority into an instrument of domination by a party or group.

This line of reasoning leads to the conclusion that resilient statehood is not an additional property of the republican form of government, but its real criterion. Without resilient statehood, a republic remains a formal proclamation, and its institutions remain vulnerable to systemic degradation.

Summing up, it can be stated that the proposed approach is scientifically innovative, because it:

- departs from the classical normativism of constitutional law, within which the republican form of government is evaluated primarily through the prism of the constitutional text, the classification of powers, and compliance with the legal model;
- shifts the focus of analysis from formal legal models to functional ontology, posing the question not “how is it written,” but “how does the republic actually function”;
- integrates legal, institutional, value-based, cultural, and socio-anthropological components.

In this sense, the proposed approach is closer not to classical constitutional engineering, but to contemporary interdisciplinary directions devoted to resilient statehood (a stable state) and constitutional culture, while differing from them in its systemic integrity.²

We also consider it necessary to emphasize that, in recent years, ensuring the constitutionality of the social organism has, with good reason, been linked by a number of researchers to the concept of the state’s sustainable development. In particular, a systematized model of protecting democratic order has been proposed, including seven basic pillars – the rule of law, judicial independence, fair and competitive elections, effective anti-corruption mechanisms, freedom and accessibility of information, civic participation, and the institutional accountability of public authority. At the same time, it is emphasized that democracy’s resilience is ensured not only by formal legal constructs, but also by entrenched institutional practices and resilient behavioral models.³

Contemporary research also confirms that state resilience is formed at the intersection of effective institutional constraints on power and the political-legal system’s capacity for adaptation. The weakening of checks and balances

² A systems approach is an approach that views the world as a network of interconnected relationships, where understanding the whole is the key to understanding its parts.

³ Carrier, M.; McKenzie, A.; Carothers, T. **U.S. Democratic Backsliding in Comparative Perspective** // Carnegie Endowment for International Peace. — Washington, D.C., 2025; Garden-Monheit, H.; Joseph, T. **Building a More Effective, Responsive Government: Lessons Learned from the Biden–Harris Administration**. — New York: Roosevelt Institute, 2025; Brookings Institution. **Democracy Playbook 2025: 7 Pillars to Defend Democracy**. — Washington, D.C., 2025 Poyarkov S. Yu. National security in the transformation of modern constitutionalism: from declarative norms to institutionalization // State and Law. - 2025 (in Russian); Bromley-Trujillo R. The State of American Federalism 2024–2025 // *Publius: The Journal of Federalism*. — 2025; Paz H. R. From Educational Analytics to AI Governance: Transferable Lessons from Complex Systems Interventions. — arXiv, 2025.

predictably leads to a pathological concentration of power, whereas a developed constitutional culture and accumulated institutional memory ensure the resilience of the state organism even in conditions of deep systemic turbulence.

Sharing and supporting these approaches, we consider it necessary to emphasize in particular that our proposed doctrinal concept of resilient statehood not only takes these theoretical positions into account, but also constitutes a comprehensive, integral scientific-theoretical and practice-oriented model. This concept brings the problem of resilience to a qualitatively new level of comprehension and regulation both within the framework of domestic processes and in the plane of supranational and inter-system relations.

3. The concept of the “constitutional republic” and the problem of the distortion of constitutionalism

In legal scholarship and international law-enforcement practice, the concepts of “absolute monarchy” and “constitutional monarchy” are used consistently. With respect to republics, such qualifying characteristics are generally not applied. Meanwhile, reality shows that, even under a republican form of government, relations can form that, in their essence, are close to absolute monarchy. Even with the formal presence of a constitution *de jure*, a *de facto* political or person-based one-man rule can arise.

In a certain sense, such a system proves even more reactionary than an absolute monarchy, because key legal relations within it acquire an illegitimate character and are masked by pseudo-legitimization. In such societies, one-man rule, arbitrariness, patronage, insecurity, lies, and institutional falsehood become dominant.

This reality means that, despite the formal presence of a constitution, constitutionalism is in fact absent – basic constitutional values are distorted and do not become the norm of practical life.

The term “constitutional republic” underscores a fundamentally important circumstance – the presence in real social life of a complex of fundamental characteristics of the republican form of public governance:

1. The bearer of power are the people. The people actually exercise power directly and through the bodies of state power and local self-government provided for by the Constitution, as well as through officials.
2. The Constitution clearly establishes and guarantees in practice the order of organizing the highest state power – the procedure for forming state bodies, their interrelationship, the population’s participation in forming power, the principle of electiveness as the basis of legitimization.

3. The procedure and terms for delegating power, as well as accountability mechanisms, are established and actually observed.
4. The rule of law is guaranteed. Public authority is limited by the fundamental rights and freedoms of human beings and citizens as a directly applicable law.
5. State power is exercised on the basis of the Constitution and laws with a separation and balance of the legislative, executive, and judicial branches. The functional, restraining, and counterbalancing powers of state bodies are delimited, procedures for implementation are defined, a dynamic balance of powers is ensured.
6. Clear procedures are provided for constitutional responsibility of the highest bodies of state power and their officials.
7. Political disputes are resolved within the legal field, and not vice versa, i.e. legal disputes are not resolved using political instruments.
8. An effective mechanism exists for identifying, assessing, and restoring every violation of constitutional balance.

The problem lies not only in the constitutional entrenchment of these provisions (i.e., in ensuring a static balance of the relations of constitutional law), but also in ensuring a dynamic balance – through the real guarantee of constitutionalism and the actual functioning of the relevant mechanisms in social practice.

A characteristic feature of the republican form of government is also that it relies to a high degree on the country's political architecture and is sensitive to the influence of political expediency. This often negatively affects the system of separation and dynamic balance of powers, undermining the foundations of the republican order.

The historical experience of many states that chose a republican form of government attests that the objective foundations inherent in this form gradually become blurred, even leading to the establishment of the diktat of a person or of political-economic oligarchic systems.

Accordingly, a form of government cannot qualify as a “constitutional republic” in those cases where the constitutionally entrenched republican system in real life degrades and is transformed into personalist one-man rule, a partocratic state, or a criminal-oligarchic construct. This is possible under presidential, parliamentary, or semi-presidential forms of the republic.

Without overburdening the presentation with particular examples, we note that every reader can compare the indicated criteria with the reality of the country in which they live and see which of the fundamental characteristics are truly present and which manifest in a distorted form. At the same time, it is important to take

their interdependence into account. The absence or mutation of one characteristic is capable of nullifying the existence of the entire system.

In this regard, the primary task becomes identifying the “ABCs” of the existence of the constitutional republic and, in particular, the nature and principal causes of the distortions of constitutionalism, so that – on the basis of diagnostics and the lessons of history – a formula can be proposed for a state capable of dynamic development and possessing a necessary and sufficient immune system.

4. The constitutional republic as a social immune system

Analysis of the contemporary republican form of government increasingly reveals the limits within which classical legal and institutional categories can no longer adequately assess the viability of statehood. Especially in conditions of systemic crises, it becomes evident that the effectiveness of the republic is determined not only by the structural design of governance, but also by its capacity for self-defense, self-regulation, and the preservation of institutional identity. In this sense, the republic can be understood as a social immune system endowed with its own protective mechanisms. A constitutional state is sustainable to the extent that it possesses dynamic equilibrium and a developed social immunity.

The concept of a social immune system makes it possible to understand republican governance not as a mechanical sum of institutions, but as a function of a viable social organism. Like biological systems, the primary goal of immune mechanisms in the republic is the recognition and neutralization of external and internal threats without the system’s self-destruction. Such threats may include external pressure as well as internal processes such as usurpation of power, institutional deformation, or the loss of public trust.

The social immunity of republican governance is formed at several interrelated levels. First and foremost is institutional immunity, expressed in the real functionality of checks and balances. From the moment these mechanisms cease to respond to the concentration of power or to legal deviations, the republic loses its primary protective layer.

The second level consists of normative-cultural immunity, determined by the depth of constitutional culture. If legal norms are perceived as formal requirements and the Constitution as a document subject to political expediency, the republic becomes vulnerable even under the most thoughtfully designed institutional architecture. Constitutional culture in this sense functions as “immune memory,” enabling society to recognize and reject practices that contradict the republican order.

The third level is connected with public consciousness and the sphere of social trust. Society's trust in the state and its institutions is the most important component of social immunity, because it protects the republic not only through legal coercion, but also through internal legitimacy. When trust is undermined, even lawful actions may be perceived as a seizure of power, while institutional resistance may be perceived as political retaliation.

A disruption of the social immune system manifests in the republic's "autoimmune" reactions, when, under the pretext of protecting power, mechanisms are launched that in fact destroy the foundations of the republican order. In such situations, control turns into suppression, security into restrictions on freedoms, and stability into stagnation. This phenomenon is especially characteristic of party-state systems in which the state is identified with the ruling political subject.

Society's immune system is a set of institutions, norms, values, and practices that ensure self-preservation, resilience, and a society's capacity to adapt to internal and external threats. It includes the state under the rule of law, constitutional culture, independent courts, free media, education, civic solidarity, and feedback mechanisms that make it possible to identify, localize, and neutralize destructive processes without destroying the whole.

Society's immunodeficiency is a condition of weakening or loss of these protective mechanisms in which society loses the ability to recognize threats, the causes of disruptions of constitutional balance, and to respond adequately to them. It manifests in the erosion of institutions, the undermining of the rule of law, the degradation of values, distrust, and apathy, which makes the system vulnerable to corruption, authoritarianism, violence, and external pressure.

In living organisms and in nature as a whole, an immune reaction is a natural necessity; the most severe disease is immune failure or immunodeficiency. In the social dimension, society's immune system rests not only on ensuring constitutional equilibrium – education, public health, social protection, effective institutions, and cultural values are also of substantial importance. In other words, a society's "immunity" is a systemic phenomenon that includes normative, institutional, and value-based or cultural components that operate jointly and mutually reinforce one another.

Understanding the republic as a social immune system makes it possible to approach the problem of resilient statehood in a new way. A resilient republic is a system in which immune mechanisms operate in a preventive, rather than reactive, mode. Threats are recognized and neutralized at early stages without resorting to legal emergency measures or institutional deformations. Such a republic does not suppress change, but manages it, preserving its own identity.

Thus, the republic as a social immune system function not only as a theoretical metaphor, but also as a functional analytical model. It makes it possible to reveal the real viability of republican governance, assess the depth of constitutional culture, and understand why some republics withstand systemic shocks while others become formal governance systems that are actually internally decomposed.

5. Partocracy as a pathological transformation of the republic

One of the most dangerous and, at the same time, most concealed deviations of the republican form of government is the formation of partocracy, in which a political party ceases to be an instrument for forming and representing the public will and gradually becomes the real bearer of state power. As a rule, this process does not unfold according to an openly anti-constitutional scenario. On the contrary, it often develops under the formal preservation of the institutions of republican governance, using their external legitimacy as a means of strengthening its own domination.

Partocracy should be understood not as an alternative model of governance, but as a pathological transformation of the republic. It arises at the moment when the source of public power effectively shifts from constitutional institutions to party structures, and the state begins to function not for public interest, but only for party reproduction. Under these conditions, the fundamental principles of the republic – separation of powers, political responsibility, and the rule of law – remain predominantly just declarative.

The key mechanism of a partocracy's formation is the systemic neutralization of institutional counterweights. When parliamentary oversight, judicial independence, or constitutional review are subordinated to the logic of party loyalty, these mechanisms cease to perform their function of limiting public power. As a result, the concentration of power is presented as "governance efficiency," whereas in reality the republican system undergoes functional disintegration.

Characteristically, partocracy can form both in multiparty and in formally competitive political systems. Multiparty politics, by itself, is not a guarantee of the republic's viability if parties do not act in competition, vying for public interests, but with the aim of controlling and reproducing state resources. Under such conditions, political competition turns into a formalized ritual, and electoral processes into a mechanism of legitimization.

In conditions of partocracy, public power loses its impersonal and non-particular character. State institutions begin to be identified with the ruling party, while the transfer of power is perceived not as a natural constitutional process but

as an existential threat to the entire system. Precisely for this reason, in partocratic systems, the transfer of power is often accompanied by deep crises, the deformation of legal institutions, and an intensification of social polarization.

One of the most dangerous consequences of partocracy is the destruction of the republic's capacity for self-defense. Identifying itself with the party, power loses the capacity for self-restraint, as a result of which any criticism, oversight, or institutional resistance is perceived as hostile action. Under such conditions, the republic finds itself in an "autoimmune" state, using its own protective mechanisms against itself.

From this standpoint, partocracy is not only a political but also a deeply constitutional problem. It testifies to the weakening of constitutional culture, a rupture of institutional memory, and the neutralization of the value of public power. Without restoring these components, the republican form of government remains vulnerable regardless of the quality of the constitutional text or the complexity of institutional design.

Accordingly, overcoming partocracy is impossible exclusively by legal or organizational means. It requires a "biological" restoration of republican governance, i.e., the formation of such value-based and institutional conditions under which the party returns to its natural boundaries and the state restores its public and non-particular character. Only in this case is a return of the republic to its genuine form of resilient statehood possible.

6. Key qualities of "resilient statehood"

On the indicated foundation of constitutional law, resilient statehood possesses the following key qualities:

1. **Effective governance and institutional capacity.** Public authorities are functional, transparent, accountable, and capable of withstanding crises without systemic collapse.
2. **Social cohesion.** Mutual respect, trust, and cooperation are maintained in society, both as a form of everyday solidarity and as a resource of public resilience.
3. **Economic resilience.** Sustainable growth, manageable inflation, and low unemployment are ensured, infrastructure and mechanisms of effective fiscal and monetary policy are developed; resilience to external shocks is present. Long-term planning for the rational use of natural resources is entrenched; proactive measures against environmental degradation are prioritized.
4. **Security and crisis-response capacity.** The necessary internal and external security and a sufficient capacity to respond to threats are ensured.

5. **A stable political environment.** Politics is predictable. There are no violent forms of struggle for power, mechanisms operate for the peaceful resolution of disputes within the legal field (an independent judiciary, effective mediation procedures, etc.). There is active civic involvement in political processes (elections, public discourse, community initiatives) . There are guarantees for freedom of speech, freedom of the press, and freedom of assembly, all considered conditions of accountability and constructive correction of government action.
6. **Cultural continuity and inclusiveness.** Respect for national identity, spiritual values, and cultural traditions is combined with acceptance of diversity and openness to innovations that do not destroy the value foundation of society.

7. Refinement of the conceptual framework

The constitutional order of resilient statehood presupposes clarification of the conceptual apparatus, among which of primary importance is a correct substantive understanding of the Constitution itself.

In legal scholarship, the view is widespread that the meaning of the verb “to constitute” (that is, to found, institute, establish) historically was not reducible either to limiting political power in the name of individual rights, or to imposing upon government the duty to follow general moral norms.⁴ “To constitute,” in its original sense, means first and foremost “to found,” “to order,” “to institute.”

⁴ Holmes S., “Constitutions and Constitutionalism” // *Comparative Constitutional Review*, 2012, No. 3(88), p. 61. (In the United States, numerous valuable works have been published on contemporary constitutionalism, in which the question of constitutionalism is considered primarily from the standpoint of the actual limitation of power). Holmes S. “Constitutions and Constitutionalism” // *The Oxford Handbook of Comparative Constitutional Law* / Ed. by M. Rosenfeld, A. Sajó. Oxford University Press, 2012; Michel Rosenfeld, *Comparative Constitutionalism: Cases and Materials* (2d ed., West 2010) (with Baer, Dorsen, and Sajó); *American Constitutionalism: From Theory to Politics*. Book by Stephen M. Griffin. Princeton University Press, 1996; *Constitutional Revolutions: Pragmatism and the Role of Judicial Review in American Constitutionalism*. Book by Robert Justin Lipkin. Duke University Press, 2000; *The Supreme Court and American Constitutionalism*. Edited by Bradford P. Wilson and Ken Masugi. The Ashbrook Series on Constitutional Politics. Rowman & Littlefield, 1997 (softcover); *Progressive Constitutionalism*. Book by Robin West. Duke University Press, 1994; *Constitutionalism: The Philosophical Dimension*. Book by Alan S. Rosenbaum. Greenwood Press, 1988; *Liberalism, Constitutionalism and Democracy*. Book by Russell Hardin. Oxford University Press, 1999; *American Constitutionalism Abroad: Selected Essays in Comparative Constitutional History*. Book by George Athan Billias. Greenwood Press, 1990; “Progressive and Conservative Constitutionalism.” Journal article by Robin West, M. Tushnet, R. Epstein, Raoul Berger, Robert Bork. *Michigan Law Review*, Vol. 88, 1990; *American Constitutionalism: From Theory to Politics*. Stephen M. Griffin. One of *Choice’s* Outstanding Academic Books of 1997; *The*

Thus, in McIlwain, Cicero's words *haec constitutio* ("they establish") are treated as one of the early uses of the concept of "constitution" as applied to a form of government.⁵ Stephen Holmes, synthesizing historical material, concludes that the primary function of the earliest constitutions was not to limit already existing power, but to create power out of a condition of powerlessness.⁶

Proceeding from this logic of origin, the concept of "constitution" (*constitutio* – to establish, to order, to found) is traditionally characterized as the Fundamental Law of the state, possessing the highest legal force, in which the following are established:

- a. the foundations of the state system;
- b. guarantees for ensuring and protecting human and civil rights and fundamental freedoms;
- c. the system of state power, its functions, principles, and the procedure for its organization;
- d. the legal limits of exercising political power and realizing the individual's political, economic, and social freedoms.

At the same time, in academic literature and at international forums, the relevance persists of problematic aspects regarding the axiology of constitutions, the political foundations of constitutionality, trends in liberal constitutionalism, the interrelationship between the constitution and constitutional culture, patterns of supranational (suprastate) constitutionality, and others.⁷

Paradox of Constitutionalism: Constituent Power and Constitutional Form. Edited by Martin Loughlin and Neil Walker. Oxford University Press, 2008; etc.).

⁵ McIlwain C.H. *Constitutionalism Ancient and Modern*. Ithaca, NY: Cornell University Press, 1947, P. 25.

⁶ The cited article, p. 62.

⁷ Stephen Holmes, "Constitutions and Constitutionalism" // *Comparative Constitutional Review*, 2012, No. 3(88), pp. 56–84; O. E. Kutafin, *Russian Constitutionalism*. Moscow, 2008; N. S. Bondar, *Russian Judicial Constitutionalism: An Introduction to the Methodology of Research*. Moscow, 2012; E. Tanchev, "Emerging Supranational Constitutionalism and Contemporary Systems of Constitutional Review" // *Comparative Constitutional Review*, 2007, No. 4, pp. 78–94; M. Rosenfeld and A. Sajó, "The Spread of Liberal Constitutionalism: A Study of the Development of Free Speech Rights in New Democracies" // *Comparative Constitutional Review*, 2007, No. 1, pp. 102–120; "Contemporary Constitutionalism and the State of Israel" // *Contemporary Constitutionalism*, 2006, No. 2, pp. 50–54; "The Theory of Constitutionalism and the Philosophy of the State in the Federal Republic of Germany" // *Law and Right*, 2001, No. 5, pp. 39–47 (in Russian). *The Twilight of Constitutionalism?* Series Editors: Martin Loughlin, John P. McCormick, and Neil Walker. Oxford University Press, 2010; *The Constitution in 2020*. Edited by Jack M. Balkin, Reva B. Siegel. Oxford University Press, 2009; *Constitutional Cultures*. Ed. by M. Myrzykowski. Warsaw, ISP, 2000; *Constitutional Cultures: The Mentality and Consequences of Judicial Review*. Robert F. Nagel. University of California Press, 1993; *Collection Science and technique of democracy*, N 37; *European and US constitutionalism*. G. Nolte (Editor). European Commission for Democracy through Law. Council of Europe Publishing, 2005.

Within the framework of the present study, the task is to approach these problematic aspects predominantly through identifying the axiological character and the interrelationship of such concepts as “constitution,” “constitutional culture,” “constitutionalism,” and “constitutional monitoring,” reflecting on them in the context of the main trends of contemporary constitutional development.⁸

A sustainable state is a state-legal formation endowed with the institutional, normative, and value-based capacity to preserve constitutional equilibrium, ensure the rule of law, and reproduce public trust under conditions of crisis, uncertainty, and external or internal turbulence, without resorting to the concentration of power or the dismantling of the system of checks and balances.

The structural features of a sustainable state include:

- e. **Normative stability** (the supremacy of the Constitution and the predictability of legal regulation)
- f. **Institutional distribution of immunity** (the absence of concentration of control functions within a single center of power)
- g. **Adaptability without deviation** (the capacity to respond to crisis without transitioning into a regime of permanent emergency)
- h. **Institutional memory** (the consolidation of positive practices and the prevention of the reproduction of destructive models)
- i. **Reproduction of trust** (legitimacy as a result of procedural transparency and constitutional accountability)

8. Symptomatology of immunodeficiency: deformation of balance, apathy, corrosion of trust

The fact is that the human community as a whole today often does not have a sufficient and effective immune system capable of confronting contemporary social challenges. The immune failure of social life becomes one of the key causes of social catastrophes. Accordingly, only a strong and viable immune system in society can be regarded as a basic guarantee of sustainable development.

Contemporary immunodeficiency manifests first and foremost as the system’s inability to recognize violations of constitutional equilibrium in a timely manner, to adequately evaluate them, and to neutralize them without destroying the whole. The accumulation of negative social energy leads to the formation of a critical mass, upon reaching which an explosion becomes practically inevitable. This

⁸ G. G. Harutyunyan, “The Axiological Nature of Constitutionalism in the Context of the Historical Evolution of Constitutional Culture,” in *The Philosophy of Law of the Pentateuch* (ed. by A. A. Guseynov and E. B. Rashkovsky). Moscow, 2012, pp. 70–82 (in Russian).

means that violations of constitutional equilibrium in social life are not identified, evaluated, and overcome in a timely manner; effective mechanisms of constitutional law for their diagnosis and neutralization have not been formed. This circumstance has fundamental significance for systemic resilience.

All elements of the social organism are mutually connected and functionally balanced. The problem lies in how to preserve this balance dynamically – throughout the entire process of the system’s existence and development. This is possible only when any disruption of this balance – for the most varied of reasons – is immediately identified, evaluated, and eliminated. This is precisely the functional meaning of society’s immune system.

The symptoms of societal immunodeficiency usually manifest in the following persistent ways:

1. **Deformation of constitutional balance.** This concerns the shifting and/or rupture of the balance among branches of government, weakening of checks and balances, decline in the real effectiveness of guarantees of rights and freedoms, as well as transformation of constitutional norms into declarative constructs in the absence of effective mechanisms of implementation and protection.
2. **Corrosion of trust.** Trust is not merely a psychological state, but a fundamental institutional precondition for reproducing the legal order. Its corrosion means a loss of the legitimacy of procedures, a decline in willingness to comply with rules, and the growth of “shadow” practices, from everyday legal nihilism to systemic corruption.
3. **Growth of apathy and alienation.** Apathy is a symptom of the degradation of feedback mechanisms – society ceases to perceive law and institutions as meaningful instruments of protection and self-regulation. As a result, the public sphere loses the capacity for rational discussion and decision-making, while citizens’ participation in public life is replaced by passive observation or reactive outbursts.
4. **The “normalization” of injustice.** Under a long-term accumulation of dysfunctions, injustice is gradually perceived as a habitual “given,” which lowers the threshold of sensitivity to rights violations and undermines society’s value filters.

These manifestations are especially dangerous because they form a vicious circle – institutional defects generate distrust and apathy, while distrust and apathy, in turn, facilitate further degradation of institutions and norms. Under these conditions, society loses the capacity for soft adaptation and shifts into a mode of “crisis reactivity”.

9. “Managed immunodeficiency”: selective rationality and manipulation

One must also consider the risk of disrupted equilibrium due to exogenous factors or under subjective influence. In this case, the phenomenon of “managed immunodeficiency” arises, which in the contemporary era is often treated as one of the characteristic mechanisms of destabilization. Its essence lies in the fact that the weakening of society’s protective mechanisms is not exclusively the “natural” consequence of internal errors and dysfunctions, but can be the result of targeted influence – through undermining institutions, blurring value orientations, manipulating public expectations, and the selective rationality of public policy.

Selective rationality in this context should be understood as a configuration of governance decisions and public discourses in which rationality is applied selectively: it serves short-term political or corporate goals, but blocks the system’s rational mechanisms of self-correction (accountability, independent oversight, legal guarantees, public criticism). As a result, society outwardly retains signs of “manageability”, but in fact loses the capacity for resilient development, because mechanisms of early warning and the neutralization of dysfunctions are suppressed or devalued.

It is precisely within this thinking that, in a number of interpretations, “managed immunodeficiency” is associated, in particular, with the technology of “color revolutions,” where destabilization is treated as the outcome of a combination of internal dysfunctions and externally supported mobilization scenarios. When approaching this academically, it is fundamentally important not to substitute clichés for analysis – the mere existence of protests or changes in political configurations does not yet prove that a process is “managed.” However, the reverse is also true – ignoring the technological aspects of contemporary forms of destabilization impoverishes diagnostics and weakens the toolkit of prevention.

A similar understanding is also used to analyze the situation of Armenia. In the national context, on the one hand, the insolvency of the political and state system, and, on the other hand, “managed immunodeficiency” have placed the state in an extremely difficult position, because the potential for restoring the disrupted equilibrium and returning social relations to a normative channel proves insufficient when it comes to overcoming the accumulated immunodeficiency.

Our many years of research make it possible to substantiate the conclusion that overcoming societal immunodeficiency within a state is impossible without constitutionalizing social life on the basis of ensuring the rule of law in the individual’s social and legal behavior, in the political behavior of the state’s political institutions, and in the public conduct of public authorities, as well as

through the introduction of a proportionate system of constitutional monitoring which, in turn, can become a most important guarantee of sustainable development.

10. Constitutional immunity as an indicator of the maturity of the state

In its final analytical dimension, constitutional immunity functions as an integral indicator of the maturity of constitutional culture and the institutional capacity of the state. It is revealed not through the rigidity of restrictions or the intensity of coercive measures, but through the ability of the legal system to:

- preserve the supremacy of the Constitution as a genuinely operative normative and value-based reference point,
- prevent the concentration of power and ensure the functional effectiveness of checks and balances,
- sustain public trust as a foundational resource of constitutional stability,
- secure the continuity of constitutional values and institutional memory amid political and social transformation.

Constitutional immunity does not arise spontaneously, nor is it formed solely as a reaction to isolated crises. Its resilience depends on a set of underlying preconditions, including a developed constitutional culture, the capacity of institutions for self-correction, the existence of mechanisms for early diagnosis of systemic risks, and an entrenched practice of public accountability.

A mature state is characterized not by the maximization of exceptional powers, but by a culture of self-restraint, the institutionalization of the temporariness of emergency measures, and a sustained ability to return to the normal constitutional order. In this sense, constitutional immunity does not perform a protective or repressive function, but rather a stabilizing and restorative one, preventing both external destabilizing pressures and auto-immune distortions generated within the constitutional system itself.

Accordingly, a resilient state is the product not of the force of exception, but of constitutional consciousness, developed institutional memory, and respect for the Constitution as a living legal organism capable of adaptation without erosion of its normative core.⁹

11. Constitutional immunity: concept and methodological boundaries

The concept of constitutional immunity has traditionally been understood as an autonomous institution of constitutional law, comprising a body of norms that

⁹ On constitutional immunity as an indicator of the maturity of the state, **Tushnet M.** - *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, Princeton University Press, 2008.

exempt high-ranking public officials, members of parliament, and judges from certain obligations and forms of legal liability in order to safeguard their independence and ensure the proper exercise of public functions. This understanding reflects a narrow, classical, institutionally personalized interpretation of immunity, primarily focused on status-based guarantees afforded to specific holders of public authority.

In a broader, system-functional dimension, however, the notion of “constitutional immunity” transcends the status of individual officeholders and acquires the quality of a structural characteristic of the constitutional order itself. From this perspective, constitutional immunity should be understood as a dynamic mechanism that secures the harmony of the constitutional system across all manifestations of social development. It refers to the capacity of the constitutional system, operating in a mode of continuity, to identify, assess, and overcome any deviations from regulation of constitutional law that arise in real social and political practice.

Within this conceptualization, constitutional immunity may be defined as follows. Constitutional immunity is the systemic capacity of the constitutional order for legal self-control and self-preservation through guarantees, checks, and procedures that maintain the balance of powers and ensure the rule of law, while preserving the vitality of, and public trust in, the legal system. Immunity thus appears not as an exception to the general regime of responsibility, but as a distributed institutional mechanism ensuring the resilience and normative integrity of the constitutional order.

The use of the term “immunity” in the analysis of constitutional law requires strict conceptual discipline.¹⁰ Immunity cannot be understood as the absolute right of the state to exclude, suspend, or arbitrarily restrict the operation of constitutional guarantees. In the constitutional dimension, it represents an embedded mechanism of legal self-regulation aimed at preventing the destructive consequences of both external threats and the public authorities’ own managerial decisions. Within the theory of constitutional immunity, rule of law is viewed not merely as a value but as a functioning system of protection encompassing standards, measurements, and institutional memory, thereby ensuring the stability of the legal order even under conditions of systemic turbulence.

The immunological paradigm, which underwent systematic development in social theory at the turn of the twentieth and twenty-first centuries, provides a

¹⁰ On the methodological use of the category of “immunity” in law, **Esposito R.** *Immunitas: The Protection and Negation of Life*. Cambridge: Polity Press, 2011, pp. 1–19.

productive theoretical foundation for rethinking the nature of the constitutional order. Within systems theory, law is described as a specific immune mechanism of the social system. In *Social Systems*, Niklas Luhmann characterizes law as a functional subsystem that stabilizes normative expectations through the binary code of lawful/unlawful, thereby contributing to the continuation of society's autopoiesis.¹¹ The legal system processes conflicts and deviations not by eliminating them but by transforming them normatively, thus maintaining operational closure and systemic reproducibility.

From this perspective, the immune function of law consists of the selective processing of environmental irritations, enabling the social system to preserve structural stability. Luhmann explicitly employs immunological metaphors, noting that the legal system functions as a mechanism for processing conflicts that prevents their destructive impact on the integrity of society.¹² Yet, in Luhmann's model, immunity remains predominantly functional; it explains how the system preserves itself but does not provide a normative criterion for assessing the legitimacy of the immune response.

A different, though complementary, perspective is offered by Roberto Esposito. In *Immunitas: The Protection and Negation of Life*, he derives the category of immunity from Roman legal tradition, interpreting *immunitas* as exemption from *munus* – the common duty or obligation of participation in communal life.¹³ Immunity thus appears as a form of protection through exclusion. The protective mechanism proves structurally ambivalent. It simultaneously preserves life and restricts community. In its radicalized form, immune logic may transform into the negation of life – a thanatopolitical configuration in which protection turns into its opposite.¹⁴

It is precisely here that the central problem of autoimmunity in contemporary political-legal theory emerges. The protective reaction may undermine the very foundations of the order it is intended to safeguard. Unlike Luhmann, Esposito situates immunity within a normative-political dimension, raising the question of the permissible limits of protection and the risk of self-destruction.

Transposing these theoretical premises into the plane of constitutional law allows for the formulation of the concept of constitutional immunity as the

¹¹ Niklas Luhmann, *Social Systems*, trans. John Bednarz Jr. and Dirk Baecker (Stanford: Stanford University Press, 1995), 142–147, 285–294.

¹² *Ibid.*, 371–376.

¹³ Roberto Esposito, *Immunitas: The Protection and Negation of Life*, trans. Zakiya Hanafi (Cambridge: Polity Press, 2011), 5–12.

¹⁴ *Ibid.*, 5–12.

systemic capacity of the constitutional order for self-preservation through the procedural processing of deviations. In this sense, constitutional immunity represents a normative-operational stage in the development of the immunological paradigm. It retains from Luhmann the functional logic of social immunity and the idea of law as a mechanism for processing conflicts, and from Esposito the normative problematic of protection, exclusion, and autoimmune self-subversion. Yet it translates these insights into the level of constitutional architecture, where immune reactions are institutionalized through procedures, guarantees, and mechanisms of checks and balances.

Constitutional immunity may thus be defined as the systemic capacity of the constitutional order:

1. to detect deviations from constitutional norms (diagnostic level),
2. to process them within institutionalized procedures (operational level),
3. to restore normative equilibrium through mechanisms of responsibility and control (restorative level),
4. to consolidate the acquired experience in institutional memory, thereby preventing the repetition of destructive scenarios (reproductive level).

Immunity thereby ceases to function as a mere metaphor and acquires the status of a normative-operational model. In contrast to Luhmann's system-functional descriptiveness and Esposito's philosophical ambivalence, constitutional immunity introduces criteria for the legitimacy of the immune response – proportionality, procedural limitation, institutional distribution, and the reproducibility of trust.

Under conditions of multi-level constitutionalism, this capacity manifests itself not only at the national but also at the supranational level, through rule-of-law standards, monitoring procedures, and mechanisms of legal evaluation designed to prevent the autoimmune erosion of the axiological foundations of the international legal order. In this context, constitutional immunity becomes an element of a broader system of resilience, in which the prevention of self-destructive tendencies within the legal system acquires decisive importance for the preservation of its legitimacy and functional capacity.

Accordingly, the concept of constitutional immunity may be regarded as the next stage in the development of the immunological paradigm in the theory of political law. It integrates system-functional analysis with normative diagnostics, translating them into the instruments of constitutional monitoring and responsibility. Immunity, in this understanding, ensures not merely protection, but the reproducibility of the constitutional order under conditions of structural turbulence, minimizing the risk that protective mechanisms may undergo autoimmune transformation into factors of disintegration.

Constitutional immunity operates as a system of safeguards that ensures the proportionality, transience, and reversibility of restrictive measures. Its task is not to maximize the force of a response, but to preserve the viability of the legal system and trust in it. This is precisely why immunity is not set in opposition to rights and freedoms, but serves as an instrument of their long-term protection.

The philosophical and legal analysis of immunity reveals its fundamental duality – it is a protective reaction, but when it goes beyond necessity, it is capable of negating the very foundation it is intended to defend. In constitutional law, this means that excessive, indeterminate, or discriminatory measures may transform into an autoimmune effect that undermines trust in law, institutions, and the Constitution itself.¹⁵

Within the doctrine of constitutional immunity, particular analytical significance is attributed to the phenomenon of the autoimmune effect, which reflects pathological forms of self-defense within a constitutional order. Although the concept originates as a metaphor borrowed from biology, in constitutional and legal theory it acquires an independent and substantive explanatory function.

The autoimmune effect may be defined as a condition in which legal, political, or institutional mechanisms designed to protect the constitutional order begin to operate against its own normative and value-based foundations. In such circumstances, the system loses the capacity to distinguish between genuine external or internal threats and its own constitutional principles, as a result of which protective reactions are transformed into factors of internal erosion and self-destruction.

It is crucial to emphasize that the autoimmune effect does not arise from external coercion or from an explicit rejection of constitutional norms. On the contrary, it develops from within the system itself, in conditions of formal continuity of constitutional institutions, legal procedures, and normative frameworks. This feature makes the autoimmune effect particularly dangerous. The constitutional order is undermined not through the abolition of law, but through its functional deformation, instrumentalization, and selective application.

The typical logic of the autoimmune effect unfolds through several interrelated stages. The initial point is usually a legitimate objective, such as the protection of sovereignty, national security, public order, or institutional stability. However, in conditions of escalating risks and systemic stress, this objective becomes accompanied by excessive or distorted responses – the expansion of exceptional

¹⁵ On the risk of protective measures transforming into autoimmune effects, **Esposito R.** *Bíos: Biopolitics and Philosophy*. Minneapolis: University of Minnesota Press, 2008;

powers, the weakening of accountability and oversight mechanisms, the restriction of fundamental rights, and the erosion of the separation of powers. Gradually, a shift in regulatory criteria occurs, whereby constitutional values and normative constraints yield to considerations of political expediency, while temporary emergency measures become normalized and permanent.

The outcome of this process unfolds as a self-destructive process – public trust in law diminishes, institutional legitimacy erodes, and the resilience of the constitutional order is compromised. Protective mechanisms that were intended to ensure systemic viability begin to reproduce risks comparable in nature to those they were meant to prevent.

A society in which autoimmune processes have penetrated all layers of constitutional-legal relations does not merely find itself in a state of social immunodeficiency. The situation is more alarming: mutated values begin to reproduce and assume the character of systemic metastases. From the autoimmune phenomenon there emerges a kind of “social cancer”, with its destructive consequences¹⁶.

Unlike ordinary abuses of power, the autoimmune effect is characterized by its normative camouflage. It operates under the appearance of legality and constitutional protection. Law, in such contexts, ceases to function as a limitation on public power and instead becomes an instrument of institutional self-preservation at any cost. This creates an illusion of normative stability while concealing a profound degradation of constitutional substance.

From the perspective of the doctrine of constitutional immunity, the autoimmune effect signifies a failure of legal self-monitoring and self-correction mechanisms. Constitutional immunity loses its selective, proportional, and value-oriented character, thereby forfeiting its regulatory and stabilizing function. Instead of reinforcing sustainable statehood, the system enters a mode of latent institutional destabilization, in which defensive logic itself becomes a source of constitutional risk.

An auto-immune situation arises not as the result of a single factor, but from the convergence of value degradation, institutional vulnerability, and the motivation of the preservation of power. These factors manifest themselves across several interrelated levels:

¹⁶ For an adequate diagnosis of the condition of the constitutional order, it is of fundamental importance to draw a clear distinction between the concepts of “social immunity,” “immunodeficiency,” and “autoimmune effect” as distinct phases of the functioning and potential deformation of the constitutional immune system.

1. Primary (value-based and cultural) level

- a low level of constitutional culture
- the perception of the rule of law as a formal norm rather than a behavioral standard
- the weakening of civic responsibility and constitutional self-awareness
- passivity of public oversight
- legal nihilism and the degradation of electoral participation
- the devaluation of constitutional norms resulting from the disjunction between political rhetoric and law-enforcement practice.

2. Constitutional and institutional design level

- deficient constitutional arrangements
- an insufficient level of parliamentarism
- inadequate checks and balances constraining executive power
- insufficient definition of the temporality and oversight of emergency powers
- the weakening of constitutional accountability mechanisms at the highest levels of government.

3. Insufficient level of constitutional justice

- political dependence of the judiciary
- delayed or selective application of constitutional review
- the predominance of constitutional court self-restraint at the expense of the protection of fundamental rights.

4. Political system and the actual practice of power

- structural deficiencies of the political system
- the simulation of competitive politics
- the marginalization or criminalization of political opposition
- the substitution of democratic legitimacy with a narrative of “stability”
- the justification of political decisions through a discourse of “inevitability.”

5. Pathological factors (auto-immune accelerators)

- corruption
- patronage (the replacement of merit with personal loyalty and the erosion of institutional accountability).

6. Politicization of law enforcement and security institutions

- selective enforcement of the law
- the institutionalization of coercive instruments
- the formation of a perception of impunity among holders of power.

7. External negative influences (*which may activate or deepen internal autoimmune vulnerabilities*)

- security-related pressures
- the prolongation of emergency regimes justified by external threats
- the practice of selective application of international norms.

The cumulative effect of these factors results in an inversion of the self-protective mechanisms of the constitutional order, whereby instruments originally introduced to ensure constitutional security are gradually transformed into means of power concentration and the erosion of legal constraints.

Accordingly, overcoming these autoimmune disorders does not require further intensification of exceptional or repressive measures. Rather, it necessitates the restoration of a constitutional balance between security and freedom, sovereignty and the rule of law, political effectiveness and constitutional responsibility. In this sense, constitutional immunity should be understood not as a license for self-defense at any cost, but as a system of legal guarantees designed to prevent the self-destruction of the constitutional order under the guise of its protection.

On the conceptual basis presented, the guarantee of constitutional immunity is the necessary and sufficient condition for creating real prerequisites for sustainable development.

12. Conclusion

The contemporary crisis of constitutionalism demonstrates that the viability of the republican form of government cannot be reduced to the formal existence of constitutional institutions or to the textual perfection of constitutional arrangements. The central problem of modern statehood lies elsewhere: in the capacity of the constitutional order to preserve its normative identity, institutional equilibrium, and public legitimacy under conditions of systemic turbulence, political fragmentation, technological transformation, and the growing instability of the global environment.

In this context, the present study proposes a shift from the classical paradigm of constitutional analysis toward a systemic-functional understanding of constitutional resilience. Classical constitutionalism was historically constructed primarily around the logic of limiting power. While this principle remains foundational, contemporary constitutional development increasingly requires another dimension of analysis — the study of the constitutional order as a living, adaptive, and self-preserving system capable not only of restricting power, but also of preventing its own internal degradation.

It is precisely within this framework that the concept of constitutional immunity acquires methodological significance. Constitutional immunity should not be

understood narrowly as a body of exceptional guarantees granted to particular officeholders. In its broader constitutional meaning, immunity represents the systemic capacity of the constitutional order for self-preservation through mechanisms of constitutional diagnostics, institutional self-correction, proportional limitation, accountability, and the reproduction of public trust. Immunity thus functions as a distributed constitutional mechanism that enables the state to preserve constitutional equilibrium without transforming crisis management into permanent exception.

From this perspective, resilient statehood emerges not as an abstract political ideal, but as the real form of existence of a constitutional republic. A republic becomes resilient only when constitutional institutions operate not as formal legal constructions, but as elements of an integrated social immune system capable of recognizing and neutralizing destructive tendencies before they evolve into systemic crises. The effectiveness of republican governance is therefore determined not by the concentration of power, but by the degree of institutional self-restraint, constitutional culture, functional balance, and the continuity of constitutional values across generations.

The study further demonstrates that one of the principal dangers confronting contemporary constitutional systems is the autoimmune deformation of the constitutional order itself. The greatest threat to constitutionalism often arises not from the direct destruction of constitutional institutions, but from their gradual instrumentalization under the guise of legality, security, stability, or political necessity. In autoimmune conditions, mechanisms originally designed to protect the constitutional order begin to undermine the very normative foundations they were intended to preserve. Constitutional degradation therefore unfolds not through the abolition of law, but through its selective application, procedural distortion, and transformation into an instrument of institutional self-preservation.

For this reason, sustainable statehood cannot be ensured through the indefinite expansion of exceptional powers or through the intensification of coercive mechanisms. A resilient constitutional order is formed only where constitutional responsibility, proportionality, institutional accountability, constitutional justice, and public trust function as interconnected elements of a unified constitutional organism. The preservation of constitutional equilibrium requires not the absolutization of security, but the continuous balancing of security and freedom, sovereignty and the rule of law, institutional effectiveness and constitutional restraint.

Accordingly, the doctrine of constitutional immunity proposed in this study may be regarded as an attempt to formulate a new methodological framework for understanding the contemporary constitutional state. This framework integrates the principles of constitutionalism, constitutional culture, institutional resilience, constitutional monitoring, and social self-regulation into a unified theoretical model oriented not merely toward the formal organization of public power, but

toward the long-term preservation of the constitutional order as a viable and self-correcting legal civilization.

Ultimately, the resilience of the constitutional republic depends not on the force of emergency measures, but on the maturity of constitutional consciousness, the depth of institutional memory, and the capacity of society to preserve the supremacy of constitutional values even under conditions of profound uncertainty and systemic stress. A sustainable state is therefore not a state that is free from crises, but a state capable of overcoming crises without losing its constitutional identity.

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. *American Constitutionalism Abroad: Selected Essays in Comparative Constitutional History*. Book by George Athan Billias. Greenwood Press, 1990
2. *American Constitutionalism: From Theory to Politics*. Stephen M. Griffin. One of *Choice's* Outstanding Academic Books of 1997
3. Bromley-Trujillo R. The State of American Federalism 2024–2025 // *Publius: The Journal of Federalism*. — 2025
4. Bondar N. S., *Russian Judicial Constitutionalism: An Introduction to the Methodology of Research*. Moscow, 2012
5. Carrier, M.; McKenzie, A.; Carothers, T., U.S. Democratic Backsliding in Comparative Perspective // Carnegie Endowment for International Peace. — Washington, D.C., 2025
6. *Constitutional Revolutions: Pragmatism and the Role of Judicial Review in American Constitutionalism*. Book by Robert Justin Lipkin. Duke University Press, 2000
7. *Constitutionalism: The Philosophical Dimension*. Book by Alan S. Rosenbaum. Greenwood Press, 1988
8. “Contemporary Constitutionalism and the State of Israel” // *Contemporary Constitutionalism*, 2006, No. 2, pp. 50–54
9. *Constitutional Cultures*. Ed. by M. Myrzykowski. Warsaw, ISP, 2000
10. *Constitutional Cultures: The Mentality and Consequences of Judicial Review*. Robert F. Nagel. University of California Press, 1993
11. Daron Acemoglu and James A. Robinson, *Why Nations Fail*, New York, 2012.
12. *European and US constitutionalism*. G. Nolte (Editor). European Commission for Democracy through Law. Concil of Europe Publishing, 2005
13. Esposito R. *Immunitas: The Protection and Negation of Life*. Cambridge: Polity Press, 2011
14. Garden-Monheit, H.; Joseph, T., *Building a More Effective, Responsive Government: Lessons Learned from the Biden–Harris Administration*. — New York: Roosevelt Institute, 2025

15. Holmes S. “Constitutions and Constitutionalism” // *The Oxford Handbook of Comparative Constitutional Law* / Ed. by M. Rosenfeld, A. Sajó. Oxford University Press, 2012
16. Harutyunyan G. G., “The Axiological Nature of Constitutionalism in the Context of the Historical Evolution of Constitutional Culture,” in *The Philosophy of Law of the Pentateuch* (ed. by A. A. Guseynov and E. B. Rashkovsky). Moscow, 2012, pp. 70–82 (in Russian)
17. Harutyunyan, G.G. *The Dialectic of the Rational and Irrational in the Historical Fate of the Armenian People*. Yerevan, 2025.
18. Harutyunyan G.G. *Constitutionalism: Lessons, Challenges, Guarantees*. Collection of Selected Publications and Presentations at International Forums Devoted to this Subject / Harutyunyan G.G. — Kyiv: Logos, 2011(in Russian).
19. Harutyunyan G.G. *Constitutionalism: Problems of Diagnostics, Monitoring and Governance*. Yerevan, 2017.
20. Harutyunyan G.G., *Constitutional Monitoring*. Yerevan, 2016.
21. Harutyunyan G.G., *Constitutional Culture: the Lessons of History and the Challenges of Time*. Yerevan, 2017.
22. Harutyunyan G.G., *The Role of the Rule of Law Checklist in the System of Constitutional Monitoring (Conceptual Approaches)*, *Constitutional Justice*, 2016, No. 3 (73),
23. Kutafin O. E., *Russian Constitutionalism*. Moscow, 2008
24. *Liberalism, Constitutionalism and Democracy*. Book by Russell Hardin. Oxford University Press, 1999
25. Luhmann Niklas, *Social Systems*, trans. John Bednarz Jr. and Dirk Baecker (Stanford: Stanford University Press, 1995)
26. Michel Rosenfeld, *Comparative Constitutionalism: Cases and Materials* (2d ed., West 2010) (with Baer, Dorsen, and Sajó)
27. Mcilwain C.H. *Constitutionalism Ancient and Modern*. Ithaca, NY: Cornell University Press, 1947
28. Paz H. R. *From Educational Analytics to AI Governance: Transferable Lessons from Complex Systems Interventions*. — arXiv, 2025
29. *Progressive Constitutionalism*. Book by Robin West. Duke University Press, 1994
30. “Progressive and Conservative Constitutionalism.” Journal article by Robin West, M. Tushnet, R. Epstein, Raoul Berger, Robert Bork. *Michigan Law Review*, Vol. 88, 1990
31. Rosenfeld M. and Sajó A., “The Spread of Liberal Constitutionalism: A Study of the Development of Free Speech Rights in New Democracies” // *Comparative Constitutional Review*, 2007, No. 1, pp. 102–120
32. Tanchev E., “Emerging Supranational Constitutionalism and Contemporary Systems of Constitutional Review” // *Comparative Constitutional Review*, 2007, No. 4, pp. 78–94
33. Tushnet M. - *Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law*, Princeton University Press, 2008

34. *The Supreme Court and American Constitutionalism*. Edited by Bradford P. Wilson and Ken Masugi. The Ashbrook Series on Constitutional Politics. Rowman & Littlefield, 1997 (softcover)
35. *The Paradox of Constitutionalism: Constituent Power and Constitutional Form*. Edited by Martin Loughlin and Neil Walker. Oxford University Press, 2008; etc.)
36. “The Theory of Constitutionalism and the Philosophy of the State in the Federal Republic of Germany” // *Law and Right*, 2001, No. 5, pp. 39–47 (in Russian)
37. *The Constitution in 2020*. Edited by Jack M. Balkin, Reva B. Siegel. Oxford University Press, 2009

PROTECTION OF COMMUNITY INTERESTS BY THE PROSECUTOR'S OFFICE: CONSTITUTIONAL AND LEGAL CHALLENGES

Sayad Badalyan*

Abstract. This article provides an in-depth analysis of the constitutional framework governing the powers of the Prosecutor's Office in the context of the protection of state and community interests. The primary aim of the study is to determine whether the legislative amendments conferring upon the Prosecutor's Office the authority to initiate claims for the protection of community interests are compatible with the requirements and underlying logic of the Constitution of the Republic of Armenia.

The research employs linguistic, systemic, and formal-logical methods of legal interpretation, as well as the analytical approach of identifying the intent of the legislator. The study examines the evolution of constitutional regulation (1995, 2005, 2015), relevant legislative amendments, their explanatory notes, and the emerging judicial practice.

The findings demonstrate that the concept of "state interest" in the Constitution functions as an autonomous legal category, the content of which does not encompass "community interest." The amendments introduced by the Amending Law are largely mechanical in nature and were not supported by a comprehensive constitutional and systemic analysis, thereby creating normative uncertainty and a risk of misinterpretation of the constitutional text.

The article further argues that the issue of protecting community interests could have been addressed through alternative legal mechanisms without conferring additional powers upon the Prosecutor's Office beyond those provided for by the Constitution. It is concluded that the matter requires constitutional assessment and is likely to become the subject of review by the Constitutional Court.

Keywords - *Prosecutor's Office; State Interest; Community Interest; Public Interest; Local Self-Government; Powers of the Prosecutor's Office; Functions of the Prosecutor's Office; Constitutionality.*

* **Sayad Badalyan** - Associate Professor, Chair of Constitutional Law, Faculty of Law, Yerevan State University Candidate of Law, sayad.badalyan@ysu.am, ORCID - 0000-0002-4692-8176



This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

The article received 26 May 2026,
reviewed 12 June 2026,
accepted for publication 18 June 2026

© The Author(s) 2026

I. Introduction

Article 103(4) of the 1995 Constitution of the Republic of Armenia¹ provided that the Prosecutor's Office initiates claims in court for the protection of state interests. This constitutional provision subsequently underwent certain amendments. In particular, as a result of the 2005 constitutional reforms, it was stipulated that the Prosecutor's Office initiates claims for the protection of state interests in court in the cases and in accordance with the procedure prescribed by law.

Following the subsequent constitutional amendments of 2015, Article 176(3) of the Constitution established that the Prosecutor's Office may initiate claims in court for the protection of state interests only in exceptional cases and in accordance with the procedure prescribed by law².

Thus, it may be observed that the constitutional provision empowering the Prosecutor's Office to initiate claims for the protection of state interests has undergone a consistent transformation over time, aimed at narrowing the scope of this power and providing it with greater precision. Whereas the 1995 version of the Constitution did not specify the cases and procedure for the exercise of this power, the 2005 version introduced the requirement that it be exercised "in cases and in accordance with the procedure prescribed by law." The 2015 version of the Constitution further tightened this approach by providing that the Prosecutor's Office may exercise this power only in "exceptional cases and in accordance with the procedure prescribed by law," thereby significantly restricting the scope of its application. This approach is also consistent with international standards, which emphasise that, although prosecutors may participate in civil and administrative matters for historical, efficiency, or economic reasons, such involvement must remain strictly exceptional in nature³. At the same time, international bodies, including the Venice Commission, have consistently underlined that the primary focus of the prosecution service should lie within the field of criminal law⁴.

¹ The Constitution of the Republic of Armenia, adopted on 5 July 1995, entered into force on 13 July 1995, available at: <https://www.arlis.am/hy/acts/1/latest> (accessed: 04.05.2026).

² The Constitution of the Republic of Armenia, adopted on 5 July 1995 (as amended by the Constitutional Amendments adopted on 6 December 2015), available at: <https://www.arlis.am/hy/acts/143723/latest> (accessed: 04.05.2026).

³ Consultative Council of European Prosecutors (CCPE-Bu), Report on the Role of the Public Prosecution Service outside the Criminal Field, CCPE-Bu (2008)4rev, Strasbourg, 5 May 2008, p. 19, available at: <https://rm.coe.int/bureau-of-the-consultative-council-of-european-prosecutors-ccpe-bu-rol/168071f586> (accessed: 04.05.2026).

⁴ European Commission for Democracy through Law (Venice Commission), *Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service*,

The emphasis on the exceptional nature of the circumstances under which the Prosecutor's Office may initiate claims for the protection of state interests is conditioned by the fact that the primary authority in such matters rests with the state body or local self-government body within whose sphere of competence the pecuniary damage to the state has occurred⁵. In other words, the involvement of the Prosecutor's Office is of a secondary, subsidiary nature and is conditioned by the failure or improper exercise of powers by the competent authority concerned.

Prior to the adoption of the Law No. HO-104-N of 1 March 2023 "On Making Amendments and Additions to the Law on the Prosecutor's Office" (hereinafter referred to as the "Amending Law")⁶, the regulatory framework of the Law of the Republic of Armenia "On the Prosecutor's Office" (hereinafter referred to as the "Law")⁷ was, in general, consistent with the prevailing constitutional approach and reflected the exceptional nature of the powers of the Prosecutor's Office. In particular, Article 4(2) of the Law provided that, in accordance with Article 176(3) of the Constitution, the Prosecutor's Office initiates claims in court for the protection of state interests only in exceptional cases and in accordance with the procedure prescribed by law.

At the same time, the Law also provided for additional procedural safeguards. Thus, pursuant to Article 27(6) of the Law, in civil or administrative cases concerning state interests in which the Prosecutor's Office had not participated, a judicial act that had entered into legal force, or had not yet entered into legal force, could be appealed only if the state body or local self-government body involved in the case, in response to an inquiry by the Prosecutor's Office, had indicated that it did not intend to appeal the relevant judicial act. Moreover, the said body was obliged to respond to the inquiry of the Prosecutor's Office within five days from the receipt thereof.

Articles 29(1) and (2) of the Law also provided a detailed regulation of the content and the conditions for the exercise of the Prosecutor's Office's power to

CDL-AD(2010)040, Strasbourg, 2010, para. 77, available at: [https://www.venice.coe.int/webforms/-documents/default.aspx?pdfid=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/-documents/default.aspx?pdfid=CDL-AD(2010)040-e) (accessed: 04.05.2026).

⁵ V. Poghosyan and N. Sargsyan, *The Constitution of the Republic of Armenia as Revised in 2015: Brief Commentaries*, Yerevan: Tigran Mets Publishing House, 2016, p. 141 (Պողոսյան Վ., Սարգսյան Ն., Հայաստանի Հանրապետության 2015թ. խմբագրությամբ Սահմանադրությունը: Համառոտ պարզաբանումներ: Եր.: Տիգրան Մեծ, 2016, էջ 141):

⁶ The Law of the Republic of Armenia "On Making Amendments and Additions to the Law 'On the Prosecutor's Office'", adopted on 01 March 2023, entered into force on 06 April 2023, available at: <https://www.arlis.am/hy/acts/175782> (accessed: 04.05.2026).

⁷ The Law of the Republic of Armenia "On the Prosecutor's Office", adopted on 17 November 2017, entered into force on 9 April 2018, RA Official Gazette 2017.12.13/74(1349), Art.1213, available at: <https://www.arlis.am/hy/acts/223075/latest> (accessed: 04.05.2026).

initiate claims for the protection of state interests. In particular, under these provisions, the initiation of such claims by the prosecutor encompassed both the protection of the State's pecuniary and non-pecuniary interests within the framework of civil and administrative proceedings, as well as the initiation of claims for compensation for pecuniary damage caused to the State by a criminal offence within the framework of criminal proceedings. It also included the submission of relevant claims on the basis of the Law of the Republic of Armenia "On Confiscation of Property of Illicit Origin"⁸.

At the same time, the legislator clearly defined the exceptional cases in which alone the prosecutor was entitled to bring a claim for the protection of state interests. These cases were as follows:

(a) where the competent state body or local self-government body, being aware of a violation of state interests and having received a proposal from the prosecutor to file a claim, failed to do so within a reasonable period of time;

(b) where the violation of state interests concerned matters for which the authority to bring a claim had not been vested by law in any state body or local self-government body;

(c) where, as a result of an examination conducted under the Law of the Republic of Armenia

"On Confiscation of Property of Illicit Origin", sufficient grounds existed for the initiation of a relevant claim.

Thus, it may be concluded that, prior to the entry into force of the Amending Law, the Law clearly limited this function of the Prosecutor's Office exclusively to the protection of state interests, including cases involving financial resources allocated by the State to communities in the context of the exercise of delegated powers.

By virtue of the Amending Law, in essence, in all provisions of the Law where the term "state interests" was used, the word "community" was added after the word "state", with the aim of conferring upon the Prosecutor's Office the authority to initiate claims not only for the protection of state interests but also for the protection of community interests. At the same time, it should be emphasised that the conferral of the power to initiate claims for the protection of community interests upon the Prosecutor's Office was carried out in a largely mechanical manner, without a corresponding systemic and constitutional analysis.

⁸ The Law of the Republic of Armenia " On Confiscation of Property of Illicit Origin ", adopted on 16 April 2020, entered into force on 23 May 2020, RA Official Gazette 2020.05.13/50(1605) Art.580, available at: <https://www.arlis.am/hy/acts/218981/latest> (accessed: 04.05.2026).

As a result, Article 4(2) of the Law was formulated as follows: in accordance with Article 176(3) of the Constitution, the Prosecutor's Office shall initiate claims in court for the protection of state (community) interests in exceptional cases and in accordance with the procedure prescribed by law.

Under such a formulation, particularly for a reader unfamiliar with the constitutional text, there is a risk of creating the impression that the wording "state (community) interests" is used in Article 176(3) of the Constitution, whereas in reality the Constitution contains no such formulation. Consequently, this legislative technique may lead to a distorted understanding of the content of the constitutional norm.

It is important to emphasise that the present article does not seek to assess the expediency or justification of conferring upon the Prosecutor's Office the power to initiate claims for the protection of community interests. The subject of this research is different. By applying the interpretative technique of identifying the intent of the legislator, as well as the linguistic and formal-logical methods of interpretation of legal norms, the article seeks to determine whether the amendments introduced into the Law, whereby the Prosecutor's Office was vested with the power to initiate claims for the protection of community interests, comply with the requirements of Article 176(3) of the Constitution.

II. Research

On the basis of the foregoing, the explanatory note to the Amending Law (hereinafter referred to as the "Explanatory Note")⁹ has been examined, as it allows certain conclusions to be drawn with regard to the issue at hand. First and foremost, it should be noted that the Explanatory Note is primarily aimed at justifying the idea that the Prosecutor's Office should be vested with the power to initiate claims not only for the protection of state interests but also for the protection of community interests. This circumstance allows one to assume that the Explanatory Note was formulated with a predetermined political or legal-policy objective, and that the Amending Law itself was adopted within that framework.

In this respect, it is evident that the Explanatory Note largely focuses on substantiating the necessity of granting the Prosecutor's Office the authority to protect community interests, whereas the preliminary and primary question should have been whether the Constitution, as such, permits the legislature to confer such

⁹ Explanatory Note on the Draft Laws "On Making Additions to the Criminal Procedure Code of the Republic of Armenia" and "On Making Amendments and Additions to the Law of the Republic of Armenia 'On the Prosecutor's Office'", available at: www.parliament.am (accessed: 04.05.2026).

powers upon the Prosecutor's Office through ordinary legislation. Although certain considerations relating to this question are present in the Explanatory Note, they are, in essence, superficial in nature and, in some instances, may even be regarded as manipulative.

Thus, the Explanatory Note states that "neither the Constitution of the Republic of Armenia nor the Law provides a definition of the concept of 'state interest', and such a definition has never existed, which has resulted in the absence of a unified approach to this concept in legal doctrine."

In this regard, it should be noted that not all concepts and terms used in the Constitution and in legislation require a specific normative definition or detailed elaboration. There exist concepts whose content is generally understood and which, in legal doctrine and practice, are perceived as self-sufficient and therefore do not give rise to significant interpretative divergences.

In our assessment, the concept of "state interest" as used in the Constitution falls precisely within this category. In these circumstances, the argument advanced in the Explanatory Note may be countered by the same logic, emphasising that, during the period from 1995 to 2023, the absence of a normative definition of the concept of "state interest" was conditioned not by its indeterminacy, but rather by the fact that no substantial legal issue had arisen concerning the need to distinguish between "state interest" and "community interest".

Subsequently, the Explanatory Note advances the thesis that the concept of "community interest" is encompassed within the concept of "state interest", which, according to its authors, is supported both by international treaties ratified by the Republic of Armenia and by definitions provided in domestic legislation. Below, it will be demonstrated that, in reality, neither international treaties nor domestic legislation substantiate the existence of such an inclusive relationship.

Moreover, even if one were to assume, *arguendo*, that such an approach could in some way be substantiated, it remains evident that neither the provisions of international treaties nor those of sub-constitutional legislation may serve as a benchmark for interpreting the content of the concept of "state interest" as used in the Constitution. *A fortiori*, such sources cannot justify the inclusion of the concept of "community interest" within a category which, at the constitutional level, is formulated as an autonomous and clearly distinct legal notion.

More generally, it should be noted that the current Constitution demonstrates particular caution and systemic coherence in the formulation of legal concepts. Accordingly, it is impermissible to attribute to constitutional notions subjective or excessively broad and expansive interpretations. The interpretation of the

constitutional text must be grounded in its literal, systemic, and teleological understanding, excluding arbitrary generalisations.

The examples set out below demonstrate that the Constitution consistently distinguishes between the concepts of “state”, “community”, “state authority”, and “public authority”, assigning to each a distinct content and legal significance.

Thus, in Article 3 of the Constitution, when referring to the principle that human and civil fundamental rights and freedoms, as directly applicable law, limit authority, the Constitution employs the concept of “public authority”. Such wording is conditioned by the fact that the said limitation applies not only to state authorities but also to bodies of local self-government, that is, to community authorities.

By contrast, in the subsequent Article 4, which concerns the principle of the separation and balance of legislative, executive, and judicial powers, the Constitution uses the concept of “state authority”, since this principle pertains exclusively to the branches of state power and does not extend to the community level.

Another illustrative example is Article 198(1) of the Constitution, according to which the Audit Chamber is an independent state body that carries out audits in the field of public finances and property with respect to the legality and efficiency of the use of state budget and community budget funds, as well as of loans and credits received, and of state and community property. It is noteworthy that, in this case, the Constitution employs the concept of “public finances and property”, thereby emphasising that the competence of the Audit Chamber extends to both the state and the community levels.

If one were to follow the logic proposed in the Explanatory Note and accept that the concept of “state” encompasses “community” as well, the Constitution could have used the formulation “state finances and property”, thereby implicitly including the community component within it. However, no such formulation is used, which once again demonstrates the clear distinction between these concepts.

Finally, let us consider another example. Pursuant to Article 154(2) of the Constitution, the Government administers state property. If, once again, we were to follow the logic advanced in the Explanatory Note and include “community property” within the concept of “state property”, we would arrive at a manifestly disproportionate and legally untenable conclusion, namely that the Government administers not only state property but also community property. Such an interpretation, however, runs counter to the constitutional principle of the autonomy of local self-government.

The Explanatory Note further asserts that the inclusion of the concept of “community interest” within that of “state interest” is allegedly confirmed by international treaties ratified by the Republic of Armenia. In particular, reference is made to Article 3 of the European Charter of Local Self-Government, according to which “local self-government denotes the right and the effective ability of local authorities to regulate and manage a substantial share of state affairs under their own responsibility and in the interests of the local population.”¹⁰

Admittedly, this wording corresponds to the text of the official Armenian translation of the Charter. However, an examination of the official English version of the Charter reveals that the expression “state affairs” appearing in the Armenian text is the result of a translation error. The English original¹¹ employs the term “public affairs”, which literally means “հսկայական հարցեր”, rather than “state affairs.”

It should also be emphasised that Article 179 of the Constitution, which enshrines the right to local self-government, as well as Article 3 of the Law of the Republic of Armenia “On Local Self-Government”¹², both of which define the concept of “local self-government”, consistently employ the formulation “public affairs”, thereby avoiding the expression “state affairs”.

Accordingly, the expression “state affairs” appearing in the Armenian text of the European Charter of Local Self-Government, which is the result of a translation error, cannot serve as a legal basis for asserting that the concept of “community interest” is encompassed within the concept of “state interest”. Consequently, this argument advanced in the Explanatory Note also loses its justificatory value.

It should further be noted that the Explanatory Note, as a whole, is characterised by internal inconsistencies. In particular, on the one hand, it is stated that the legislator has limited the concept of “state interest” by effectively distinguishing community interest from it, on the basis that the latter, together with state interest, forms part of the broader concept of public interest. On the other hand, however, the same Explanatory Note asserts that the concept of “community interest” is encompassed within the concept of “state interest”, with reference both to

¹⁰ European Charter of Local Self-Government, Council of Europe, Strasbourg, 15 October 1985, ETS No. 122, available at: <https://www.arlis.am/hy/acts/80563/latest> (accessed: 04.05.2026).

¹¹ European Charter of Local Self-Government, Council of Europe, Strasbourg, 15 October 1985, ETS No. 122, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=122> (accessed: 04.05.2026).

¹² The Law of the Republic of Armenia “On Local Self-Government”, adopted on 07 May 2002, entered into force on 21 June 2002, RA Official Gazette 2002.06.21/21(196), Art. 473, available at: <https://www.arlis.am/hy/acts/224020/latest> (accessed: 04.05.2026).

international treaties ratified by the Republic of Armenia and to definitions provided in domestic legislation.

Such a dual approach gives rise to a logical contradiction. If it is accepted that the legislator was fully aware of the substantive distinctions between the concepts of “state”, “community”, and “public” interests and, on that basis, deliberately excluded the possibility of the Prosecutor’s Office initiating claims for the protection of community interests from the scope of its powers, it becomes difficult to substantiate the assertion that the concept of “community interest” is, at the same time, encompassed within the concept of “state interest”. In other words, these two approaches are mutually exclusive and cannot be applied simultaneously within the same line of legal reasoning.

The Explanatory Note also seeks to justify the necessity of conferring upon the Prosecutor’s Office the power to initiate claims for the protection of community interests by reference to the fact that the State delegates certain powers to local self-government bodies, which are subject to mandatory financing from the state budget. However, it should be noted that this issue had already been regulated at the legislative level prior to the entry into force of the Amending Law.

In particular, Article 29(1) of the Law, as previously in force, provided that the initiation of claims by the prosecutor for the protection of state interests also encompassed the protection of financial resources allocated by the State to communities for the exercise of delegated powers. In other words, even prior to the adoption of the amendments, the legislator had taken into account the specific nature of delegated powers and their financing and had included their protection within the scope of the “protection of state interests”.

This approach is, of course, fully justified in the context of delegated powers and does not give rise to any substantive inconsistency with the concept of “state interest” as used in the Constitution. However, the same cannot be asserted with respect to those powers of local self-government bodies that are not of a delegated nature. Accordingly, the mere existence of delegated powers could in no way serve as a sufficient legal basis for conferring upon the Prosecutor’s Office the authority to initiate claims for the protection of community interests in non-delegated spheres.

The Explanatory Note also advances, as an additional argument, the thesis that, in the absence of conferring upon the Prosecutor’s Office the authority to initiate claims for the protection of community interests, the existing framework of oversight over communities gives rise to significant risks of inefficient management of community funds. It is argued that an analysis of the Laws of the Republic of Armenia “On Local Self-Government” and “On the Budgetary System

of the Republic of Armenia”¹³ demonstrates that oversight over the activities of local self-government bodies is limited.

However, in this respect as well, it is necessary to reiterate that the purpose of the present article is not to assess the expediency or practical effectiveness of conferring such powers. Admittedly, if the subject of the research were confined solely to considerations of expediency, it is possible that one might conclude that granting such powers to the Prosecutor’s Office could have a positive effect. Nevertheless, if the existing constitutional framework does not provide for such a possibility, then even in the presence of seemingly well-founded risks, their mitigation cannot be achieved through legislative amendments that are inconsistent with the Constitution.

In other words, the reduction of the risks associated with the inefficient management of community funds must be pursued through the application of legal instruments that are consistent with the Constitution. In our assessment, this objective could have been achieved through alternative means, in particular through the improvement of the mechanisms of legal and professional oversight over the activities of local self-government bodies established under the Law of the Republic of Armenia “On Local Self-Government”, without conferring upon the Prosecutor’s Office additional powers not provided for by the Constitution.

It should be noted that, following the adoption of the Amending Law, a certain body of judicial practice has also emerged regarding its application. At the same time, it is important to emphasise that this practice has not developed around the fundamental question of whether conferring upon the Prosecutor’s Office the authority to initiate claims for the protection of community interests is compatible with the Constitution. Rather, it has been primarily concerned with issues relating to the calculation of limitation periods in cases where such claims have been brought by the Prosecutor’s Office.

The essence of the issue lies in the fact that, after the entry into force of the Amending Law, the Prosecutor’s Office began actively to initiate claims for the protection of community interests. In such cases, the Prosecutor’s Office, as a rule, argued that the limitation periods had not expired, on the grounds that they should be calculated from the moment when, by virtue of the entry into force of the Amending Law, the Prosecutor’s Office was vested with the relevant authority.

¹³ The Law of the Republic of Armenia “On the Budgetary System of the Republic of Armenia”, adopted on 24 June 1997, entered into force on 21 August 1997, RA Official Gazette 1997.08.11/18, available at: <https://www.arlis.am/hy/acts/219259/latest> (accessed: 04.05.2026).

At the same time, this position stands in clear logical contradiction to the approaches set out in the Explanatory Note to the Amending Law. In particular, while the Explanatory Note seeks to substantiate that the concept of “community interest” is encompassed within the concept of “state interest”, the Prosecutor’s Office, through its submissions before the courts, effectively acknowledges that it acquired the authority to initiate claims for the protection of community interests only after the entry into force of the Amending Law. This dual approach once again demonstrates the theoretical and logical inconsistencies inherent in the Explanatory Note.

Nevertheless, since the discussions in judicial practice have been concentrated on issues relating to limitation periods, the courts, in analysing the Explanatory Note, have addressed the arguments advanced by the Prosecutor’s Office on that specific issue, while at the same time refraining from engaging with the more fundamental and principled question, namely the constitutionality of the Prosecutor’s Office’s authority to initiate claims for the protection of community interests.¹⁴

In another case, the Court of Cassation of the Republic of Armenia also addressed issues relating to the Prosecutor’s Office’s authority to initiate claims for the protection of community interests; however, once again, this was done not in the context of assessing its constitutionality, but rather within the framework of analysing the objective pursued by the legislator through the adoption of the Amending Law¹⁵.

Admittedly, if the issue is considered solely from the perspective of the legislator’s intent, no substantial controversy arises: it is evident that the legislator aimed to vest the Prosecutor’s Office with the authority to initiate claims for the protection of community interests. However, when the matter is examined from the standpoint of the constitutionality of the legislative amendment in question, it becomes apparent that the courts have thus far refrained from addressing this issue directly.

In our view, however, all the necessary preconditions exist for a court to exercise the power provided for in Article 169(4) of the Constitution and to refer the matter to the Constitutional Court for the purpose of determining the

¹⁴ See, for example, the decision of the Anti-Corruption Court of Appeal of the Republic of Armenia of 17 October 2025 in case No. HKD/0143/02/23, available at: https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040813900 (accessed: 04.05.2026).

¹⁵ Decision of the Court of Cassation of the Republic of Armenia of 10 May 2024 in administrative case No. VD/4571/05/23, available at: <https://arlis.am/hy/acts/193830> (accessed: 04.05.2026).

constitutionality of the relevant provisions. This possibility cannot be excluded in the future. Moreover, it is highly likely that the issue raised in this article will, in due course, become the subject of review by the Constitutional Court, if not at the initiative of the courts, then at least within the framework of individual applications.

In this context, it is also noteworthy that the Anti-Corruption Court of Appeal of the Republic of Armenia has already applied to the Constitutional Court on a similar issue, albeit with a rather unexpected formulation. In particular, the court challenged not the constitutionality of the Amending Law itself, but that of the regulatory framework in force prior to its entry into effect.

Thus, in its application to the Constitutional Court, the Anti-Corruption Court of Appeal requested that Article 29 of the Law of the Republic of Armenia “On the Prosecutor’s Office”, as in force prior to 6 April 2023, be declared unconstitutional and invalid to the extent that it did not provide for the exceptional cases and procedure for the exercise of the Prosecutor’s Office’s authority to initiate claims for the protection of community interests.

However, the Constitutional Court, by its procedural decision of 21 January 2025¹⁶, refused to examine the case on the basis that the applicant had failed to substantiate the existence of a “reasonable doubt” as to the constitutionality of the challenged provision, as required under Article 169(4) of the Constitution.

III. Conclusion

On the basis of the foregoing, a number of conclusions may be formulated regarding the constitutionality of the legislative amendment conferring upon the Prosecutor’s Office the authority to initiate claims for the protection of community interests:

- The evolution of constitutional regulation (1995, 2005, 2015) demonstrates a consistent narrowing of the Prosecutor’s Office’s power to initiate claims for the protection of state interests and the entrenchment of its subsidiary nature, thereby precluding the expansion of this power through ordinary legislation.
- The concept of “state interest” is used in the Constitution as an autonomous legal category, the content of which does not imply the inclusion of

¹⁶ Procedural Decision No. SDAO-7 of the Constitutional Court of the Republic of Armenia, adopted on 21 January 2025, “On Refusing to Examine the Case on Determining the Compliance with the Constitution of Article 29 of the Law ‘On the Prosecutor’s Office’, as in force prior to 6 April 2023, on the Basis of the Application of the Anti-Corruption Court of Appeal”, available at: https://concourt.am/decision/decisions/67934c354bd99_SDAV-7.pdf (accessed: 04.05.2026).

“community interest”; any such interpretation is contrary to the literal and systemic understanding of the constitutional text.

- The expansion of the concept of “state interest” by the Amending Law, through the inclusion of “community interest”, was carried out in a purely mechanical manner, without proper constitutional justification, thereby giving rise to normative uncertainty and a risk of distorting the constitutional text.
- The Explanatory Note to the Amending Law is characterised by internal contradictions and a lack of theoretical coherence, as it simultaneously asserts both the distinction between “state” and “community” interests and their inclusive relationship.
- A systemic analysis of various provisions of the Constitution (in particular, the use of the concepts of “public authority”, “state authority”, “public finances”, and “state property”) demonstrates that the Constitution clearly distinguishes between the state and community levels, thereby excluding their conflation through interpretation.
- An analysis of international legal sources, including the European Charter of Local Self-Government, does not support the inclusion of “community interest” within “state interest”, and the arguments advanced in this regard are based on translation inaccuracies.
- The existence of risks associated with the inefficient management of community funds, however relevant and important, cannot in itself serve as a justification for conferring upon the Prosecutor’s Office additional powers not provided for by the Constitution. The mitigation of such risks must be pursued exclusively through legal mechanisms consistent with the principle of constitutionality. In particular, a more proportionate and lawful solution would have been to improve the existing system of oversight over local self-government bodies, by developing the legal and professional control mechanisms provided for in the Law of the Republic of Armenia “On Local Self-Government”, without disturbing the constitutional balance.
- Judicial practice, having focused on issues relating to limitation periods, has not yet addressed in depth the constitutionality of the Prosecutor’s Office’s authority to initiate claims for the protection of community interests; however, all the necessary legal preconditions exist for this issue to become, in the future, the subject of review by the Constitutional Court.

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. Consultative Council of European Prosecutors (CCPE-Bu), Report on the Role of the Public Prosecution Service outside the Criminal Field, CCPE-Bu (2008)4rev, Strasbourg, 5 May 2008, p. 19, available at: <https://rm.coe.int/bureau-of-the-consultative-council-of-european-prosecutors-ccpe-bu-rol/168071f586> (accessed: 04.05.2026).
2. Explanatory Note on the Draft Laws “On Making Additions to the Criminal Procedure Code of the Republic of Armenia” and “On Making Amendments and Additions to the Law of the Republic of Armenia ‘On the Prosecutor’s Office’”, available at: www.parliament.am (accessed: 04.05.2026).
3. European Commission for Democracy through Law (Venice Commission), *Report on European Standards as regards the Independence of the Judicial System: Part II – The Prosecution Service*, CDL-AD(2010)040, Strasbourg, 2010, para. 77, available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2010\)040-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2010)040-e) (accessed: 04.05.2026).
4. Poghosyan and N. Sargsyan, *The Constitution of the Republic of Armenia as Revised in 2015: Brief Commentaries*, Yerevan: Tigran Mets Publishing House, 2016, p. 141 (Պողոսյան Վ., Սարգսյան Ն., Հայաստանի Հանրապետության 2015թ. խմբագրությամբ Սահմանադրությունը: Համառոտ պարզաբանումներ: Եր.: Տիգրան Մեծ, 2016, էջ 141):
5. The Constitution of the Republic of Armenia, adopted on 5 July 1995, entered into force on 13 July 1995, as amended.
6. European Charter of Local Self-Government, Council of Europe, Strasbourg, 15 October 1985, ETS No. 122, available at: <https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyenum=122> (accessed: 04.05.2026).
7. The Law of the Republic of Armenia “On the Budgetary System of the Republic of Armenia”, adopted on 24 June 1997, entered into force on 21 August 1997, RA Official Gazette 1997.08.11/18, available at: <https://www.arlis.am/hy/acts/219259/latest> (accessed: 04.05.2026).
8. The Law of the Republic of Armenia “On Local Self-Government”, adopted on 07 May 2002, entered into force on 21 June 2002, RA Official Gazette 2002.06.21/21(196), Art. 473, available at: <https://www.arlis.am/hy/acts/224020/latest> (accessed: 04.05.2026).
9. The Law of the Republic of Armenia “On the Prosecutor’s Office”, adopted on 17 November 2017, entered into force on 9 April 2018, RA Official Gazette 2017.12.13/74(1349), Art.1213.

10. The Law of the Republic of Armenia “On Making Amendments and Additions to the Law ‘On the Prosecutor’s Office’”, adopted on 01 March 2023, entered into force on 06 April 2023, available at: <https://www.arlis.am/hy/acts/175782> (accessed: 04.05.2026).
11. Decision of the Court of Cassation of the Republic of Armenia of 10 May 2024 in administrative case No. VD/4571/05/23, available at: <https://arlis.am/hy/acts/193830> (accessed: 04.05.2026).
12. Procedural Decision No. SDAO-7 of the Constitutional Court of the Republic of Armenia, adopted on 21 January 2025, “On Refusing to Examine the Case on Determining the Compliance with the Constitution of Article 29 of the Law ‘On the Prosecutor’s Office’, as in force prior to 6 April 2023, on the Basis of the Application of the Anti-Corruption Court of Appeal”, available at: https://concourt.am/decision/decisions/67934c354bd99_SDAV-7.pdf (accessed: 04.05.2026).
13. Decision of the Anti-Corruption Court of Appeal of the Republic of Armenia of 17 October 2025 in case No. HKD/0143/02/23, available at: https://datalex.am:443/?app=AppCaseSearch&case_id=47850746040813900 (accessed: 04.05.2026).

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.

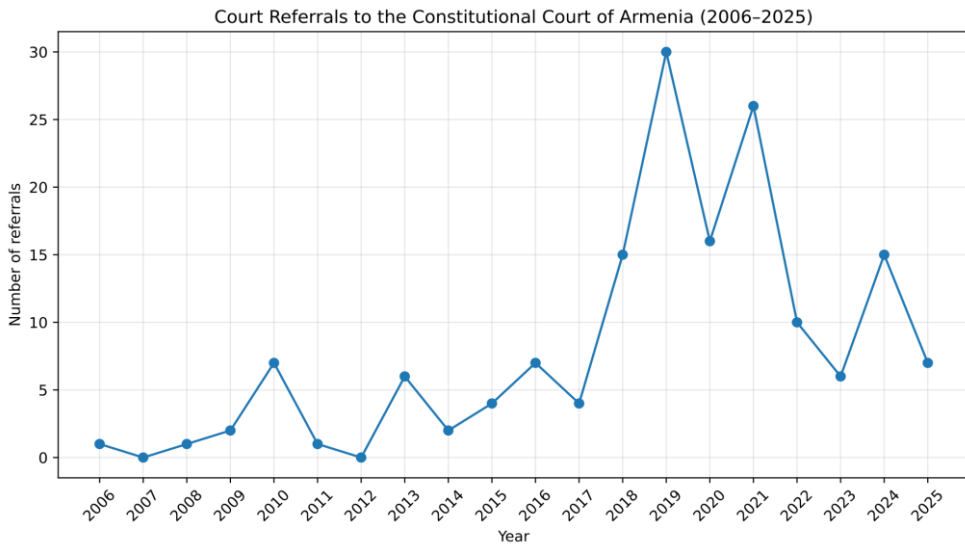


Figure 1. Court Referrals to the Constitutional Court of Armenia (2006–2025).¹

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

2024file:///E:/%D0%A0%D0%B0%D0%B1%D0%BE%D1%87%D0%B8%D0%B9%20%D1%81%D1%82%D0%BE%D0%BB/EPH/2026/Hodvac/Constitutional_Referrals_by_Ordinary_Courts_A_Pl at.pdf

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.

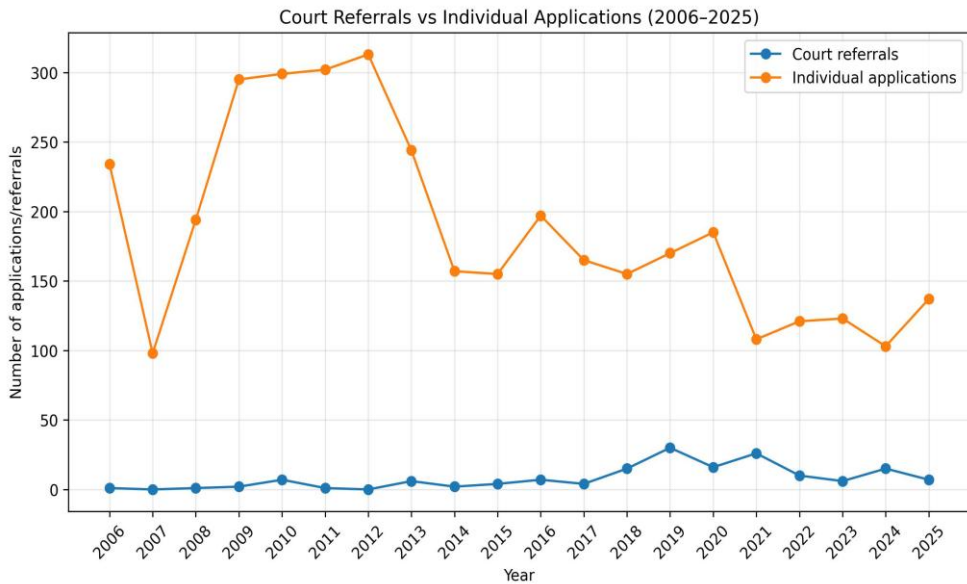
The mechanism of judicial referrals to the Constitutional Court performs a dual function. First, it has a rights-protective function, since it prevents the application of a potentially unconstitutional norm to a concrete individual. Second, it has an objective public-law function, since it serves the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

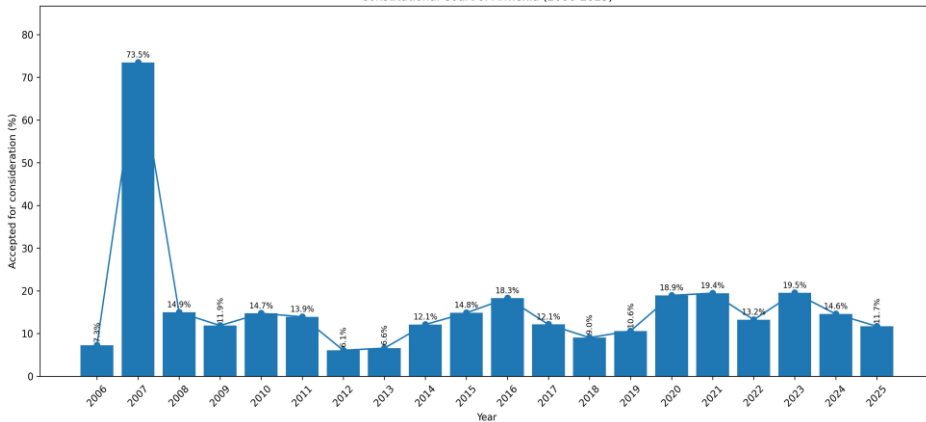
⁷ Constitution of the Republic of Armenia, as amended by the referendum of 6 December 2015, Article 169, Part 4.

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.

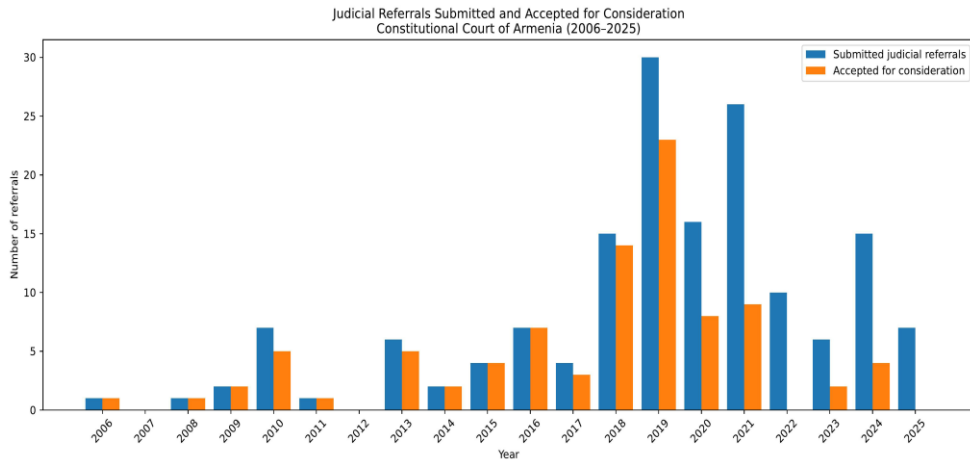
A court may apply constitution-conforming interpretation only where the challenged or applicable norm allows such interpretation. If the text, structure, legal context, or binding practice of application of the norm leads to a meaning that cannot be reconciled with the Constitution, the court cannot 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.

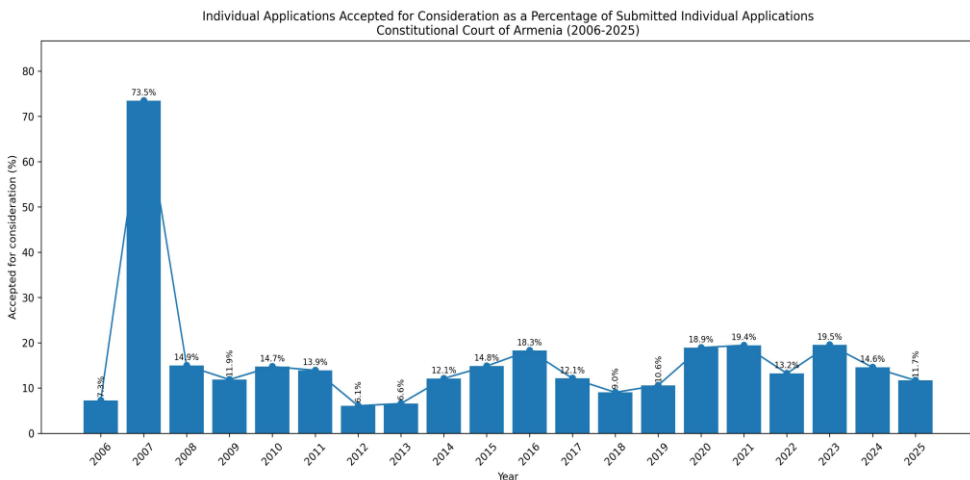
In this context, it is important to distinguish between two situations. In the first situation, the norm allows several possible interpretations, one of which is compatible with the Constitution. In that case, the court may choose the constitution-conforming interpretation. In the second situation, the 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.

PROTECTION OF LEGITIMATE EXPECTATIONS IN THE CONTEXT OF REVOCATION OF UNLAWFUL ADMINISTRATIVE ACTS

Kristine Aleksanyan*

Abstract. This article examines the issues related to the annulment of unlawful administrative acts in administrative law, within the context of balancing the protection of legitimate expectations and the principle of legality. The article establishes the main criteria that administrative authorities and courts should follow when deciding on the annulment of unlawful favorable administrative acts, both *ex nunc* and *ex tunc*. Specifically, in the case of *ex nunc* annulment, emphasis is placed on maintaining a proper balance between the protection of legitimate expectations and the principle of legality, the time elapsed between the adoption and annulment of the unlawful favorable administrative act, and the need to establish a transitional period when annulling an unlawful administrative act in order to prevent disproportionate harm to the addressee. When considering the *ex tunc* annulment of an unlawful favorable administrative act, attention is given to the degree of reliance and engagement of the addressee on the act's legality, the extent of violation of the principle of legality, the interests of third parties, and the time elapsed between the adoption and annulment of the administrative act.

Keywords - *legitimate expectation, legality, favorable administrative act, ex nunc annulment, ex tunc annulment, proper balance, EU case law.*

Introduction

Issues related to unlawful administrative acts in administrative law represent a field of significant importance both in legal theory and in practical application. The balance between the legality of administrative acts and the protection of legitimate expectations creates complex legal and factual situations, in which individuals may rely on decisions without fully understanding their legality. Moreover, the

* **Kristine Aleksanyan** - PhD in Law, Assistant Professor at Chair of Constitutional Law, Faculty of Law, Yerevan State University, E-mail: aleksanyan.kristine@ysu.am ORCID: <https://orcid.org/0009-0000-1635-0812>



annulment of unlawful favorable administrative acts can be carried out *ex nunc* or *ex tunc*, with differing effects on the rights of the addressee and the public interest.

The purpose of this study is to substantiate, through a comprehensive examination of comparative experience, national practice, and the case law of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU), that the annulment of unlawful administrative acts must be addressed in a balanced manner, ensuring legal certainty and the protection of individual legitimate expectations, while minimizing unjust impacts on third parties and the public interest. To this end, the article develops criteria that administrative authorities and administrative courts should follow when resolving the *ex nunc* or *ex tunc* annulment of unlawful favorable administrative acts.

Research

Legal norms applied in administrative law are often complex. The precise boundaries of lawful administrative action may not always be fully clear, even to specialists in the field. Lawyers themselves may debate where the line between legality and illegality lies, and judges may hold differing views on which side of the line a particular administrative act falls. In this context, given the complexity of contemporary administrative legislation, individuals are often unable to clearly understand that an administrative act or action is unlawful.

Naturally, the principles of legality and lawful administration require that if a public authority issues an unlawful decision, it must be annulled—especially where the illegality may have serious effects on third parties. However, it is clear that the revocation of unlawful decisions can have significant consequences for those who relied on them, trusting in their legality. The absence of any protection for legitimate expectations can therefore create substantial difficulties and undermine trust in public authorities, as individuals plan their lives and make financial or personal decisions based on these acts¹.

This issue presents a fundamental tension: fairness to the individual may conflict with the principle of lawful administration, which requires authorities to act only within powers explicitly granted and within the legal limits. The fact that unlawful decisions can generate expectations that authorities are then obliged to respect challenges this principle. By making unlawful declarations, authorities

¹ **Bradley AW**, 'Administrative Justice and the Binding Effect of Official Acts' (1981) *Current Legal Problems*, p. 3, **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), pp. 257–298:

may, intentionally or unintentionally, extend their powers beyond the limits prescribed by law². Different legal systems address this problem in varying ways.

In this context, it is of practical interest to consider the criteria that an administrative court or authority should apply when deciding whether to annul an unlawful administrative act with *ex tunc* or *ex nunc* effect. The rich case law of EU courts provides particularly useful guidance in this regard. The EU judicial practice on the annulment of unlawful decisions developed in the decisions of the European Coal and Steel Community (ECSC)³.

For research purposes, the detailed analysis of EU courts' case law is especially relevant for drawing conclusions on the protection of legitimate expectations when unlawful administrative acts are annulled. Relying on French and German judicial practice, EU courts have developed a complex public-law principle designed to balance the requirements of legality and fairness for individuals who plan their lives and rely on unlawful decisions⁴. Within this framework, a clear distinction is drawn between *ex tunc* and *ex nunc* annulments.

With regard to domestic regulations, Article 64(1) of the Law On Fundamentals of Administration and Administrative Proceedings⁵ (hereinafter Law) provides that an unlawful administrative act loses its legal effect either from the moment a decision declaring it invalid is adopted or from the moment the administrative act was originally adopted, subject to the exceptions set out in the second paragraph of the same subsection and in Article 64(2). The second paragraph of this subsection specifies that, in cases provided for in Article 63(4), an unlawful administrative act is deemed invalid from the moment it was adopted, unless otherwise provided by law. Article 63(4) identifies the circumstances in which an individual has no right to rely on an administrative act; in other words, these are cases in which the protection of legitimate expectations does not arise.

Thus, Article 64(1) shows that the legislature has, on one hand, granted the administrative authority discretion in determining the moment at which an administrative act loses its legal effect, and on the other hand, has identified specific cases in which an unlawful administrative act must be deemed invalid from the moment of adoption (where the individual has no right to rely on the act), and cases in which the act loses legal effect from the moment it is declared invalid.

² Minister of Agriculture and Fisheries v Mathews [1950] 1 KB 148.

³ **Craig P**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp. 613-618 **Schwarze J**, *European Administrative Law* (revised edn, Sweet & Maxwell 2006), pp. 991-1025.

⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 281-285:

⁵ Adopted on 18 February 2004.

According to Article 64(2), a favorable unlawful administrative act, which gives rise to simultaneous or ongoing property obligations or serves as a prerequisite for such obligations, may only lose its effect from the moment it is declared invalid if the beneficiary has already obtained the conferred benefits or disposed of the property in reliance on the act, and returning these benefits would cause substantial harm to the beneficiary.

Regarding the *ex nunc* annulment of unlawful decisions, the approach of the EU courts appears to be clear. Some rulings indicate that *ex nunc* annulment is, in principle, always possible⁶. In the recent case of *ZF*⁷, the EU Court reaffirmed that, according to established case law, any EU institution that finds an adopted act to be unlawful has the right to annul it within a reasonable period, with prospective effect. This right may, however, be limited by the need to respect the legitimate expectations of the act's beneficiary if they have relied on the act's legality⁸. The Court emphasized that an EU institution can annul an unlawful act only within a reasonable timeframe. Accordingly, the Court summarized that the annulment of a favorable unlawful act for the addressee is subject to two legal conditions: first, the legitimate expectations of the concerned party must be preserved, and second, the annulment must be carried out within a reasonable period⁹.

Similar criteria have been formulated by the European Court of Human Rights (ECtHR). In *Moskal v Poland*, the Court noted that, considering the importance of social justice, public authorities should not be deprived of the opportunity to correct their errors, even if these errors result from their own negligence. A contrary approach would conflict with the doctrine of unjust enrichment and would also be unfair to other participants in the social security system, particularly those who were denied benefits due to non-compliance with legal requirements. Finally, it would sanction the improper allocation of limited public resources, which would contradict the public interest¹⁰.

The Court has also emphasized that, despite the important considerations mentioned above, this general principle cannot prevail in situations where an individual is required to bear an excessively heavy burden as a result of being deprived of a benefit. If the error originates from the authorities themselves and no third party is at fault, a different approach must be applied in the proportionality

⁶ Case 15/60 *Simon v High Authority* [1961] ECR 115, 123.

⁷ Case T-605/18 *ZF v Commission* [2020] ECR, 148.

⁸ Case C-248/89 *Cargill v Commission* [1991] ECR, 20, Case T-233/16 *P Ruiz Molina v EUIPO* [2017] ECR, 27, Case T-365/24 *LU v EIB* [2026] ECR 100.

⁹ Case T-605/18 *ZF v Commission* [2020] ECR, 150.

¹⁰ ECtHR judgment *Moskal v. Poland* (10373/05) 15 September 2009, 73: See also ECtHR, judgement *Beinarovič and Others v Lithuania* (70520/10, 21920/10, 41876/11) 12 June 2018.

assessment to determine whether the burden imposed on the applicant is indeed excessive¹¹.

The case concerned the suspension of a previously awarded pension by a social security authority following the discovery of an administrative error. In this context, the Court highlighted two additional important factors relevant to the annulment of unlawful administrative acts: the applicant's good faith, the timing of the declaration of invalidity, and the provision for transitional arrangements¹².

The European Court of Human Rights (ECtHR) has recently reaffirmed that the principle of "good administration" requires public authorities, when a matter of public interest is involved—especially if it concerns fundamental rights such as property—to act promptly, properly, and with maximum consistency. As a general rule, the principle of good administration should not prevent authorities from correcting inadvertent errors, even if they arise from their own negligence. However, the need to correct "old errors" should not disproportionately interfere with new rights acquired by an individual who has reasonably relied on the legitimacy of the public authority's actions. In other words, public authorities that fail to comply with or observe their own established procedures should not benefit from their unlawful conduct or evade their obligations. Any risk arising from an error by a public authority must be borne by the state, and errors should not be remedied at the expense of the individuals concerned¹³.

Therefore, it can be concluded that *ex nunc* annulment is generally less intrusive for the beneficiary of an administrative act than *ex tunc* annulment. Both the ECtHR and EU courts typically consider it acceptable to annul a favorable unlawful administrative act from the moment it is declared invalid. However, two important factors must be considered by the administrative authority or court when examining the annulment of an administrative act.

Thus, in each case, the administrative authority or the court must consider the specific facts of the case, ensuring, through consistent application of the proportionality principle, an appropriate balance between the protection of legitimate expectations and the principles of legality. In this context, it is necessary to assess whether the initial measure created legitimate expectations and whether the *ex nunc* annulment occurs within a reasonable period. Thirdly, if the immediate entry into force of the *ex nunc* annulment would, by undermining legitimate

¹¹ *ibid.*

¹² ECtHR judgment *Moskal v. Poland* (10373/05) 15 September 2009, 67-76.

¹³ ECtHR, judgement *Eka Mikeladze and Others v. Georgia* (29385/11, 19372/12, 29533/13, and 73699/13) 25 November 2021, 49, ECtHR, judgement *Văleanu and Others v Romania* (59012/17 and 29 others) 8 November 2022, 247.

expectations, impose a disproportionately heavy burden on the addressee of the administrative act, a transitional period should be established, meaning that the administrative act would lose its effect at a later date.

Until now, the discussion has focused on the *ex nunc* annulment of favorable unlawful administrative acts. We will now turn to the criteria that a court or administrative authority should apply when considering the *ex tunc* annulment of administrative acts. As with *ex nunc* annulment, the starting point remains the need to balance the principle of legality with the protection of legitimate expectations¹⁴. However, because *ex tunc* annulment constitutes a more severe interference with legitimate expectations, the criteria in this context are significantly stricter¹⁵.

In examining this issue, it is practically important to identify the factors that should be considered when deciding whether to annul favorable unlawful administrative acts *ex tunc*. These criteria are based on an analysis of the case law of the European Court of Human Rights, the Court of Justice of the European Union, and the judicial practices of Germany, France, and the United Kingdom.

First, the annulment of a favorable unlawful administrative act should only be considered if the individual in whose favor the decision was made could not have reasonably held a legitimate expectation that the decision would finally resolve the matter in question. The issue is whether a person with general knowledge and experience could reasonably expect that the decision definitively settled the matter¹⁶. A legitimate expectation is more likely to be protected when it is difficult to establish that the act is unlawful, rather than when it clearly violates specific statutory provisions or fundamental procedural or substantive principles¹⁷.

The importance of reliance on the legality of the measure was emphasized in the *Lagardère and Canal* cases¹⁸. The EU General Court found that the initial decision was, in fact, lawful and therefore should not be annulled retroactively. Moreover, the Court noted that even if the initial decision had been unlawful due to additional restrictions, this would not justify retroactive annulment. The discrepancy with the additional restrictions was not so evident as to give the applicants, who were *bona fide* commercial enterprises, any reason to doubt the lawfulness of the decision at

¹⁴ Cases 7/56 and 3-7/57 *Algera v Common Assembly* [1957] ECR 39, 15/85 *Consorzio Cooperative d'Abruzzo v Commission*. [1987] ECR 1005 10-11.

¹⁵ Case 54/77 *Herpels v Commission* [1978] ECR, 38.

¹⁶ Case 112/77 *Töpfer v Commission* [1978] ECR 1019.

¹⁷ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 257–298.

¹⁸ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 616, Case T-251/00 *Lagardère SCA and Canal+ SA v Commission* [2002] ECR II-4825.

the time it was received. Thus, retroactive annulment would have conflicted with the applicants' legitimate expectations¹⁹.

Second, if it is established that an individual holds legitimate expectations, the administrative authority must take into account the extent to which the person has relied on the decision. Of particular importance is whether the individual has relied financially on the decision²⁰. However, financial reliance is neither necessary nor sufficient. The key question is the broader impact of retroactively annulling the decision.

The likelihood of the applicant's success will be lower if they cannot demonstrate reliance on the lawfulness of the measure that was subsequently annulled, particularly if they cannot show any negative consequences arising from the passage of time between the initial measure and its annulment or modification.

This reasoning is illustrated in the Alpha Steel case²¹. The applicant company had been allocated a steel quota for a specified period, which it challenged. During judicial review, the Commission replaced the contested decision, arguing that the previous decision was flawed. Nevertheless, the new decision established a lower quota than the previous one. The applicant argued that the Commission could not annul the decision under judicial review and replace it with a less favorable one. The CJEU rejected this argument²².

This reasoning aligns with Article 64(2) of the Law, which provides that a favorable unlawful administrative act that gives rise to simultaneous or ongoing property obligations, or serves as a precondition for such obligations, may only lose legal effect from the moment it is declared null and void if the beneficiary has, by virtue of their right to trust in the administrative act, already received the conferred benefits or disposed of the property in such a way that it cannot be returned, or that returning it would cause significant harm to the beneficiary.

Third, the importance or weight of the principle of legality must be taken into account. The more serious the violation, the more likely it is that the decision may be annulled. A decision that infringes fundamental rights is more likely to be revoked than a decision taken with procedural irregularities or based on an ambiguous misinterpretation of legislative provisions²³.

¹⁹ *ibid.*

²⁰ **Lord Mackenzie Stuart**, 'Legitimate Expectations and Estoppel in Community Law and English Administrative Law' (1983) LIEI 53, ¶ 60.; Cases 42 and 49/59 SNUPAT v High Authority [1961] ECR 53, 14/81 Alpha Steel v Commission [1982] ECR 749:

²¹ Case 14/81 Alpha Steel v Commission [1982] ECR 749:

²² **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 617.

²³ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), pp. 281–285:

In the *De Compte* case, the European Court ruled that compensation granted on the basis of a misinterpretation of the concept of “work-related” illness could not be annulled. Apparently, this was considered a relatively minor legal error that did not justify revocation of the decision to the detriment of the individual who had already suffered significant reliance²⁴.

However, an applicant is unlikely to succeed in cases where the measure is manifestly unlawful, leaving no room for any legitimate expectation of its validity. In the *Cargill* case²⁵, the CJEU reaffirmed the principle that the right to annul a manifestly unlawful measure retroactively is limited by the beneficiary’s legitimate expectation based on the measure’s apparent lawfulness. Nevertheless, the Court found that the contested measure had been annulled *ex tunc* within three months of the violation being identified. Moreover, the defect in the measure was so obvious that several traders had contacted the Commission to seek correction at the time of its publication. Consequently, a diligent trader could not reasonably rely on the lawfulness of such a flawed measure²⁶.

The CJEU applies this criterion even where the wording, purpose, or overall structure of the legal framework clearly indicates that annulment should operate retroactively. In particular, this refers to situations where overriding public interest can only be achieved if the administrative act is annulled from the moment it was adopted²⁷.

Fourth, it is necessary to consider how third parties would be affected if an unlawful decision were to remain in force. For example, in the *Hugovens* case, the European Court held that a tax advantage granted for scrap metal could be annulled retroactively, in particular because no other steel producers benefited from this advantage. Maintaining the benefit would have had a distorting effect on competition²⁸.

²⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), p. 292, Case C-90/95P *Henri de Compte v EP* [1997] ECR I-1999.

²⁵ Case C-365/89 *Cargill BV v Produktschap voor Margarine, Vetten en Olie* [1991] ECR I-3045, [18],

Case C-248/89 *Cargill BV v Commission* [1991] ECR I-2987, 20.

²⁶ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 617.

²⁷ Case 14/61: *Koninklijke Nederlandsche Hoogovens en Staalfabrieken NV v High Authority of the European Coal and Steel Community* [1962], Joined Cases C-74/00 P and C-75/00 P: *Falck SpA and Acciaierie di Bolzano SpA v Commission of the European Communities* [2002], Case C-611/17: *Republic of Italy v Council of the European Union (Fishing quota for Mediterranean swordfish)* [2019].

²⁸ Case 14/61 *Hoogovens v High Authority* [1962] ECR 253, 269-70.

However, for the consequences to third parties to carry significant weight in the balancing exercise, they must be relatively direct. De Compte provides a clear example²⁹: who could suffer harm from the unlawful decision to pay or not pay compensation to Mr. De Compte for his work-related illness? Only the community's finances, i.e., the totality of European taxpayers³⁰. There was no partner or individual subject to direct "harm" or discrimination as a result of the unlawful compensation³¹. Therefore, the Court's position is that when considering the annulment of a favorable unlawful administrative act affecting third parties, it is not a matter of automatically excluding the protection of legitimate expectations; rather, the legitimate expectations must be balanced against competing rights and interests³².

In this context, the recent decision of the Armenian Court of Cassation appears problematic. The Court stated: "...the right of the addressee of an administrative act to rely on its existence is not, by itself, sufficient to prevent the act from being annulled. It is necessary that, under Article 63(3) of the Law on the Principles of Administration and Administrative Procedure, another legislative prerequisite exists, namely that the continued operation of the administrative act does not harm the rights of any person, the Republic of Armenia, or any community.

According to the Court, the prerequisite that 'the operation of the administrative act does not harm the rights of any person' can only be considered fulfilled if the operation of the administrative act cannot reasonably affect or relate to the rights of third parties. Otherwise, when the operation of the act can reasonably impact the rights of others, the prerequisite for applying the legislative regulation to avoid annulment of an unlawful administrative act cannot be considered satisfied.³³

We consider that the protection of the addressee's reliance cannot be automatically subordinated to the interests of other individuals, the state, or the community, thereby excluding the first's protection in all cases. Whenever the addressee has a legitimate expectation of the administrative act, yet the act affects the rights or interests of others, the state, or the community, the proper approach is not to exclude the protection of legitimate expectations outright. Rather, the principle of proportionality should be applied rigorously to ensure a fair balance between the addressee's right to rely on the act and the protection of legality and

²⁹ Case C-90/95P *Henri de Compte v EP* [1997] ECR I-1999.

³⁰ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), p 292.

³¹ Case 15/85 *Consorzio Cooperative d'Abruzzo v Commission* [1987] ECR 1005.

³² Case 111/63 *Lemmerz-Werke v High Authority* [1965] ECR 677.

³³ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), p 616.

³³ Decision of the Court of Cassation in administrative case No. VD/8615/05/20.

the prevention of harm to others. This approach is justified because it would be unfair to leave the full burden of administrative errors on the addressee, even if the actual harm to third-party interests is minimal.

Finally, it is necessary to take into account the period of time between the adoption of the decision and its annulment. Retroactive annulment must always be carried out within a reasonable timeframe. The duration of this period particularly depends on how difficult it was for the administrative body and the interested party to ascertain that the decision was unlawful, as well as how promptly the interested party was informed that the administrative body might annul the decision³⁴.

These criteria are rarely precisely defined in case law, and it is difficult to determine exactly what constitutes a “reasonable” period, although a period of several weeks is almost always considered acceptable. For example, in recent cases, the European Court has taken a stricter approach. In *Consorzio Cooperative d’Abruzzo*³⁵, the applicant requested the annulment of a decision by the European Agricultural Guidance and Guarantee Fund (EAGGF), which reduced the aid by approximately one billion lire. The reduction decision was adopted two years after an earlier decision granting the applicant a higher amount of aid. The Commission argued that the retroactive annulment was justified because the previous decision had been legally incorrect³⁶.

The European Court disagreed and held that the retroactive annulment of an unlawful measure is acceptable only if it is carried out within a reasonable timeframe and if the Commission pays sufficient attention to the extent to which the applicant could have relied on the legality of the measure. In this case, the retroactive annulment failed for two reasons. First, the reduction decision was made two years later, which was not a reasonable period because the Commission could have discovered and corrected its error earlier. Second, the applicant had reasonably relied on the legality of the initial decision, as the errors were not obvious.

The European Court of Justice (ECJ) also ruled in favor of the applicant in *de Compte*³⁷. Recall that the respondent attempted to justify the retroactive annulment of the previous decision on the basis that it was unlawful, as it had been adopted due to a misinterpretation of work-related illness provisions. The ECJ rejected this

³⁴ **Søren J. Schönberg**, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, **Yearbook of European Law**, Vol. 19, Issue 1 (1999), pp. 296–297.

³⁵ Case 15/85 *Consorzio Cooperative d’Abruzzo v Commission* [1987] ECR 1005.

³⁶ **Craig P.**, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp 615-616.

³⁷ Case C-90/95 P *Henri de Compte*, Case T-416/04 *Kontouli 161–170*, Case F-51/07 *Philippe Bui Van v Commission*, EU:F:2010:108.

argument. The Court affirmed that an unlawful measure may be annulled retroactively within a reasonable timeframe; however, this right is limited by the requirement to respect the legitimate expectations of the measure's addressee, who relied on its legality. In this case, the applicant was entitled to rely on the legality of the measure that the respondent sought to annul. Moreover, there was no evidence that the applicant had been misled or had received incomplete or false information regarding the prior decision. Additionally, no overriding public interest existed that would outweigh the beneficiary's justified reliance on a stable and maintained situation³⁸.

These rulings demonstrate that the concept of a "reasonable delay" is inextricably linked to the balance between legitimate expectations and legality. As discussed above, the *de Compte* case involved significant interests in favor of the applicant, weak arguments in favor of legality, and no risk of harm to third parties³⁹. Consequently, to ensure an overall fair outcome, the European Court substantially curtailed the "reasonable" timeframe⁴⁰.

In summary, regarding the retroactive (*ex tunc*) annulment of unlawful favorable administrative acts, annulment from the date of adoption should be applied only in exceptional circumstances, in light of the need to preserve legal certainty and protect legitimate expectations. When addressing the retroactive annulment of unlawful favorable administrative acts, the administrative body or court must take into account: the degree to which the addressee relied on the legality of the administrative act and the extent of their interest in it; the weight of legality; the interests of third parties; and the period of time elapsed between the adoption of the administrative act and its annulment.

Conclusion

In summary of the research, it can be noted that the *ex nunc* annulment of unlawful administrative acts is generally, all else being equal, less intrusive for the addressee of the administrative act than *ex tunc* annulment. This is explained by the fact that both the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) generally consider it acceptable to annul unlawful favorable administrative acts from the moment they are declared invalid. However,

³⁸ Craig P, *EU Administrative Law* (3rd edn, Oxford University Press 2018), pp. 616, 618.

³⁹ Søren J. Schönberg, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, *Yearbook of European Law*, Vol. 19, Issue 1 (1999), p. 292:

⁴⁰ Case 14/61 *Hoogovens v High Authority* [1962] ECR 253, 5.

two aspects must be emphasized, which the administrative authority or the court must take into account when examining the annulment of an administrative act.

Thus, in each case, the administrative authority or the court must consider the specific facts of the case, applying the principle of proportionality consistently, to ensure an appropriate balance between the protection of legitimate expectations and the principle of legality. In this context, it is necessary to assess whether the initial measure gave rise to legitimate expectations, and whether the *ex nunc* annulment occurs within a reasonable period. Thirdly, if the immediate entry into force of the *ex nunc* annulment would, by disrupting legitimate expectations, impose a disproportionately heavy burden on the addressee of the administrative act, a transitional period should be established, meaning that the administrative act would lose its legal effect at a later date.

With regard to the *ex tunc* annulment of unlawful favorable administrative acts, it can be noted that, due to the need to ensure legal certainty and the protection of legitimate expectations, such annulment from the moment of adoption should only be applied in exceptional cases. When resolving the *ex tunc* annulment of unlawful favorable administrative acts, it is necessary to take into account the addressee's degree of reliance on the legality of the administrative act, their level of involvement, the weight of the principle of legality, the interests of third parties, and the period between the adoption of the administrative act and its annulment.

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. Bradley, A. W., *Administrative Justice and the Binding Effect of Official Acts*, 1981 Current Legal Problems, p. 3.
2. Craig P, *EU Administrative Law* (3rd edn, Oxford University Press 2018).
3. Schwarze, J., *European Administrative Law* (revised edn, Sweet & Maxwell 2006), pp. 991–1025.
4. Lord Mackenzie Stuart, *Legitimate Expectations and Estoppel in Community Law and English Administrative Law*, 1983 LIEI 53, p. 60.
5. Søren J. Schønberg, *Legal Certainty and Revocation of Administrative Decisions: A Comparative Study of English, French, and EC Law*, Yearbook of European Law, Vol. 19, Issue 1 (1999), pp. 257–298.
6. Case 15/60 Simon v. High Authority [1961] ECR 115, 123.
7. ECtHR, *Moskal v. Poland* (10373/05) 15 September 2009, §§ 67–76.

8. ECtHR, *Beinarovič and Others v. Lithuania* (70520/10, 21920/10, 41876/11) 12 June 2018.
9. ECtHR, *Eka Mikeladze and Others v. Georgia* (29385/11, 19372/12, 29533/13, 73699/13) 25 November 2021, § 49.
10. ECtHR, *Văleanu and Others v. Romania* (59012/17 and 29 others) 8 November 2022, § 247.
11. Cases 42 and 49/59 SNUPAT v. High Authority [1961] ECR 53.
12. Case 14/61 Koninklijke Nederlandsche Hoogovens en Staalfabrieken NV v. High Authority [1962] ECR 253, 269–270.
13. Case 111/63 Lemmerz-Werke v. High Authority [1965] ECR 677.
14. Case 14/81 Alpha Steel v. Commission [1982] ECR 749.
15. Case 15/85 Consorzio Cooperative d’Abruzzo v. Commission [1987] ECR 1005, pp. 10–11.
16. Case 54/77 Herpels v. Commission [1978] ECR 38.
17. Case 112/77 Töpfer v. Commission [1978] ECR 1019.
18. Case T-251/00 Lagardere SCA and Canal+ SA v. Commission [2002] ECR II-4825.
19. Joined Cases C-74/00 P and C-75/00 P Falck SpA and Acciaierie di Bolzano SpA v. Commission [2002].
20. Case C-248/89 Cargill BV v. Commission [1991] ECR I-2987, 20.
21. Case C-365/89 Cargill BV v. Produktschap voor Margarine, Vetten en Olien [1991] ECR I-3045, [18].
22. Case C-90/95P Henri de Compte v. EP [1997] ECR I-1999.
23. Case T-233/16 P Ruiz Molina v. EUIPO [2017] ECR 27.
24. Case C-611/17 Republic of Italy v. Council of the European Union (Fishing quota for Mediterranean swordfish) [2019].
25. Case T-605/18 ZF v. Commission [2020] ECR 148, 150.
26. Case T-365/24 LU v. EIB [2026] ECR 100.
27. Case T-416/04 Kontouli [161–170].
28. Case F-51/07 Philippe Bui Van v. Commission EU:F:2010:108.
29. Minister of Agriculture and Fisheries v. Mathews [1950] 1 KB 148.
30. Decision of the Court of Cassation, administrative case No. VD/8615/05/20

CONTEMPORARY ISSUES OF THE ILLEGAL CIRCULATION OF HUMAN ORGANS OR OTHER OBJECTS DEEMED EQUIVALENT THERETO UNDER THE CRIMINAL CODE

Anna Margaryan^{*}, Gevorg Barseghyan^{**}, Bagration Darbinyan^{***}

Abstract. This article is devoted to a comprehensive study of the issues of criminal-legal regulation of the illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials, or bodily fluids.

The aim of the study is to identify the theoretical and practical issues arising from Article 183 of the Criminal Code of the Republic of Armenia, to assess the compliance of its provisions with contemporary criminal-legal policy and international legal standards, and to propose avenues for legislative improvement.

In the course of the study, both general scientific and special research methods were employed, including analysis, synthesis, generalization, comparative legal analysis, logical analysis, systems-structural analysis, and legal modelling.

The article comprehensively examines the issues relating to the object, objective side, subject, and subjective side of the corpus delicti, as well as the specific features of the criminal-legal assessment of the illegal circulation of human organs. It is substantiated that the current regulation does not fully reflect the graduated differences in the degree of public danger of the criminal conduct and, in certain cases, is inconsistent with the immediate object of criminal-legal protection. As a result, a new structure of Article 183 of the Criminal Code of the Republic of Armenia is proposed, based on the nature of the subject matter of the offence, the degree of public danger, unlawfulness, and the principle of differentiation of the protected legal interests.

^{*} **Anna Margaryan** - Head of the Chair of Criminal Law, Faculty of Law, Yerevan State University, Doctor of Legal Sciences, Professor, ORCID - 0000-0003-4533-6467, annamargaryan@ysu.am

^{**} **Gevorg Barseghyan** - Lecturer at the Chair of Criminal Law, Faculty of Law, Yerevan State University, Candidate of Legal Sciences, ORCID - 0000-0002-5642-7658, gevorg.barseghyan@ysu.am

^{***} **Bagration Darbinyan** - Bachelor's student, Faculty of Law, Yerevan State University, ORCID - 0009-0007-5685-1161, bagration.darbinyan@edu.ysu.am



The research findings may contribute to the improvement of national criminal legislation, the effective implementation of international obligations undertaken by the Republic of Armenia, and the harmonization of law enforcement practice.

Keywords – *trafficking in human organs, vital organs, non-vital organs, public health, medical ethics, Oviedo Convention, Convention against Trafficking in Human Organs, organ transplantation, biomedicine technologies, improvement of criminal legislation.*

I. Introduction

The illegal circulation of human organs, or, as it is often referred to, the sale or trafficking of human organs, is a global problem that requires an appropriate and adequate response from States and supranational organizations. The vital necessity of donor organs and the evident imbalance between their supply and demand have led to the development of a transnational business involving the illegal procurement and/or transplantation of human organs. The demand for vital organs, with the exception of one or two organs, is satisfied at the cost of donors' lives, which implies the operation of criminal schemes. It is probably due to these circumstances that the "hunting" for human organs has spread as a form of transnational organized crime. To prevent it, or at least to reduce its scale, States and supranational organizations must adopt the necessary measures, namely the development and/or revision of rules governing organ transplantation, the introduction of the necessary tools for the investigation and detection of this offence, and so on. It should also be noted that the scale of the illegal circulation of human organs is determined by the standard of living of the population of a given State.

Studies show that victims of human organ trafficking are predominantly residents of States with a low standard of living. Therefore, in order to prevent the illegal circulation of human organs, each State should adopt comprehensive measures, not exclusively legal ones. The illegal circulation of human organs is not only a criminal or medical issue, but also a manifestation of social inequality, in which the main providers of biological resources are socially vulnerable groups, while the beneficiaries are more affluent strata of society¹.

In this context, the incorporation into the Criminal Code of an offence establishing liability for the illegal circulation of a human embryo, foetus, human or cadaveric cells, tissues, organs, biological materials, or bodily fluids (Article

¹ Scheper-Hughes N., *The Global Traffic in Human Organs*. Current Anthropology. 2000. Vol. 41(2), pp. 191–224.

183, under the heading “Offences Endangering Human Life and Health”) should be regarded as a progressive and welcome development.

The ratification by the Republic of Armenia in 2025 of the European Convention on Human Rights and Biomedicine (“Oviedo Convention”) on the Protection of Human Rights and Dignity with regard to the Application of Biology and Medicine², as well as the ongoing process of ratification of the Council of Europe Convention against Trafficking in Human Organs³, demonstrates that the Republic of Armenia attaches particular importance to this field and has assumed relevant international legal obligations, which necessitates the further harmonization of national legislation and the effective implementation of conventional norms.

Given the relatively recent introduction of the *corpus delicti* under consideration, it has not yet been studied in the Republic of Armenia with sufficient scope or depth. Accordingly, by making the *corpus delicti* the subject of the present research and identifying the shortcomings of the article establishing it, this paper seeks to outline possible approaches to overcoming and/or resolving those deficiencies.

In light of the above, the aim of this article is to examine, on the basis of criminal-legal and comparative legal analysis, the legal regulation establishing liability for the illegal circulation of human organs or other objects equated thereto under the Criminal Code, to identify the problems in the current legislation and law enforcement practice, and to propose possible directions for their resolution and improvement.

1. MAIN RESEARCH

1.1. Object and Objective Side of the Offence

An analysis of the disposition of Article 183 of the Criminal Code of the Republic of Armenia⁴ (hereinafter also referred to as the “Criminal Code”) indicates that the *corpus delicti* of illegal circulation of human organs or other objects provided for in the Article may also be constituted where the relevant objects have been removed

² Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (*ETS No. 164*). Oviedo, 4 April 1997, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=164&utm_source=chatgpt.com

³ Council of Europe. *Council of Europe Convention against Trafficking in Human Organs (CETS No. 216)*. Santiago de Compostela, 25 March 2015, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=216&utm_source=chatgpt.com

⁴ Criminal Code of the Republic of Armenia. Adopted on 5 May 2021, entered into force on 1 July 2022, Law No. HO-199-N. In force.

from a cadaver. At the same time, this legislative approach gives rise to a certain theoretical inconsistency between the *corpus delicti* and its specific object, as the latter is classified under the chapter entitled “Offences Endangering Human Life and Health”. Where the conduct concerns a cadaver, human life has already ceased, and the social relations associated with the protection of health no longer exist. Accordingly, the question arises as to whether, in such cases, the social relations that the *corpus delicti* in question is intended to protect are in fact harmed.

Under the current legal framework, a certain inconsistency arises between the specific object of the *corpus delicti* and the social relations that are actually harmed, which may adversely affect both the theoretical soundness of the provision and its interpretation in law enforcement practice. In this context, an incomplete definition of the object of criminal-legal protection may give rise to difficulties in assessing the structural elements of the *corpus delicti*, particularly in cases where the objective side is manifested entirely through the unlawful removal of the subject matter of the *corpus delicti* from a cadaver. We believe that, in the case of such *corpus delicti*, where the criminal conduct is directed against a cadaver, the public danger of the act is particularly high due to the victim’s inability to “have a voice” and, consequently, the greater likelihood that it will remain latent; therefore, the existence of such an irremediable legal defect without legislative amendment is unacceptable.

Comparative legal research demonstrates that, in many States belonging to the continental legal family, the provisions establishing liability for the illegal circulation of human organs and other biological materials used for transplantation are structured on the basis of the principle of a clear distinction between the objects of criminal-legal protection. Within this approach, the systematic placement of the *corpus delicti* is determined not only by the nature of the subject matter of the offence but also by the social relations against which the respective encroachment is directed.

In this regard, the Criminal Code of the Italian Republic⁵ is of particular interest, where acts related to the illegal circulation of organs are differentiated depending on whether the subject matter of the offence has been taken from a living person or from a cadaver. As a result of such differentiation, the respective acts are regulated under different generic and specific objects of criminal-legal protection, which makes it possible to more precisely reflect the nature of their public danger.

⁵ Criminal Code of the Italian Republic (Codice Penale), Royal Decree No. 1398 of 19 October 1930, Republic of Italy.

In particular, cases involving the unlawful removal of organs or other biological materials from a cadaver are treated under the Italian Criminal Code as infringements against social relations aimed at ensuring respect for the deceased and are provided for in the section “Offences against religious worship and respect for the dead” (Article 413 of the Criminal Code of the Italian Republic). By contrast, cases involving the unlawful removal or circulation of organs from a living person are classified among offences relating to the protection of the individual and are provided for in the section “Offences against the personality of the individual” (Article 601-bis of the Italian Criminal Code). Such a legal regulation indicates that the Italian Criminal Code, in determining the object of criminal-legal protection, is guided by the nature of the social relations that are actually harmed, thereby ensuring the internal systemic coherence of the *corpus delicti*.

The approach adopted in the Criminal Code of the Russian Federation⁶ is generally consistent with the regulations enshrined in the Criminal Code of the Republic of Armenia. In particular, the generic and specific objects of the *corpus delicti* under discussion are, in structural terms, placed within a similar system of protection of legal interests and values. At the same time, it is noteworthy that the disposition of the provision establishing liability for the illegal circulation of human organs or other objects provided for by law does not include cases involving the circulation of organs or other biological materials taken from a cadaver. This legislative solution is essentially based on the approach according to which, in cases involving acts committed against a cadaver, there is no direct encroachment upon social relations aimed at protecting life and health, which constitute the main object of criminal-legal protection of the given group of offences. In this regard, the Criminal Code of the Russian Federation appears to have sought to ensure a higher degree of systemic consistency between the object of the *corpus delicti* and the social relations that are actually harmed.

In this respect, the Criminal Code of the French Republic⁷ has adopted a distinct approach to the regulation of the issue in question. In particular, liability for the illegal circulation of human organs and other biological materials or objects provided for by law is established in Article 511-2 of the French Criminal Code,

⁶ Criminal Code of the Russian Federation, Federal Law No. 63-FZ of 13 June 1996 (as amended on 9 April 2026).

⁷ Criminal Code of the French Republic (Code pénal), Law No. 92-683 of 22 July 1992, French Republic.

which is located in the section “Offences relating to public health”⁸ within the chapter “Offences against the human body”. Such a systemic solution makes it possible to bring within the scope of criminal-legal protection not only social relations relating to life and health, but also those concerning the inviolability of the human body, medical ethics, and public health. As a result, more comprehensive criminal-legal protection is ensured for the legitimate interests endangered or harmed by the offences under consideration, regardless of whether the subject matter of the offence has been taken from a living person or from a cadaver.

The analysis of the above-mentioned comparative legal experience indicates that the effectiveness of the criminalization of the illegal circulation of human organs and objects equated thereto under the *corpus delicti* is largely determined by the coherence between the object of criminal-legal protection and the systemic placement of the relevant *corpus delicti*. In this context, it is considered appropriate to replace the title of Chapter 25 of the Criminal Code of the Republic of Armenia, “Offences Endangering Human Life and Health,” with “Offences in the Field of Public Health or Medical Ethics”. Such an approach would make it possible to include, within a unified framework of criminal-legal protection, the entire range of social relations that may be harmed by acts related to the illegal circulation of human organs, tissues, and other biological materials. Moreover, such an approach would reduce the theoretical contradictions that arise in cases where the objective side of the *corpus delicti* is manifested in the unlawful removal of objects provided for by the *corpus delicti* from a cadaver, while under the current regulation there is a certain inconsistency between such conduct and the specific object of criminal-legal protection.

Moving slightly away from the main subject of this study and turning to the normative legal acts regulating social relations related to a cadaver, the Law on Medical Care and Services for the Population⁹ has also been examined, in which there are likewise certain shortcomings with regard to the issue of concern. In particular, Article 41 of the said Law regulates pathological-anatomical activity, and its Part 4 provides that autopsies may not be performed on the basis of the deceased person’s expressed will during their lifetime, or upon a written

⁸ The “Offences relating to public health” section of the French Criminal Code is composed of two chapters:

- 1) Offences related to biomedical ethics;
- 2) Offences against the human body.

⁹ The Law of the Republic of Armenia “On Medical Care and Services for the Population”, adopted on 04.03.1996, entered into force on 16.05.1996, HO-42. In force.

application by a parent, spouse, children, or legal representative, and only three exceptions are provided, namely:

- in cases where there is the presence or suspicion of an infectious disease, or of any disease included in the list approved by the Government as posing a danger to others;
- in cases of death resulting from neoplasms, where histological confirmation (verification) thereof is absent;
- in cases of perinatal mortality.

Discussions with morgue staff indicate that consideration is also given to whether death occurred outside a hospital setting and to the absence of signs of violence on the body. However, with regard to the issue under discussion, we consider that the existence of such a provision is unacceptable, as under such regulation there is a high likelihood of endangering the legitimate interests protected by criminal law. In this context, it is appropriate to consider the possibility of revising the current legal regulation, by more clearly defining the permissible cases in which a pathological-anatomical autopsy may not be performed. In particular, the approach according to which the primary basis for refusal of an autopsy may be exclusively the will expressed by the deceased person during their lifetime in accordance with the procedure established by law appears to be justified. Such regulation, on the one hand, would ensure respect for personal autonomy and the deceased person's will after death, and on the other hand, would reduce the risk of weakening the protection of legitimate interests safeguarded by criminal law.

Turning to the structure of the objective side of the *corpus delicti* under consideration, it should be noted that the current regulation does not sufficiently reflect the significant differences in the degree of public danger between various manifestations of criminal conduct. In particular, within the same *corpus delicti*, a unified regulatory approach has been adopted with regard to both cases of the illegal circulation of organs, tissues, and other biological materials taken from a cadaver, and cases of the illegal circulation of vital and non-vital organs or other objects taken from a living person.

However, these acts differ in terms of the degree of public danger and the potential harmful consequences. It is evident that the illegal circulation of a vital organ taken from a living person differs substantially, from the perspective of public danger, from cases involving the removal of an organ or biological material from a cadaver. Accordingly, in establishing criminal liability, it is necessary to ensure a differentiated legal approach consistent with the nature and degree of

danger of the act. From this perspective, the current regulation, which treats the above-mentioned different situations within the same *corpus delicti* and without sufficient differentiation, does not correspond to the fundamental approach of criminal law, according to which the criminal-legal response must be proportionate to the public danger of the committed act¹⁰.

When analysing the scope of social relations harmed by the offence, it was noted that in cases where the subject matter of the offence is taken from a cadaver, and in the absence of life as an object of criminal-legal protection, the social relations aimed at the protection of life and health are not directly harmed. That circumstance also affects the assessment of the nature and degree of the public danger posed by such acts. Similar theoretical issues arise with regard to the criminal-legal status of the embryo and foetus constituting the subject matter of the *corpus delicti* under consideration, as in their case there is likewise a legal and bioethical debate concerning the beginning of life and the boundaries of the scope of criminal-legal protection.

At the same time, the development of modern biomedical technologies has led to the emergence of social relations directly connected with the potential use of embryonic and foetal cells, tissues, and organs and, consequently, requiring adequate legal protection, including protection under criminal law. It is noteworthy that the well-known xenotransplantation experiment “Baby Fae”, performed on 15 November 1984 by paediatric surgeon Leonard Bailey, during which a newborn infant received a baboon heart transplant, made a significant contribution to the development of transplantation medicine by demonstrating the prospects for expanding the possibilities of biomedical interventions¹¹. Subsequent scientific and technological advances have made the issues of the use and circulation of embryonic and foetal biological materials, as well as the legal regulation of the social relations associated with them, increasingly relevant.

Each new achievement in biomedical technology expands not only the possibilities of medicine but also gives rise to new legal and ethical challenges that require appropriate legal regulation¹². Accordingly, such advances in medicine have also made it necessary to extend protection to situations in which the illegal circulation of an embryo or foetus is aimed at obtaining the foetal organs or other objects provided for by the *corpus delicti* (as both at the embryonic and foetal

¹⁰ Von Hirsch A., *Doing Justice: The Choice of Punishments*. Northeastern University Press, 1976, p. 55,

Ashworth A., *Sentencing and Criminal Justice*. 6th ed. Cambridge University Press, 2015, p. 97.

¹¹ “Baby Fae and the Baboon Heart Transplant”, BBC News, 19 November 2012.

¹² Harris J., *Wonderwoman and Superman: The Ethics of Human Biotechnology*. Oxford University Press, 1992.

stages, the subject matter of the offence is already formed during specific periods of development)¹³. This gives rise to a situation in which one subject matter of the offence (the embryo or foetus) may be obtained for the purpose of removing from it another subject matter provided for by the corpus delicti.

However, in both the case of the embryo or foetus and the case of a cadaver, life is absent from the perspective of criminal law, therefore, taking this characteristic as the point of departure, the same part should provide for the illegal circulation of the embryo or foetus itself, as well as of the objects provided for by the corpus delicti that have been taken from a cadaver.

In light of the foregoing, we propose that Part 1 of Article 183 be revised as follows: “*The unlawful acquisition, sale, possession, transportation, or delivery of an embryo or foetus, or of cells, tissues, organs, biological materials, or fluids of a cadaver*”.

The matter provided for by the corpus delicti under examination are generally classified in medicine¹⁴ into two groups:

1. **Vital** cells, tissues, organs, and biological materials or fluids¹⁵,
2. **Non-vital** cells, tissues, organs, and biological materials or fluids¹⁶.

In light of this distinction, it also becomes necessary to differentiate between cases involving the removal of vital and non-vital subject matter of the offence from a living person. The various manifestations of the illegal circulation of organs cannot be assessed within the same criminal-legal framework, since their degree of public danger is determined not only by the act committed but also by the extent of the risks posed to the donor’s life, health, and dignity¹⁷.

Since non-vital subject matter of the offence is medically compatible with life, we propose that Part 2 of the Article should cover its unlawful circulation when taken from a living person, while the removal of vital (life-incompatible) subject matter of the offence, due to its higher public danger and unlawfulness, should be provided for in Part 3, resulting in the following wording of the Article:

(...)

2. *The unlawful acquisition, sale, possession, transportation, or delivery of non-vital cells, tissues, organs, biological materials, or fluids of a living person.*

¹³ Studenikina T. M., *Embryogenesis and Early Postnatal Development of Human Tissues and Organs*, YSMU, 2020, pp. 3–49.

¹⁴ “Pathophysiology”, ed. by V. V. Novitsky, E. D. Goldberg, O. I. Urazova, 2009, p. 92.

¹⁵ The loss is incompatible with life; it leads to death immediately or within a short period of time.

¹⁶ The loss is compatible with life; removal does not endanger a person’s life or health.

¹⁷ Delmonico F., Shimazono Y., *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*. Transplantation. 2008. Vol. 86(8). pp. 1013–1018

3. *The unlawful acquisition, sale, possession, transportation, or delivery of vital cells, tissues, organs, biological materials, or fluids of a living person.*

(...)

Under the current wording of Article 183 of the Criminal Code of the Republic of Armenia, the aggravating circumstances provided for in Part 2 (qualified corpus delicti) also do not demonstrate a uniform regulatory approach in comparison with other offences, where the negligent occurrence of a more serious consequence is likewise provided as an aggravating circumstance. The regulation of the current Criminal Code is, in most cases, based on the justified approach that the occurrence of a more serious consequence is included among the most aggravating circumstances (for example, Articles 198, 205, etc.), thereby emphasizing the greater dangerousness of the respective act.

By recognizing the human being and human life as the highest value under the constitutional norm, it is impermissible to equate the deprivation of a person's life as a result of an offence with the commission of an offence by a group of persons or with cases committed through the use of official or service authority or the influence derived therefrom.

Among the aggravating circumstances, it is also necessary to provide for cases of unlawful circulation committed by persons engaged in professional activity in this field, since there are many latent instances in which, for example, medical personnel offer such unlawful services to individuals in need of medical care and provide information on possible suppliers, thereby acting in violation of professional medical ethics.

Based on the results of the study conducted within the framework of this article, we propose that Article 183 of the Criminal Code be rephrased as follows:

“Article 183. Illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials or fluids

1. *The unlawful acquisition, sale, possession, transportation or delivery of a human embryo, foetus, or cells, tissues, organs, biological materials or fluids of a cadaver shall be punishable by (...)*

2. *The unlawful acquisition, sale, possession, transportation or delivery of non-vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by (...)*

3. *The unlawful acquisition, sale, possession, transportation or delivery of vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by*

(...)

4. ***An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed***

1) by a group of persons by prior agreement, or
 2) through the use of official or service authority, or the influence derived therefrom, or through the **use of professional activity**,
 shall be punishable by (...)

5. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed by a criminal organization or if it negligently caused the death of a person, serious harm to health, or other grave consequences, shall be punishable by (...)”.

The most aggravating circumstance, formulated as “*negligently causing the death of a person, serious harm to health, or other grave consequences*”, also occupies a problematic position from a scientific and practical perspective, due to the fact that the offences referred to are, by their legislative design, formal in nature, whereas the offence committed under the most aggravating circumstance is material (i.e., completion of the offence requires the occurrence of a consequence), therefore, under such a regulatory framework, it is necessary that the act provided for in Parts 1, 2, 3 or 4 be completed, and only under such conditions would it be possible to qualify the act under Part 5 of Article 183 in the presence of the discussed most aggravating circumstance. The point is that the described act should be understood as referring only to a completed offence, whereas in cases of preparation for the offence or attempted offences, if the described dangerous consequence occurs, providing a criminal-legal assessment under the qualified corpus delicti in question would directly contradict the theory of criminal law and the logic of the Criminal Code. To illustrate this more clearly, let us consider the following example:

A, acting out of mercenary motives and being unaware of the congenital defect of unilateral renal agenesis¹⁸, gives his consent for the removal of one of his kidneys. B, through a professional (medical) intervention, intends to unlawfully acquire the kidney; however, only after incising the relevant part of the body and causing internal injuries with a medical instrument does he realize the absence of the organ. Some time later, A dies from complications arising after the surgical removal of the kidney.

Under the operation of the proposed regulation, in the given example B. is subject to criminal liability for attempted acquisition of a vital organ from a living person (Article 44-183, Part 3) and for negligent deprivation of life (Article 165), in cumulative concurrence of offences.

¹⁸ Agenesis means the congenital absence of an organ. Renal agenesis means the congenital absence of a kidney.

The criminal-legal assessment of the illegal circulation of organs is based on Part 1 of Article 44 of the Criminal Code, according to which an attempted offence is understood as an intentional act or omission directly aimed at the commission of an offence, containing the elements of *corpus delicti* provided for by the Special Part of the Code, where the offence envisaged by the person's intention is not committed due to circumstances beyond his/her control, resulting from the absence of some of the elements of the *corpus delicti* in question.

The analysis of the cited provision shows that the subject matter provided for by the *corpus delicti* is absent, without which a formal offence cannot be considered completed. Therefore, in accordance with the direction of intent, the act is to be qualified as an attempted acquisition of a vital organ from a living person (Articles 44–183, Part 3), and as regards the other part, concerning the two forms of realization of the subjective element of the most aggravating circumstance, it should be noted that in this case we are dealing with a material *corpus delicti* requiring the occurrence of a consequence; however, since the basic act described under the formal *corpus delicti* has not been completed, it is not possible to qualify the conduct under the most aggravating material offence. In other words, an act characterized by an aggravating or the most aggravating circumstance defined by a material *corpus delicti* may be qualified as such only where the basic *corpus delicti* (formal or material) has been completed. Therefore, in the present case, the conduct shall be qualified separately as an attempted acquisition of a vital organ from a living person (Articles 44–183, Part 3) and, where a causal link is established, as negligent deprivation of life as a separate offence.

It is also considered necessary to clarify the qualification features of the aggravating circumstance committed by a group of persons by prior agreement. Due to the fact that the *corpus delicti* under study is characterized by a dual-structured objective side, certain difficulties may arise with regard to its qualification as co-perpetration. In this context, as a preliminary clarification, it should be noted that in the *corpus delicti* characterized by a dual-structured objective side, co-perpetration may exist both in cases where the accomplices simultaneously perform the same act constituting the objective side, and in cases where, on the basis of a common intent and through the complementary nature of their conduct, they perform different acts falling within the objective side of the *corpus delicti*. For a more illustrative presentation, let us consider an example:

For the purpose of unlawfully acquiring a kidney, A had an agreement with physician K, pursuant to which physician K removed the organ from Z, who had consented to the unlawful removal of his organ, while A subsequently acquired and disposed of it.

In the present example, in addition to the proposed aggravating circumstances, due to the dual structure of the objective side of the *corpus delicti*, there is also commission by a group of persons by prior agreement, since one of the perpetrators was aware that his conduct, consisting of performing a different element of the dual structure of the objective side, served to complement the conduct of the other; accordingly, in cases of co-perpetration, the realization of the objective side involves a temporal gap, which is determined by the extended and temporally prolonged nature of the criminal conduct. Thus, due to the dual structure of the objective side of the *corpus delicti*, this feature may also be manifested in such cases, where, despite the presence of all the elements of co-perpetration, co-perpetration in its classical sense as simultaneous execution is not the only form that can be recognized.

The disposition of the *corpus delicti* under study uses the term “**illegal circulation**”, which implies that circulation of the subject matter of the *corpus delicti* may also be carried out within legally permissible limits. In order to understand the scope and procedure, it is also necessary to examine the Law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”¹⁹, the provisions of which are also problematic and for which we will propose possible amendments.

First, the first requirement of legality is reflected in the provision of the law stipulating that the use of organs and tissues obtained from living or deceased donors as a source of profit²⁰ is prohibited. Therefore, in any case where all stages of organ procurement comply with the legally established rules, the act becomes unlawful from the moment profit is obtained within the meaning of the law, by exceeding the permitted legal framework, which in turn gives rise to the elements of the *corpus delicti* and, consequently, criminal liability.

In this context, it is necessary to note that such regulations are consistent with the international obligations undertaken by the Republic of Armenia. Thus, on 18 April 2025, the Republic of Armenia ratified the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (the Oviedo Convention)²¹.

¹⁹ The law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”. Adopted on 16.04.2002, entered into force on 25.11.2002, HO-324. In force.

²⁰ According to the Law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”, profit is defined as the receipt, demand, or acceptance of a promise of money, property, property rights, securities, or any other advantage for oneself or another person, whether directly or through an intermediary.

²¹ The Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (*ETS*

According to Article 20 of the Convention (“Protection of persons who are not able to consent to organ removal”), “1. It is prohibited to remove an organ or tissue from a person who does not have the capacity to give the necessary consent provided for in Article 5. In exceptional cases and under conditions of legally established protection, the removal of regenerative tissue from a person who does not have the capacity to consent is permitted if the following conditions are met: i. there is no suitable donor who has the capacity to consent; ii. the recipient is the donor’s brother or sister; iii. the donation must have the potential to save the recipient’s life; iv. explicit and written authorization has been given in accordance with Article 6(2) and (3), in compliance with legal requirements and with the approval of the competent authority; v. the potential donor does not object”.

According to Article 21 of the Convention (“Prohibition of financial gain”), the human body and its parts shall not, as such, be a source of financial gain. According to Article 22 (“Disposal of a part of the human body”), where any part of the human body is removed in the course of an intervention, it may be stored and used for a purpose other than that for which it was originally removed only if this is done in accordance with appropriate procedures of information and consent.

One of the fundamental principles of contemporary bioethics is that the human body and its individual parts cannot be regarded as ordinary objects of economic circulation, since human dignity prevails over market values²².

The next issue of interest in the context of criminal law, the violation of which may lead to criminal liability, is the scope of permissible organs and tissues, distinguished between living donors and cadaveric donors.

In the case of a living donor, the regulation is as follows: for transplantation purposes, only one of a pair of organs²³, a part of an unpaired organ, or tissue may be removed from a living donor, provided that its absence cannot cause changes posing a threat to the donor’s life. In this context, a question may arise as to whether, notwithstanding the fact that the “victim” has given consent, criminal liability for causing serious harm to health may nevertheless arise, since the objective side of causing serious harm to health may be manifested by an act, such as the surgical removal of an organ, that results in the impairment of any human organ or of its function. However, this issue will be addressed in the final part of the article, where the legislatively inevitable concurrence of the *corpus delicti* of

No. 164). Oviedo, 4 April 1997, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatyid=164&utm_source=chatgpt.com

²² Andorno R., *Human Dignity and Human Rights as a Common Ground for a Global Bioethics*. *Journal of Medicine and Philosophy*, 2009, Vol. 34(3), pp. 223–240.

²³ Human paired organs include the eyes, ears, kidneys, and lungs.

the illegal circulation of organs and other subject matter covered by it with certain other corpus delicti will be examined.

In the case of a cadaveric donor, the regulation is different: after confirmation of the fact of brain death or biological death of a person, the lists of organs or tissues that may be removed for transplantation purposes are determined by the competent authority.

In this case, the competent authority is the Ministry of Health, and according to the relevant lists, the classification is made on two grounds: the list of organs and tissues in cases of brain death²⁴ and the list of organs and tissues in cases of biological death²⁵.

The next essential regulation provides that the removal and processing of organs and/or tissues for transplantation, as well as their transplantation, are permitted only in duly licensed medical institutions. Particular attention should also be paid to the fact that, under the same Law, transplantation requires a medical opinion confirming the necessity of the transplantation. The Law also addresses the recipient's²⁶ consent.

It is also necessary to examine the specific features of the removal of organs and tissues from a cadaveric donor, which are likewise regulated by the Law under consideration. In particular, it provides that *organs and tissues may not be removed from a cadaver for transplantation purposes only where the person, during his or her lifetime, has declared, in accordance with the procedure established by the legislation of the Republic of Armenia, his or her refusal to act as an organ and tissue donor after death. In the absence, in the Register of Organ and Tissue Donors and Recipients, of the person's written refusal to act as a cadaveric donor, organs and tissues may be removed from the cadaver for transplantation purposes with the consent his or her relatives (next of kin).*

In our view, this regulation is justified, since it essentially operates on the presumption that organ removal is permissible upon the consent of any of the persons specified by law, unless it is established that the individual, during his or her lifetime, submitted a declaration of refusal in accordance with the prescribed procedure.

²⁴ According to Order No. 236-N of the Minister of Health, the list of organs and tissues in cases of brain death includes the kidneys, liver, liver lobe, heart, lungs, pancreas, bone tissue, cartilage tissue, cornea, heart valves, blood vessels, and skin.

²⁵ According to Order No. 236-N of the Minister of Health, the list of organs and tissues in cases of biological death includes the cornea, heart valves, blood vessels, skin, bone tissue, and cartilage tissue.

²⁶ A natural person to whom organs and/or tissues are to be transplanted for therapeutic purposes.

The Law also establishes the procedure and conditions for the removal of organs and/or tissues from a living donor, the specific features of which are likewise justified, as they are aimed at ensuring all the necessary safeguards for the protection of human life and/or health.

The Law also defines the categories of persons from whom the removal of organs and/or tissues is permissible.

The violation of the procedure or conditions governing at least one of the above-mentioned essential regulations that intersect with criminal law will result in the illegal circulation of organs and give rise to criminal liability, since the organs and/or tissues will have been removed in violation of the legally prescribed permissible procedure, that is, unlawfully, and such conduct is provided for and prohibited under the Criminal Code under threat of punishment.

1.2. The Subject and the Subjective Side of the Offence

The next element of the *corpus delicti* under consideration that deserves separate attention is the subjective side. In legal literature²⁷, it is generally stated that the *corpus delicti*, from the perspective of the subjective side, may be manifested only through direct intent. Although the offence is most commonly committed and, indeed, in all cases known in practice, has been committed through direct intent, we believe that there may also be cases in which the *corpus delicti* under consideration manifests itself, from the subjective side, through indirect intent, particularly in light of the conceptually revised understanding of indirect intent reflected in the 2003²⁸ and 2022 Criminal Codes.

Given the nature of a material *corpus delicti*, which is linked to the occurrence of a consequence, indirect intent under the former Criminal Code was possible only in relation to material *corpus delicti*, since, as is well known, in the case of a formal *corpus delicti*, a consequence is not an element of the *corpus delicti* and the offence is deemed completed upon the commission of the act. By contrast, under the current regulation, the definition of indirect intent fully allows for the possibility of this form of the subjective side in the case of formal *corpus delicti* as well, since the key criterion is no longer the foreseeability of a consequence but rather the awareness of the factual circumstances constituting elements of the *corpus delicti*. To illustrate this more concretely, let us consider the following example:

²⁷ Arakelyan S. V., Barseghyan A. V., *Offences against the Person under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2023, p. 170.

²⁸ Criminal Code of the Republic of Armenia. Adopted on 18.04.2003, entered into force on 01.08.2022, HO-528-N. No longer in force (repealed on 01.07.2022).

A is driving a taxi when he overhears the passengers' conversation, which allows him to understand that kidneys are being unlawfully transported in the vehicle he is driving, and he continues driving, thereby unlawfully transporting the organs and delivering the passengers to the relevant destination.

In the presented example, A, being aware of the factual circumstances constituting elements of the *corpus delicti* under consideration and without having the purpose of committing or carrying out the offence, nevertheless performs the act constituting the objective side, namely the unlawful transportation of kidneys. A commits the act prohibited under the Criminal Code, under threat of punishment, with indirect intent. Accordingly, it follows that the *corpus delicti* under consideration may be manifested, from the subjective perspective, both through direct intent and through indirect intent.

The subject of the offence under consideration may be both a sane natural person who has reached the age of criminal responsibility, as well as a legal person, in the presence of the grounds provided for by Article 123 of the Criminal Code.

1.3. Other issues of legal qualification of the offence

One of the next issues of scientific and practical interest and complexity relates to the problem of *the inevitable statutory concurrence* between the *corpus delicti* under consideration and the offences of Murder (Article 155), Causing Serious Harm to Health (Article 166), and Causing Moderate Harm to Health (Article 167) in cases where these offences are committed under aggravating circumstances involving the taking of the victim's cells, tissues, organs, or biological materials or fluids. The issue is that the said aggravating circumstance treats the purpose of taking the listed items as an aggravating factor; therefore, in such cases, the realization of that purpose does not constitute an element of the *corpus delicti*. Accordingly, in all cases where the act is committed under the said aggravating circumstance, and subject to the relevant conditions under the statutory regulation of the stages of the offence, the act will be qualified as a multiplicity of offences. To illustrate this more concretely, let us consider an example:

A kills B for the purpose of taking his kidneys. At the scene of the crime, A is immediately arrested before having the opportunity to carry out any act aimed at the removal of the organ.

In the cited example, A's act will be qualified as murder committed for the purpose of taking cells, tissues, organs, or biological materials or fluids from the victim (Article 155, Part 2), and as preparation for the offence of the illegal circulation of human embryos, foetuses, human or cadaveric cells, tissues, organs, or biological materials or fluids (Articles 43–183).

As follows from the definition of preparation for an offence, in the example under consideration the murder serves as the intentional creation of another condition (the perpetrator, acting with direct intent, deprives the victim of life for the purpose of removing an organ).

Let us consider a case of an attempted offence through the following example: *A kills B for the purpose of taking his kidneys. At the scene of the crime, A. is arrested at the moment when, using a scalpel that he had brought with him in advance, he had already made an incision in the relevant part of the body.*

A's act will be qualified as murder committed for the purpose of taking cells, tissues, organs, or biological materials or fluids from the victim (Article 155, Part 2) and attempted offence of the illegal circulation of human embryos, fetuses, human or cadaveric cells, tissues, organs, or biological materials or fluids (Articles 44–183).

The legal rules and qualification peculiarities applicable to the cases discussed above should likewise be applied to other corpus delicti that contain the aggravating circumstance under consideration.

From the perspective of distinguishing between the objective sides of trafficking and the illegal circulation of organs and other objects covered by the corpus delicti under consideration, it is important to bear in mind that Part 4 of Article 188 of the Criminal Code provides that *exploitation includes (...) the taking of another person's cells, organs, tissues, or biological materials or fluids.*

The interpretation of this provision allows for the logical conclusion that where the subject matter of the offence is taken from a person against that person's will or in disregard of their will, the act will contain the elements of trafficking, since the objective side of trafficking links such conduct to exploitation and includes it within the concept of exploitation. Conversely, where the subject matters of the offence are taken with the person's consent, the act should be qualified under Article 183 of the Criminal Code. Accordingly, based on a combined and comprehensive analysis of the dispositions of the provisions defining the two corpus delicti, whether a particular course of conduct contains the elements of trafficking or of the illegal circulation of organs is determined by the victim's expression of will. In such cases, multiplicity of offences will be absent.

A systemic analysis of the Criminal Code demonstrates that, in the case of similar corpus delicti (such as the illegal circulation of weapons, the illegal circulation of narcotic drugs, etc.), the theft of the subject matter of the corpus delicti is criminalized as a separate corpus delicti. In the case of the corpus delicti under consideration, however, it follows that the theft of the subject matter of the offence would be qualified under the same article. In this regard, the

characterization of the subject matter of the *corpus delicti* as a possible subject matter of theft appears problematic. The issue is that, pursuant to Point 16 of Part 1 of Article 3 of the Criminal Code, **the subject matter of theft is another person's property**. The subject matter of theft is characterized by four features: physical, economic, social, and legal. With regard to the theft of organs and other objects covered by the *corpus delicti* under consideration, compliance with the characteristics of the subject matter of theft appears debatable, particularly in relation to the social and legal characteristics. The social characteristic requires that property consist of objects that are the result of human labour or investment, have been created, processed, transformed, or separated from nature through human effort, and constitute objects of social relations²⁹. Accordingly, with respect to the social characteristic, while it is clear that a narcotic drug is created or processed by a person and that a weapon likewise comes into existence as a result of human activity, in the case of organs and the other objects covered by the *corpus delicti* under consideration, it may only be argued, under a broad interpretation, that they satisfy this characteristic insofar as they are separated from the victim's body through human intervention. Although problematic, the social characteristic may be overcome, as regards the legal characteristic, however, the contradictions and grounds for debate are considerably greater. A question may arise in the context of whether, for example, a person's hand belongs to anyone under a right of ownership. According to the scientific commentary, the essence of the legal characteristic of property is that an object which is the result of human labour and possesses economic value must be the property of a natural person, a legal person, or the State, and the offender must have no rights in relation to it³⁰. Although discussions with specialists in the field indicate that customs authorities, when importing human organs (where such importation is permitted by law and the applicable requirements are met), register them as property, it nevertheless remains ambiguous, from the perspective of satisfying the characteristics of the subject matter of theft, whether organs or the other objects covered by the *corpus delicti* under consideration may be regarded as subject matters of theft. Nevertheless, the issue of the theft of the objects covered by the *corpus delicti* under consideration remains unresolved and has not been subjected to comprehensive and consistent regulation, despite the fact that, in our view, it is no less dangerous than, for example, the theft of narcotic drugs. This gives rise to a situation in which both the

²⁹ Arakelyan S. V., Baghdasaryan G. S., and Petrosyan P. D., *Crimes Against Property under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2024, pp. 9-10.

³⁰ Arakelyan S. V., Baghdasaryan G. S., and Petrosyan P. D., *Crimes Against Property under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2024, p. 10.

unlawful acquisition of such objects and the theft of objects already unlawfully acquired receive the same criminal-legal assessment, leaving it to the law-enforcement authorities and courts to address the issue by imposing a more severe assessment of theft cases within the limits of the applicable sanction.

2. CONCLUSION

Based on the findings of the research conducted in this article, we have arrived at a number of conclusions, the principal ones of which are as follows:

1. We propose that Article 183 of the Criminal Code of the Republic of Armenia be revised to read as follows:

“Article 183. Illegal circulation of human embryos, foetuses, human or cadaver cells, tissues, organs, biological materials or fluids

1. The unlawful acquisition, sale, possession, transportation or delivery of a human embryo, foetus, or cells, tissues, organs, biological materials or fluids of a cadaver shall be punishable by (...)

2. The unlawful acquisition, sale, possession, transportation or delivery of non-vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by (...)

3. The unlawful acquisition, sale, possession, transportation or delivery of vital cells, tissues, organs, biological materials or fluids of a living person shall be punishable by

(...)

4. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed

1) by a group of persons by prior agreement, or

2) through the use of official or service authority, or the influence derived therefrom, or through the use of professional activity,

shall be punishable by (...)

5. An act provided for in Parts 1, 2, 3 or 4 of this Article, if committed by a criminal organization or if it negligently caused the death of a person, serious harm to health, or other grave consequences,

shall be punishable by (...).”

2. We propose that Chapter 25 of the Criminal Code be renamed “Offences in the Field of Public Health or Medical Ethics”.

3. From the subjective perspective, the offence may be committed with either direct or indirect intent.

4. Due to the fact that the corpus delicti under study is characterized by a dual-structured objective side, certain difficulties and shortcomings may arise with

regard to its qualification as co-perpetration. In this context, as a preliminary clarification, it should be noted that in the corpus delicti characterized by a dual-structured objective side, co-perpetration may exist both in cases where the accomplices simultaneously perform the same act constituting the objective side, and in cases where, on the basis of a common intent and through the complementary nature of their conduct, they perform different acts falling within the objective side of the corpus delicti.

5. Amendments should be made to the related legislation cited above concerning pathological autopsies and transplantation in order to prevent potential harm to the interests protected by criminal law.

6. In our view, the possibility of criminalizing the theft of the objects referred to in Article 183 under a separate corpus delicti should be made the subject of further discussion.

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

BIBLIOGRAPHY

1. Scheper-Hughes N., *The Global Traffic in Human Organs*. *Current Anthropology*, 2000. Vol. 41(2), pp. 191–224.
2. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, (ETS No. 164). Oviedo, 4 April 1997, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=164&utm_source=chatgpt.com
3. Council of Europe. Council of Europe Convention against Trafficking in Human Organs (CETS No. 216). Santiago de Compostela, 25 March 2015, https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treaty-num=216&utm_source=chatgpt.com
4. Criminal Code of the Republic of Armenia. Adopted on 05.05.2021, entered into force on 01.07.2022, HO-199-N. In force.
5. Criminal Code of the Republic of Italy (Codice Penale), Royal Decree No. 1398 of 19 October 1930, Republic of Italy.
6. Criminal Code of the Russian Federation, Federal Law No. 63-FZ of 13 June 1996 (as amended on 09.04.2026).
7. Criminal Code of the French Republic (Code pénal), Law No. 92-683 of 22 July 1992, French Republic.

8. Law of the Republic of Armenia “On Medical Care and Services for the Population”. Adopted on 04.03.1996, entered into force on 16.05.1996, HO-42. In force.
9. Von Hirsch A., *Doing Justice: The Choice of Punishments*, Northeastern University Press, 1976, p. 55.
10. Ashworth A., *Sentencing and Criminal Justice*. 6th ed. Cambridge University Press, 2015, p. 97.
11. “Baby Fae and the Baboon Heart Transplant”, BBC News, 19 November 2012.
12. Harris J., *Wonderwoman and Superman: The Ethics of Human Biotechnology*. Oxford University Press, 1992.
13. Studenikina T. M., *Embryogenesis and Early Postnatal Development of Human Tissues and Organs*, YSMU, 2020, pp. 3–49.
14. “Pathophysiology”, ed. by V. V. Novitsky, E. D. Goldberg, O. I. Urazova, 2009, p. 92.
15. Delmonico F., Shimazono Y., *The Declaration of Istanbul on Organ Trafficking and Transplant Tourism*. Transplantation. 2008. Vol. 86(8). pp. 1013–1018
16. Law of the Republic of Armenia “On Transplantation of Human Organs and (or) Tissues”. Adopted on 16.04.2002, entered into force on 25.11.2002, HO-324. In force.
17. Andorno R., *Human Dignity and Human Rights as a Common Ground for a Global Bioethics*. *Journal of Medicine and Philosophy*, 2009, Vol. 34(3), pp. 223–240.
18. Order of the Minister of Health No. 236-N of 25 July 2024. <https://www.arlis.am/hy/acts/195739/latest>
19. Arakelyan S. V., Barseghyan A. V., *Offences against the Person under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2023, p. 170.
20. Arakelyan S. V., Baghdasaryan G. S., and Petrosyan P. D., *Crimes Against Property under the New Criminal Code of the Republic of Armenia*, Yerevan: Academy of Justice, 2024, p. 10.
21. Criminal Code of the Republic of Armenia. Adopted on 18.04.2003, entered into force on 01.08.2022, HO-528-N. No longer in force (repealed on 01.07.2022).

PROBLEMS OF THE PROTECTION OF THE RIGHT TO LIFE IN THE ARMED FORCES

Melik Melikyan*, Elina Khachatryan**

Abstract. The article examines problems considering to the protection of the right to life within the armed forces in the context of the case-law of the European Court of Human Rights, international standards, domestic legal regulations, and mechanisms of civilian oversight. It is substantiated that the protection of the right to life of servicemen is not limited solely to the State's obligation to conduct an an investigation meeting the requirements of effectiveness into cases of death, but also includes the prevention of real and foreseeable risks to life, the обеспечение of a safe service environment, and the establishment of effective measures aimed at eliminating psychological coercion, non-statutory relations, and humiliating treatment.

Particular attention is devoted to the role of non-governmental organizations, especially the "Peace Dialogue" NGO, as an important factor in identifying violations of fundamental rights within the armed forces, ensuring public oversight, and promoting legislative reforms. The article also analyzes the regulations contained in Articles 522 and 523 of the Criminal Code of the Republic of Armenia, highlighting issues related to psychological violence, systemic pressure, command inactivity, and the establishment of causation.

It is concluded that the effective protection of the right to life within the armed forces is possible only through the complementary application of criminal law, preventive institutional measures, psychological support, and independent oversight mechanisms.

Keywords - *Right to life, armed forces, non-statutory relations, effective investigation, non-governmental organization, civilian oversight, command responsibility, criminal law protection.*

* **Melik Melikyan** - Ph.D. in Law, email – melikmelikyan1994@gmail.com, ORCID: 0000-0002-4136-3903

** **Elina Khachatryan** - President of the "Peace Dialogue" Non-Governmental Organization, Graduate of the Department of Law of the French University in Armenia, Master's in Conflict Management and Humanitarian Action from the University of Siena, email – elinakhachatryan@peacedialogue.am, ORCID: 0009-0002-7828-9951



Introduction

The right to life constitutes one of the fundamental and inalienable human rights, the protection of which represents a primary obligation of a democratic state governed by the rule of law. The necessity of safeguarding this right becomes particularly pronounced within the armed forces, where individuals are placed under the direct control of the State within a system characterized by strict hierarchical relations and military discipline. The nature of military service presupposes that the State assumes an enhanced obligation to protect the life, health, dignity, and psychological integrity of servicemen.

The European Court of Human Rights has consistently developed a legal approach according to which Article 2 of the Convention imposes upon the State not only a negative obligation to refrain from the unlawful deprivation of life, but also positive obligations:

- to prevent known and real risks to life,
- to establish appropriate legal and institutional mechanisms,
- to ensure an genuinely effective investigative process in every case of suspicious death.

Within this context, the jurisprudence of the European Court of Human Rights is of particular significance, as the Court, through the progressive development of its case-law, has established the principal criteria relating both to the substantive and procedural dimensions of violations of Article 2 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter, “the Convention”).

The relevance of the present article is also conditioned by the examination of domestic practice, particularly the persistence of criminality and non-statutory relations within the armed forces, which demonstrates that the issue is not merely individual or disciplinary in nature, but rather constitutes a fundamental problem of criminal policy and institutional organization.

At the same time, the annual reports of the Human Rights Defender, as well as the reports of civil society organizations, indicate that significant challenges and pressing issues continue to persist in the sphere of the protection of the right to life, thereby requiring both preventive institutional measures on the part of the State and, with regard to incidents and crimes that have already occurred, a more comprehensive approach and the enhancement of existing mechanisms.

The research was conducted through the application of both general and special scientific methods of cognition, including methods of analysis and comparison, systemic-structural, comparative legal, formal legal, precedential, and documentary

analysis. Through these methods, the study examined international and domestic standards concerning the protection of the right to life in the armed forces, the case-law of the European Court of Human Rights, mechanisms of civilian oversight, as well as issues relating to the effectiveness of the relevant provisions of the Criminal Code of the Republic of Armenia.

I. Criminal Law Guarantees of the Protection of the Right to Life in the Armed Forces within the Context of the Case-Law of the European Court of Human Rights

The European Court of Human Rights examines violations of the right to life within the armed forces from both procedural and substantive perspectives, without limiting the State's affirmative duties arising under Article 2 of the Convention solely to the requirement of conducting an effective investigation after a death has occurred.

According to the case-law developed by the European Court, State responsibility may arise not only in situations where an investigation fails to satisfy the requirements of independence, comprehensiveness, and effectiveness, but also where State authorities have failed to establish adequate legal, institutional, and preventive institutional measures for the protection of the lives of servicemen.

Within this context, the substantive component includes obligations relating to the prevention of real and foreseeable risks to the lives of servicemen, the elimination of non-statutory relations, the prevention of humiliating treatment and conduct, the neutralization of conditions involving psychological coercion, as well as the effective exercise of command supervision.

At the same time, the procedural component presupposes the conduct of an independent, objective, prompt, and comprehensive investigation in every case of death within the armed forces, aimed not only at establishing the immediate causes of death, but also at revealing the influence of the service environment, hierarchical relations, possible psychological violence, and command negligence.

Further developing its already established jurisprudence in this sphere, the European Court identified the principal criteria constituting the substantive and procedural dimensions of the protection of the right to life within the armed forces.

From the substantive perspective, these criteria are as follows:

- The European Court of Human Rights has consistently recognized Article 2 of the Convention as one of the cornerstones of the Convention system. Read together with Article 3, it embodies the fundamental values upon which the human rights protection framework of the Council of Europe is built. Consequently, the

safeguards arising from Article 2 must be interpreted and implemented in a manner that ensures effective, practical, and meaningful protection of the right to life rather than merely formal compliance with the Convention¹:

- Under Article 2 § 1 of the Convention, the State's responsibilities are not confined to abstaining from unlawful interference with the right to life. The Convention framework further requires States to create and effectively implement legislative and administrative measures capable of ensuring adequate protection of the lives of everyone subject to their jurisdiction².

- The Court's case-law concerning fatalities in the armed forces establishes that the legal status of a serviceman—whether serving under conscription or by contract—does not diminish the State's responsibility. Since both categories of military personnel remain under the exclusive authority of the State, the latter is required to ensure conditions that effectively protect their lives and guarantee the safety of military service³. The judgment in *Boychenko v. Russia* reinforces the Court's position that no material distinction exists between contract and conscript servicemen for the purposes of Article 2 of the Convention. Since both groups remain under the exclusive control of the State while performing military service, the corresponding positive obligations of the State apply equally to each of them⁴.

- The obligation to protect life also includes the State's positive duty, in appropriate circumstances, to undertake preventive operational measures in order to protect individuals both from the criminal acts of others and, in certain circumstances, from dangers arising from themselves⁵.

- According to the Court's assessment not every risk to life, in itself, gives rise to an immediate obligation on the part of the State to intervene. The issue of a violation of Article 2 of the Convention arises where the State authorities knew or ought to have known of a real and immediate risk to the life of a specific

¹ Inter alia, the judgment of the European Court of Human Rights in *McCann and Others v. the United Kingdom*, 27 September 1995, Application No. 18984/91, §§ 146–147, Series A No. 324.

² The judgment of the European Court of Human Rights in *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III.

³ The judgment of the European Court of Human Rights in *Beker v. Turkey*, 24 March 2009, Application No. 27866/03, §§ 5 and 43; *Durdu v. Turkey*, 3 September 2013, Application No. 30677/10, §§ 6 and 62; as well as *Yasemin Doğan v. Turkey*, 6 September 2016, Application No. 40860/04, §§ 8, 43, and 45.

⁴ The judgment of the European Court of Human Rights in *Boychenko v. Russia*, 12 October 2021, Application No. 8663/08, §§ 5 and 80; as well as *Tomac v. the Republic of Moldova*, 16 March 2021, Application No. 4936/12, § 52.

⁵ The judgment of the European Court of Human Rights in *Osman v. the United Kingdom*, 28 October 1998, § 115; *Keenan v. the United Kingdom*, 3 April 2001, Application No. 27229/95, § 89, ECHR 2001-III; *Kılınc and Others v. Turkey*, 7 June 2005, Application No. 40145/98, § 40; as well as *Durdu v. Turkey*, § 62, and *Yasemin Doğan v. Turkey*, § 43.

individual, yet failed, within the scope of their powers, to take measures which could reasonably have been expected to prevent that risk⁶.

- When examining cases involving suicide, the European Court of Human Rights considers whether the competent national authorities were, or reasonably should have been, aware of an immediate and identifiable threat to an individual's life. In making this assessment, the Court evaluates factors such as the person's mental health history, previous suicide or self-harm attempts, indications of suicidal intent, and other manifestations of psychological vulnerability. The Court has consistently applied this approach not only to individuals deprived of their liberty but also to both conscript and contract servicemen, who remain under the effective control and responsibility of the State throughout their military service.⁷

- According to the Court's case-law, the State is obliged to ensure high professional standards within the military personnel system and may incur responsibility in situations where a serviceman has been driven to suicide by his hierarchical superiors through humiliation and ill-treatment⁸.

- In its jurisprudence, the European Court of Human Rights evaluates the evidence on the basis of the "beyond reasonable doubt" standard. Nevertheless, such a conclusion may be reached not only through direct evidence but also on the basis of sufficiently compelling, coherent, and consistent factual inferences. Furthermore, where an individual is under the effective authority and control of the State, including during military service, the evidential burden shifts to the national authorities, which are expected to provide a credible and satisfactory account of the circumstances surrounding the injuries sustained or the death that occurred⁹.

- 1) Thus, the case-law of the European Court of Human Rights in the field of the protection of the right to life within the armed forces establishes the following fundamental theses:
- 2) the protection of the lives of servicemen constitutes for the State not merely a passive obligation, but also an active positive obligation aimed at preventing risks existing within the service environment;
- 3) deaths occurring within the armed forces are assessed not only in the context of the conduct of individual persons, but also in light of the entire service environment, command supervision, and non-statutory relations;

⁶ The above-mentioned judgment of the European Court of Human Rights in *Keenan v. the United Kingdom*, 3 April 2001, Application No. 27229/95, §§ 89 and 93; as well as *Şahinkuşu v. Turkey*, 21 June 2016, Application No. 38287/06, § 58.

⁷ The judgment of the European Court of Human Rights in *Fernandes de Oliveira v. Portugal* [GC], 31 January 2019, Application No. 78103/14, § 115.

⁸ *Ibid.*

⁹ *Inter alia, Anguelova v. Bulgaria*, Application No. 38361/97, §§ 109–111, ECHR 2002-IV.

- 4) the suicide or death of a serviceman may give rise to the State's substantive liability where the State authorities knew or ought to have known of a real and foreseeable risk to life, yet failed to undertake sufficient preventive institutional measures;
- 5) the State is obliged to establish effective legal, organizational, and administrative mechanisms aimed at ensuring the lives of servicemen and safe conditions of military service;
- 6) the effective protection of the right to life within the armed forces includes the prevention not only of physical violence, but also of psychological coercion, humiliation, and conduct violating human dignity;
- 7) the inactivity of military leadership or inadequate supervision may be regarded as a causal factor contributing to a violation of the right to life;
- 8) in cases involving injuries or deaths occurring during military service, the burden of proof is largely placed upon the State authorities, which are required to provide a satisfactory and convincing explanation;
- 9) Article 2 of the Convention also gives rise to an obligation to conduct an independent, objective, prompt, and comprehensive investigation in every case of death;
- 10) a genuinely effective investigative process must be directed not only at establishing the immediate causes of death, but also at identifying the service-related, psychological, and organizational factors that may have contributed to the occurrence of the particular consequence.

With regard to the procedural standards, they are as follows:

- An effective official investigation into every case of death is required under Article 2 of the Convention. The purpose of such an investigation is to ensure the effective implementation of domestic legal provisions protecting the right to life, and the same standards are equally applicable to deaths occurring during military service, including cases involving the suicide of contract servicemen¹⁰.

- The investigation must be effective in the sense that it is capable of leading to the establishment of the facts and, where appropriate, to the identification and punishment of those responsible¹¹.

¹⁰ Inter alia, the judgment of the European Court of Human Rights in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 14 April 2015, Application No. 24014/05, §§ 169 and 171, as well as § 81 of *Boychenko v. Russia*.

¹¹ The judgment of the European Court of Human Rights in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], § 172, as well as *Nana Muradyan v. Armenia*, 5 April 2022, Application No. 69517/11, § 125.

- The obligation to conduct a genuinely effective investigative process is an obligation of means rather than of result. State authorities are required to take all reasonable measures necessary to clarify the circumstances of the case, including the questioning of witnesses, the carrying out of forensic examinations, and, where necessary, an autopsy. At the same time, the effectiveness of an investigation is assessed not by the number of investigative measures undertaken, but by the comprehensive, objective, and impartial evaluation of the evidence, while the failure to undertake the necessary measures hinders the full establishment of the facts and results in a violation of the standards of an effective investigation¹².

- The Court's case-law makes clear that an investigation cannot satisfy the requirements of Article 2 unless it is conducted by authorities who are genuinely independent from those potentially involved in the incident. This requirement extends beyond formal institutional arrangements and encompasses practical independence, which constitutes an essential precondition for an objective and impartial investigation¹³.

- An investigation conducted under Article 2 must afford the victim's family a meaningful opportunity to safeguard their legitimate interests. It should also be subject to an appropriate degree of public oversight, the extent of which depends on the circumstances of the individual case. The Court has further recognized that the involvement of the victim's relatives, as well as public scrutiny, may be achieved not only during the initial investigative stage but also throughout subsequent phases of the proceedings¹⁴.

- According to the Court's established approach, Article 2 does not impose an absolute duty on investigative authorities to carry out each procedural step proposed by the victim's family. The decisive consideration is whether the investigation, viewed as a whole, satisfies the requirements of effectiveness under the Convention¹⁵.

- The assessment of investigative effectiveness is necessarily case-specific. Rather than applying a uniform standard in every situation, the Court examines the investigation against the factual context of the case and the practical conditions

¹² The judgment of the European Court of Human Rights in *Muradyan v. Armenia*, 24 November 2016, Application No. 11275/07, § 135, as well as § 126 of *Nana Muradyan v. Armenia*.

¹³ § 177 of the judgment of the European Court of Human Rights in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC].

¹⁴ The judgment in *Hugh Jordan v. the United Kingdom*, § 109; as well as the judgment of the European Court of Human Rights in *Giuliani and Gaggio v. Italy* [GC], 24 March 2011, Application No. 23458/02, § 304, ECHR 2011, and *McKerr v. the United Kingdom*, 4 May 2001, Application No. 28883/95, § 129, ECHR 2001-III.

¹⁵ The judgment of the European Court of Human Rights in *Ramsahai and Others v. the Netherlands* [GC], 15 May 2007, Application No. 52391/99, § 348, ECHR 2007-II.

under which it was conducted, while recognizing that the level of effectiveness required may differ depending on the particular circumstances involved.¹⁶

Thus, the case-law of the European Court of Human Rights within the framework of the procedural aspect of the right to life establishes the following fundamental theses:

- Article 2 of the Convention gives rise to an obligation to conduct an effective official investigation into every case of death, including cases involving the suicide of servicemen during military service,
- the investigation must be independent, objective, prompt, and capable of establishing the factual circumstances of the case and identifying the persons responsible,
- State authorities are required to undertake all reasonable measures necessary for the clarification of the circumstances of the case,
- the effectiveness of an investigation is assessed not by the number of measures undertaken, but by the overall comprehensiveness of the investigation, the thorough evaluation of evidence, and its practical effectiveness,
- the investigation must ensure a sufficient degree of participation for the victim's family and an adequate level of public scrutiny,
- the standards of an effective investigation are assessed in light of the circumstances of each particular case.

Summarizing the approaches developed by the case-law of the European Court of Human Rights in the sphere of the protection of the right to life within the armed forces, it may be concluded that the general logic and principal vectors converge toward a unified approach according to which the obligations of the State arising under Article 2 of the Convention encompass both the establishment of effective substantive mechanisms for the protection of the lives of servicemen and the conduct of an effective investigation in every case of death. In this context, the Court's principal positions may be summarized as follows:

- i. the protection of the right to life must be practical and effective rather than merely formal,
- ii. the State is obliged to establish effective legal, administrative, and organizational mechanisms for the protection of the lives of servicemen,
- iii. servicemen remain under the exclusive control of the State, as a result of which the State's the State's affirmative duties assume a more stringent character,

¹⁶ Inter alia, the judgment of the European Court of Human Rights in *Muradyan v. Armenia*, § 136.

- iv. the State is obliged to prevent real and foreseeable risks to the lives of servicemen, including the risks of suicide, psychological coercion, and non-statutory relations,
- v. command inactivity, inadequate supervision, or a degrading service environment may give rise to the State's substantive liability,
- vi. in cases involving deaths during military service, the burden of proof is largely placed upon the State authorities,
- vii. in every case of death, the State is obliged to ensure an independent, objective, prompt, and effective investigation,
- viii. an effective investigation must be directed not only toward establishing the immediate causes of death, but also toward identifying the service-related, psychological, and organizational factors that may have contributed to the particular consequence,
- ix. the effectiveness of an investigation is assessed from the perspective of its comprehensiveness, objectivity, independence, and practical effectiveness.

II. The Role and Significance of the Activities of Non-Governmental Organizations in Ensuring the Right to Life within the Armed Forces

The protection of the right to life within the armed forces cannot be viewed exclusively within the framework of criminal law or internal disciplinary mechanisms. In essence, it presupposes a multi-layered preventive system in which the obligations of the State are complemented through external oversight, public accountability, and the participation of civil society. This approach is likewise consistent with the rationale presented in the preceding sections of the present study, according to which violations of the right to life within the armed forces are often conditioned not only by individual criminal conduct, but also by systemic factors related to the service environment, command supervision, non-statutory relations, and the insufficiency of preventive institutional measures.

From the perspective of international standards, a fundamental point of departure is the principle that servicemen, notwithstanding the specific nature of military service, continue to enjoy fundamental human rights. Recommendation CM/Rec(2010)4 proceeds from the principle that any limitation imposed on the rights of military personnel should have a clear legal basis, pursue a legitimate objective, and satisfy the requirement of proportionality, while States must ensure the real and effective protection of their rights throughout the entire period of service¹⁷.

¹⁷ The OSCE/ODIHR and DCAF handbook *Human Rights and Fundamental Freedoms of Armed Forces Personnel*, Chapter 1, pp. 17–24; Chapter 3, pp. 65–77; Chapter 8, pp. 233–248; Chapter 12, pp. 327–336, <https://search.coe.int/cm?i=09000016805cf8ef> (last accessed: 20 May 2026).

Within this framework, the role of non-governmental organizations derives not from the necessity of replacing State functions, but rather from the need to complement and strengthen them. The 1998 United Nations Declaration on Human Rights Defenders recognizes the right of every individual and association, individually or in association with others, to promote and protect universally recognized human rights. The same approach is reflected in the European Union Guidelines on Human Rights Defenders, where non-governmental organizations are regarded as important actors in the protection of human rights, the identification of violations, and the promotion of public awareness¹⁸.

In the field of the armed forces, this role is primarily manifested in four main areas:

- a) prevention of violations and early identification of risks,
- b) raising awareness among servicemen and their family members regarding their rights,
- c) conducting independent monitoring, fact-finding, and preparation of reports,
- d) promotion of legislative and institutional reforms.

The OSCE/ODIHR and DCAF handbook *Human Rights and Fundamental Freedoms of Armed Forces Personnel* examines the protection of human rights within the armed forces not only in the context of the internal command structure, but also through the prism of external oversight, parliamentary supervision, ombudsman institutions, and the participation of civil society. According to the approach adopted in the handbook, the protection of human rights within the armed forces requires transparency, effective complaint mechanisms, and opportunities for independent oversight¹⁹.

From the perspective of historical development, models of external oversight for the protection of human rights within the armed forces emerged particularly after the Second World War as mechanisms for the democratic control of military systems. In 1952, Norway established the Parliamentary Ombudsman Institution for the Armed Forces, which is regarded as one of the first military ombudsman models in the world. In 2021, Norway adopted a new Act on the Parliamentary Ombudsman Committee for the Armed Forces, thereby strengthening the legal foundations and supervisory role of that institution²⁰.

¹⁸ *EU Guidelines on Human Rights Defenders*, paras. 3–5, 14–16, 19–20. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet29en.pdf> (last accessed: 20 May 2026).

¹⁹ <https://www.dcaf.ch/sites/default/files/publications/documents/HandbookHumanRightsArmedForces-080409.pdf> (last accessed: 20 May 2026).

²⁰ <https://forsvarsombudet.no/english/> (last accessed: 20 May 2026).

Germany's experience is likewise significant. In Germany, the Parliamentary Commissioner for the Armed Forces of the Bundestag functions as an independent mechanism for the protection of the fundamental rights of servicemen and for parliamentary oversight. DCAF materials emphasize that the essence of the German model lies in the combination of the protection of fundamental rights within the armed forces and the supervisory powers of Parliament: the Commissioner is empowered to receive complaints from servicemen, examine existing problems, and present systemic deficiencies through annual reports²¹.

In the United Kingdom, the Armed Forces Service Complaints Ombudsman operates as an independent oversight mechanism, whose annual reports demonstrate that external complaint and supervision procedures are particularly important for identifying pressure, discrimination, improper treatment within the service environment, as well as delays in the examination of complaints. For example, the 2023 Annual Report recorded that 13 percent of armed forces personnel reported having experienced bullying, harassment, or discriminatory treatment during service, which indicates the systemic nature of such problems and the necessity of independent oversight.²²

Canada's experience likewise demonstrates that ombudsman institutions and independent civilian supervision bodies in the field of the armed forces may contribute not only to the examination of individual complaints, but also to systemic reforms. The Office of the Ombudsman for the Department of National Defence and the Canadian Armed Forces was established in 1998 with the aim of increasing the transparency of the defence system and ensuring fair treatment of servicemen. For example, the 2024–2025 Annual Report addressed a systemic review of the healthcare complaints process within the armed forces and observed that the absence of uniformly formulated procedures resulted in inconsistent and differentiated handling of complaints²³.

This comparative experience demonstrates that an effective system for the protection of the right to life within the armed forces is constructed not only through mechanisms of criminal liability, but also through the combination of

²¹ DCAF, *Parliament's Ombudsman for the Armed Forces*, available at <https://www.btg-bestellservice.de/pdf/80193000.pdf> (last accessed: 20 May 2026).

²² *Armed Forces Service Complaints Ombudsman, Annual Report 2023*, available at: https://www.scoaf.org.uk/sites/default/files/2024-04/11224-SCOAF-Annual%20Report%20and%20Accounts%202023-24_v6_accessible1%20%281%29.pdf (last accessed: 20 May 2026).

²³ *Office of the Ombudsman for the Department of National Defence and the Canadian Armed Forces, Annual Report 2024–2025*, pp. 18–24, available at: <https://www.canada.ca/content/dam/oodndcf-odnfc/documents/reports-pdf/ar-ra-2024-25-en.pdf> (last accessed: 20 May 2026).

preventive and supervisory institutions. Non-governmental organizations, independent expert bodies, ombudsman institutions, and parliamentary oversight collectively create an environment in which it becomes possible to:

- identify at an earlier stage the risks of non-statutory relations, psychological coercion, and humiliating treatment,
- raise the legal awareness of servicemen and their families,
- ensure an adequate level of public oversight in cases involving deaths or serious incidents,
- contribute to the transparency of investigations and to the confidence of victims' families,
- promote legislative and institutional reforms.

Nevertheless, the role of non-governmental organizations must be exercised within an appropriate balance. The sphere of the armed forces is connected with issues of national security, official secrecy, and the maintenance of combat readiness; therefore, the participation of civil society must be structured through clear legal regulations, limitations on access to information, the protection of personal data, and due consideration of the legitimate interests of national security. However, such limitations cannot serve as grounds for completely closing the sphere of human rights protection within the armed forces or excluding it from public oversight.

Thus, the analysis of international instruments and foreign experience makes it possible to conclude that the participation of non-governmental organizations within the system for the protection of the right to life in the armed forces possesses not merely an auxiliary, but rather a preventive and systemic significance. Such organizations contribute to the effective implementation of the State's affirmative duties by ensuring external oversight, public accountability, the early identification of violations, and the continuity of reforms.

In this context, the following directions may be regarded as перспективные for the Republic of Armenia:

- clarification of the legal procedures for independent human rights monitoring within the armed forces,
- institutionalization of cooperation between non-governmental organizations and the Office of the Human Rights Defender,
- development of safe, accessible, and reliable complaint mechanisms for servicemen and their families,
- conducting thematic studies concerning deaths and serious incidents with the participation of civil society,

- preparation of periodic independent reports concerning psychological safety within the armed forces, the prevention of non-statutory relations, and command responsibility.

Therefore, the contemporary model for guaranteeing the right to life within the armed forces must be based on the understanding that criminal law response constitutes a necessary, but insufficient, measure. Effective protection is possible only where a complementary and functioning system is established among criminal liability mechanisms, effective investigations, command supervision, ombudsman mechanisms, and the participation of non-governmental organizations.

IV. The Role of Civil Society Oversight in the Protection of the Right to Life within the Armed Forces of the Republic of Armenia and Future Trends in Legislative Developments

In the Republic of Armenia, the effectiveness of the protection of the right to life within the armed forces has, in recent years, gradually begun to be viewed not only in the context of criminal prosecution and domestic disciplinary mechanisms, but also through the prism of independent civilian supervision, the activities of non-governmental organizations, and independent human rights institutions. This approach derives both from international legal standards and from the domestic reality that violations of fundamental rights within the armed forces often possess a systemic character associated with non-statutory relations, psychological coercion, official inactivity, bullying, humiliating treatment, and insufficient mechanisms for the prevention of suicide.

The 2025 Annual Report of the Human Rights Defender of the Republic of Armenia underscores that the armed forces, despite their specific institutional nature, remain subject to independent civilian supervision. It further emphasizes that the protection of human rights and the maintenance of national security should not be regarded as competing objectives; instead, they represent mutually reinforcing principles that must advance simultaneously. The Report also highlights that an effective system for safeguarding human rights within the armed forces cannot rely exclusively on internal oversight mechanisms. Rather, it requires the meaningful engagement of independent oversight bodies together with active participation from civil society organizations in promoting accountability and strengthening the protection of fundamental rights²⁴.

²⁴ *Annual Report of the Human Rights Defender of the Republic of Armenia for 2025 on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms*, pp. 52–53.

The Office of the Human Rights Defender is regarded, within the sphere of the protection of human rights in the armed forces, as a constitutional mechanism of external and independent civilian supervision. The report particularly emphasizes that it is of fundamental importance for servicemen to be able to apply not only to bodies operating within the military hierarchy, but also to independent institutions capable of conducting effective investigations and identifying systemic problems. At the same time, reference is also made to the Explanatory Memorandum to Recommendation CM/Rec(2010)4 of the Committee of Ministers of the Council of Europe, which states that the effective protection of human rights within the armed forces requires the existence of independent oversight mechanisms.

The report further emphasizes that the Office of the Defender carries out its activities not only through cooperation with State bodies, but also through sustained engagement with civil society organizations, including expert discussions and joint studies concerning the protection of the rights of servicemen²⁵.

The annual reports of the Prosecutor General's Office of the Republic of Armenia for recent years likewise demonstrate that the problems existing within the armed forces continue to possess a systemic character. In particular, during 2022, 4,570 incidents were recorded within the armed forces, of which 1,696 constituted crimes, including 1,028 military crimes. In 2023, 2,358 incidents were recorded, of which 1,555 constituted crimes, while 847 were military crimes. In 2024, 2,093 incidents were recorded, of which 1,331 constituted crimes, including 715 military crimes. According to the 2025 Annual Report, 2,248 incidents were recorded, representing a 7.4 percent increase as compared with the previous year²⁶.

This statistical data demonstrates that, notwithstanding certain numerical decreases, the problem continues to possess a systemic character and is not confined to isolated disciplinary violations. Under such circumstances, the participation of civil society acquires not merely an auxiliary, but also a preventive significance.

The case-law of the European Court of Human Rights concerning Armenia likewise demonstrates that violations of the right to life within the armed forces are often accompanied not only by direct violence, but also by humiliating treatment, bullying, psychological coercion, and the absence of effective mechanisms for the prevention of suicide.

A particularly important illustration of these shortcomings is provided by the judgment in *Hovhannisyan and Nazaryan v. Armenia*. In that case, the European

²⁵ Also p. 52 of the same report.

²⁶ The annual reports on the activities of the Prosecutor General's Office of the Republic of Armenia, available at: <https://www.prosecutor.am/dynamicWebPages/report> (last accessed: 20 May 2026).

Court of Human Rights found that the respondent State had neither fulfilled its positive obligation to take adequate preventive measures to safeguard the life of a contract serviceman nor complied with its procedural duty to conduct an effective investigation into the circumstances surrounding his death. The Court further emphasized that the Armenian legal and institutional framework lacked effective mechanisms capable of preventing suicides among members of the armed forces²⁷.

A comparable approach was adopted by the European Court of Human Rights in *Varyan v. Armenia*. Assessing the circumstances of the case, the Court concluded that the respondent State had not provided an adequate level of protection for the life of a conscript who had been subjected to humiliation and physical abuse. The judgment further revealed shortcomings in the preventive framework, particularly the absence of effective suicide prevention measures within the military environment²⁸.

In this context, particular significance attaches to the activities of the “Peace Dialogue” non-governmental organization, which in recent years has become one of the most active and systematically operating organizations in the sphere of the protection of human rights within the armed forces, particularly with regard to guaranteeing the right to life. The organization’s 2023–2024 Annual Report states that its strategic priorities include strengthening respect for human rights and democratic values, developing a culture of peace, as well as deepening the involvement of and cooperation with local communities²⁹.

Among the important areas of activity of the “Peace Dialogue” non-governmental organization are fact-finding studies concerning violations of fundamental rights within the armed forces, support provided to the families of deceased servicemen, public awareness-raising regarding safe military service, as well as the collection and publication of information concerning non-combat deaths and violations of rights within the armed forces under the “Safe Soldiers for a Safe Armenia” initiative³⁰.

It is noteworthy that, through its proposals concerning the new 2023–2025 Action Plan deriving from the National Human Rights Protection Strategy (Human Rights Protection Strategy), the “Peace Dialogue” non-governmental organization

²⁷ The judgment of the European Court of Human Rights in *Hovhannisyan and Nazaryan v. Armenia*, 17 October 2023, Applications Nos. 2169/12 and 29887/14, §§ 95–103, 118–122, and 129–134.

²⁸ The judgment of the European Court of Human Rights in *Varyan v. Armenia*, 17 October 2023, Application No. 48998/14, §§ 90–97, 104–109, and 114–118.

²⁹ “Peace Dialogue” Non-Governmental Organization, *Annual Report 2023–2024*, Yerevan, 2025.

³⁰ The annual reports of the “Peace Dialogue” non-governmental organization, available at: <https://peacedialogue.am/category/publications/annual-reports/> (last accessed: 20 May 2026).

submitted a package consisting of 24 proposals, 10 of which were incorporated into the first draft of the Action Plan³¹.

A significant portion of the submitted proposals continues to retain considerable relevance, particularly in the context of the protection of the right to life, mental health protection, and preventive oversight within the armed forces. The most important and relevant among them are:

- **the development of criteria for the public disclosure of non-combat deaths within the armed forces**, since the research substantiated that the lack of transparency regarding such incidents hinders public oversight and the identification of systemic problems,
- **the study of the causes of suicide and the introduction of preventive institutional measures**, as the research demonstrates that deaths within the armed forces are often conditioned not only by individual factors, but also by service-related and psychological factors,
- **the introduction of a mental health diagnostic system within the armed forces**, since the research emphasized the impact of psychological coercion, bullying, and humiliating treatment on the right to life of servicemen,
- **the reassessment of the effectiveness of the institution of officer-psychologists**, as the conducted study demonstrates that the existing preventive and psychological support mechanisms frequently fail to ensure sufficient effectiveness³².

At the same time, some of the proposals that were not fully incorporated into the Action Plan continue to possess practical significance and should be considered within the framework of future reforms.

These include:

- **the introduction of a system containing clear criteria for the qualification of cases of torture and ill-treatment within the armed forces**, as well as the publication of statistical data, since the present research likewise substantiated that violations of the right to life and the prohibition of torture frequently possess a systemic and insufficiently publicized character,
- **the introduction of mechanisms of public oversight over disciplinary battalions**, since the research emphasized the necessity of external and independent oversight within closed and hierarchical service environments,

³¹ https://peacedialogue.am/2023/03/18/https-peacedialogue-am-en-2022-09-16-hrap_proposals_-accepted_arm/ (last accessed: 20 May 2026).

³² Ibid.

- **the development of an operational response plan concerning human rights in wartime situations**, since the present research established that, under wartime conditions, the risks relating to the right to life, psychological security, and the protection of victims' families significantly increase³³.

In light of the foregoing, with regard to the regulations contained in Articles 522 and 523 of the Criminal Code of the Republic of Armenia, it is necessary to note that they possess significant importance within the context of the protection afforded by criminal law of the right to life in the armed forces, since they are aimed not only at the prevention of physical violence, but also at preventing suicides resulting from psychological coercion, humiliation, and non-statutory relations. At the same time, the combined analysis of the present research, the case-law of the European Court of Human Rights, and domestic statistical data demonstrates the existence of a number of problematic issues which may serve as a basis for further scientific and legislative examination.

In particular, it is problematic that the methods of driving a person to suicide provided for in these articles are limited to the formulations of “threats, cruel treatment, or humiliation of personal honor and dignity,” whereas the present research and the case-law of the European Court emphasize that psychological pressure, bullying, social isolation, continuous humiliation, and the hostile nature of the service environment within the armed forces often manifest themselves in more complex and multi-layered forms, which may not be fully encompassed by the existing formulations. Under such circumstances, the necessity for a clearer criminal law reflection of forms of psychological violence and systemic pressure may become the subject of further study.

Another problematic issue concerns the practical application of the distinction between negligent and intentional forms of driving a person to suicide, since under conditions of military service the influence of psychological pressure, hierarchical dependence, and service subordination is often difficult to assess clearly from the perspective of the form of guilt. The present research likewise substantiates that suicides within the armed forces are generally conditioned not by a single act, but rather by a combination of prolonged service-related and psychological influences, which complicates the establishment of causation and the proof of the subjective element.

Furthermore, the articles do not contain an independent assessment of command inactivity or inadequate supervision, whereas both the present research and the

³³ Available at: https://peacedialogue.am/2022/09/03/hrap_proposals_arm/ (last accessed: 20 May 2026).

standards developed by the European Court of Human Rights emphasize that the inactivity of military leadership, inadequate supervision, or the tolerance of a degrading service environment may constitute causal factors contributing to violations of the right to life. In this context, a clearer delineation of the scope of command responsibility may become the subject of future legislative discussions.

Conclusion

The present research demonstrates that the effectiveness of ensuring effective safeguards for the preservation of life within the armed forces is conditioned not only by the existence of criminal liability, but also by the effectiveness of preventive, organizational, and supervisory mechanisms. The combined analysis of the case-law of the European Court of Human Rights, domestic statistical data, the reports of the Human Rights Defender, and civil society studies indicates that violations of the right to life within the armed forces frequently possess a systemic character and are conditioned by deficiencies in the service environment, psychological coercion, non-statutory relations, and the insufficient effectiveness of supervisory mechanisms.

At the same time, the analysis of Articles 522 and 523 of the Criminal Code of the Republic of Armenia demonstrates that although these provisions are of significant importance for the criminal law prevention of suicides within the armed forces, a number of problematic issues nevertheless remain, including those related to the comprehensive inclusion of forms of psychological violence and systemic pressure, the distinction between negligent and intentional forms of driving a person to suicide, as well as the legal assessment of command inactivity.

The research further demonstrates that the effective protection of the right to life is possible only through the combination of criminal law, preventive, and independent supervisory mechanisms, within which non-governmental organizations, ombudsman institutions, and other forms of civilian monitoring mechanisms play an important role.

In this context, important directions for future reforms may include:

- (1) the development of mechanisms for the protection of mental health and the prevention of suicide within the armed forces,*
- (2) the introduction of effective systems aimed at preventing non-statutory relations, bullying, and psychological coercion,*
- (3) the strengthening of the independence, transparency, and public oversight of investigations into deaths,*
- (4) the legal clarification of command supervision and preventive obligations,*

- (5) *the development of mechanisms for civilian monitoring mechanisms and independent monitoring in the sphere of the protection of human rights within the armed forces,*
- (6) *the improvement of the law-enforcement practice and legislative framework relating to Articles 522 and 523 of the Criminal Code of the Republic of Armenia with the aim of ensuring a more comprehensive reflection of contemporary manifestations of psychological violence and service-related pressure within the armed forces.*

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

Reference list

1. The judgment of the European Court of Human Rights in *McCann and Others v. the United Kingdom*, 27 September 1995, Application No. 18984/91, §§ 146–147, Series A No. 324.
2. The judgment of the European Court of Human Rights in *L.C.B. v. the United Kingdom*, 9 June 1998, § 36, *Reports of Judgments and Decisions* 1998-III.
3. The judgment of the European Court of Human Rights in *Beker v. Turkey*, 24 March 2009, Application No. 27866/03, §§ 5 and 43;
4. The judgment of the European Court of Human Rights in *Yasemin Doğan v. Turkey*, 6 September 2016, Application No. 40860/04, §§ 8, 43, and 45.
5. The judgment of the European Court of Human Rights in *Boychenko v. Russia*, 12 October 2021, Application No. 8663/08, §§ 5 and 80;
6. The judgment of *Tomac v. the Republic of Moldova*, 16 March 2021, Application No. 4936/12, § 52.
7. The judgment of the European Court of Human Rights in *Osman v. the United Kingdom*, 28 October 1998, § 115.
8. The judgment of European Court of Human Rights in *Keenan v. the United Kingdom*, 3 April 2001, Application No. 27229/95, § 89, ECHR 2001-III;
9. The judgment of European Court of Human Rights in *Kılınc and Others v. Turkey*, 7 June 2005, Application No. 40145/98, § 40;
10. The judgment of European Court of Human Rights in as *Durdu v. Turkey*, § 62, and *Yasemin Doğan v. Turkey*, § 43.
11. The judgment of European Court of Human Rights in *Şahinkuşu v. Turkey*, 21 June 2016, Application No. 38287/06, § 58.
12. The judgment of the European Court of Human Rights in *Fernandes de Oliveira v. Portugal* [GC], 31 January 2019, Application No. 78103/14, § 115.

13. The Judgment *Anguelova v. Bulgaria*, Application No. 38361/97, §§ 109–111, ECHR 2002-IV.
14. The judgment of the European Court of Human Rights in *Mustafa Tunç and Fecire Tunç v. Turkey* [GC], 14 April 2015, Application No. 24014/05, §§ 169 and 171,
15. The judgment of the European Court of Human Rights in *Nana Muradyan v. Armenia*, 5 April 2022, Application No. 69517/11, § 125.
16. The judgment of the European Court of Human Rights in *Muradyan v. Armenia*, 24 November 2016, Application No. 11275/07, § 135
17. The judgment of the European Court of Human Rights in *Hugh Jordan v. the United Kingdom*, § 109.
18. The judgment of the European Court of Human Rights in *Giuliani and Gaggio v. Italy* [GC], 24 March 2011, Application No. 23458/02, § 304, ECHR 2011
19. The judgment of the European Court of Human Rights in *McKerr v. the United Kingdom*, 4 May 2001, Application No. 28883/95, § 129, ECHR 2001-III.
20. The judgment of the European Court of Human Rights in *Ramsahai and Others v. the Netherlands* [GC], 15 May 2007, Application No. 52391/99, § 348, ECHR 2007-II.
21. OSCE/ODIHR and DCAF handbook *Human Rights and Fundamental Freedoms of Armed Forces Personnel*, Chapter 1, pp. 17–24; Chapter 3, pp. 65–77; Chapter 8, pp. 233–248; Chapter 12, pp. 327–336, <https://search.coe.int/cm?i=09000016805cf8ef> (last accessed: 20 May 2026).
22. *EU Guidelines on Human Rights Defenders*, paras. 3–5, 14–16, 19–20. <https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet29en.pdf> (last accessed: 20 May 2026).
23. <https://www.dcaf.ch/sites/default/files/publications/documents/HandbookHumanRightsArmedForces-080409.pdf> (last accessed: 20 May 2026).
24. DCAF, *Civilian Oversight of the Security Sector: Policy Brief*, <https://www.dcaf.ch/sites/default/files/imce/SSAD/SDN-PolicyBrief-CivilianOversight.pdf> (last accessed: 20 May 2026)., (pp. 3-7, 11-16, 21-24):
25. <https://forsvarsombudet.no/english/> (last accessed: 20 May 2026).
26. DCAF, *Parliament's Ombudsman for the Armed Forces*, available at <https://www.btg-bestellservice.de/pdf/80193000.pdf> (last accessed: 20 May 2026).
27. *Armed Forces Service Complaints Ombudsman, Annual Report 2023*, available at: https://www.scoaf.org.uk/sites/default/files/2024-04/11224-SCOAF-Annual%20Report%20and%20Accounts%202023-24_v6_accessible1%20%281%29.pdf (last accessed: 20 May 2026).
28. *Office of the Ombudsman for the Department of National Defence and the Canadian Armed Forces, Annual Report 2024–2025*, pp. 18–24, available at: <https://www.canada.ca/content/dam/oodndcf-odnfc/documents/reports-pdf/ar-ra-2024-25-en.pdf> (last accessed: 20 May 2026).

29. *Annual Report of the Human Rights Defender of the Republic of Armenia for 2025 on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms*, pp. 52–53.
30. The annual reports on the activities of the Prosecutor General’s Office of the Republic of Armenia, available at: <https://www.prosecutor.am/dynamicWebPages/report> (last accessed: 20 May 2026).
31. The judgment of the European Court of Human Rights in *Hovhannisyan and Nazaryan v. Armenia*, 17 October 2023, Applications Nos. 2169/12 and 29887/14, §§ 95–103, 118–122, and 129–134.
32. The judgment of the European Court of Human Rights in *Varyan v. Armenia*, 17 October 2023, Application No. 48998/14, §§ 90–97, 104–109, and 114–118.
33. “Peace Dialogue” Non-Governmental Organization, *Annual Report 2023–2024*, Yerevan, 2025.
34. The annual reports of the “Peace Dialogue” non-governmental organization, available at: <https://peacedialogue.am/category/publications/annual-reports/> (last accessed: 20 May 2026).
35. https://peacedialogue.am/2023/03/18/https-peacedialogue-am-en-2022-09-16-hrap-proposals_accepted_arm/ (last accessed: 20 May 2026).
36. https://peacedialogue.am/2022/09/03/hrap_proposals_arm/ (last accessed: 20 May 2026).

THE NEED FOR A DOCTRINE OF JURISDICTION IN CRIMINAL PROCEDURAL SCIENCE (FOR THE POST-SOVIET STATES)

Dmitry Chekulaev*

Abstract. The article presents the author's position on the necessity of further comprehensive study of the institution of jurisdiction in criminal proceedings within the framework of a separate field of research - the doctrine of jurisdiction. It substantiates the need to develop a doctrinally grounded concept of jurisdiction and its types, including the identification, as a separate type of jurisdiction, of the jurisdiction applicable during special periods (jurisdiction under martial law or a state of emergency). The author also argues for recognizing the interbranch nature of jurisdiction, characteristic of civil, commercial (arbitrazh), administrative, and criminal proceedings, as well as the possible necessity of unifying the relevant terminology. Furthermore, the article emphasizes the expediency of scientific and practical research into certain controversial issues, including the scope of the concept of the "prohibition of disputes over jurisdiction", the improvement of the existing procedure for transferring cases according to jurisdiction, and the inclusion of a separate chapter entitled "Jurisdiction" in criminal procedural legislation. Discussions of this kind may prove particularly useful among scholars of the post-Soviet states, which previously existed within a common "procedural space".

Keywords - *criminal procedure, jurisdiction, the right to a lawful court, composition of the court, dispute over jurisdiction, judicial system.*

In the Russian pre-reform¹, post-reform, and Soviet science of criminal procedure, the study of the institution of jurisdiction did not receive sufficient attention for a long time. For example, throughout the entire Soviet period of development, only a very limited number of thematic studies were published, and these related mainly

* **Dmitry P. Chekulaev** - Associate Professor of the Department of Criminal Procedure, Administration of Justice, and Prosecutorial Supervision, Faculty of Law, Lomonosov Moscow State University, Candidate of Legal Sciences (PhD in Law), e-mail: dm_ch@inbox.ru, ORCID: 0009-0008-2532-4497



This work is licensed under a Creative Commons Attribution-NonCommercial 4.0 International License.

The article received 11 June 2026,
reviewed 27 June 2026,
accepted for publication 29 June 2026

© The Author(s) 2026

¹ Prior to the Great Judicial Reform of 1864 initiated by Emperor Alexander II.

to the period of the 1930s–1950s². A similarly "peripheral", from the standpoint of legal scholarship, approach to the study of the institution of jurisdiction persisted after the adoption in 1958 of the *Fundamentals of Criminal Judicial Procedure of the USSR and the Union Republics* and the subsequently adopted republican codes of criminal procedure, as well as during the first decades following the dissolution of the USSR.

It is possible that the absence of major scholarly works in this field was, to some extent, a tribute to Soviet academic traditions, which regarded jurisdiction, particularly territorial jurisdiction, as a "technical" institution. For example, as the well-known Soviet professor M. A. Cheltsov noted, not every violation of the rules of jurisdiction necessarily entails the unconditional invalidation of the judgment rendered. If the court, by accepting the case for its proceedings, exceeded its powers, its judgment must be quashed. However, if the limits of its powers were not exceeded, that is, where one court accepted for its proceedings a case that should have been heard by another court of the same level, there are no grounds for the mandatory quashing of the judgment³.

A similar explanation of the legislator's approach under consideration was provided by the eminent Soviet scholar M. S. Strogovich, who wrote: "The prohibition of disputes between courts regarding the jurisdiction of a particular case proceeds, first, from the unity of the Soviet judicial system and, second, from the inadmissibility of delays in criminal cases (the fate of the accused would remain unresolved while the dispute over the jurisdiction of the case continued)"⁴.

A certain increase in the number of studies devoted to issues of jurisdiction in the early 2020s was associated with the examination of the constitutional foundations of the administration of justice and was carried out through the prism of the right to a lawful court⁵. Thus, many states that had previously formed part of the USSR as Union republics have enshrined in their modern constitutions the right

² **Kozhevnikov, M. V.** *Jurisdiction of Criminal Cases*. Edited by I. T. Golyakov. Moscow, 1939. 20 p., **Gusev, L. N.** *Jurisdiction of Criminal Cases*. Moscow, 1955. 20 p.

³ **Cheltsov, M. A.** *Criminal Procedure*. Moscow, 1948. P. 440. It is noteworthy that a similar approach was also adopted by pre-revolutionary scholars. Thus, **V. K. Sluchevsky** discussed in detail the various procedural consequences of a court's violation of the rules of **territorial or subject-matter jurisdiction**. In his opinion, a violation of the former type of jurisdiction "does not constitute an absolute ground for recognizing the validity of the judgment rendered." However, a judgment delivered in violation of the latter type of jurisdiction (subject-matter jurisdiction) "must never acquire the force of a lawful judicial decision and is subject to annulment." (Sluchevsky, V. *Textbook of Russian Criminal Procedure. Judicial Organization and Judicial Proceedings*. St. Petersburg, 1913. Pp. 254–256).

⁴ **Strogovich, M. S.** *Course of Soviet Criminal Procedure*. Moscow, 1958. P. 149.

⁵ **Kondrashin, P. V., & Popova, E. I.** *The Right to a Lawful Court in Criminal Proceedings: A Monograph*. Edited by Yu. P. Garmayev. Moscow, 2024.

to a lawful court through the requirement of compliance with the rules of jurisdiction. For example, Chapter 2 of the Constitution of the Russian Federation, entitled "Rights and Freedoms of Man and Citizen" and not subject to amendment, provides that no one may be deprived of the right to have his or her case examined by the court and the judge to whose jurisdiction it has been assigned by law (Article 47(1)). At the constitutional level, the Republic of Kazakhstan provides that "no person may, without his or her consent, have the jurisdiction established for him or her by law altered" (Article 77(3)(3) of the Constitution of the Republic of Kazakhstan). Pursuant to Article 31(2) of the Constitution of Georgia, "everyone has the right to have his or her case examined only by the court within whose jurisdiction the case falls".

A logical continuation of the growing interest in the institution of jurisdiction was the organization of major academic events. For example, in March 2024, the Faculty of Law of Lomonosov Moscow State University hosted an international conference devoted exclusively to a single issue - the jurisdiction of criminal courts. Among the participants was a distinguished plenary speaker representing the Armenian school of criminal procedure, Professor S. A. Dilbandyan⁶. In substantiating the need for holding such a specialized academic conference, the prominent Russian scholar Professor L. V. Golovko figuratively emphasized that the institution of jurisdiction had long been underestimated, being perceived by many as a purely technical institution that did not deserve close scholarly attention⁷.

The existing vacuum in the doctrinally systematized study of jurisdiction in criminal proceedings, as well as the deficiencies in the conceptual framework, is currently being addressed by contemporary scholars, including representatives of leading academic research institutions. For example, in 2026, E. E. Konovalova, a researcher at the Institute of State and Law of the Russian Academy of Sciences, published a comprehensive monograph advocating the following approach to the issue under consideration: the right to have one's case examined by the court and the judge to whose jurisdiction it has been assigned by law should, in the context of criminal proceedings, be characterized as the right of participants in criminal proceedings who are vested with the right to judicial protection to have their

⁶ **Dilbandyan, S. A.** Subject-Matter and Other Types of Jurisdiction under the Criminal Procedure Code of the Republic of Armenia. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure," Moscow, 29 March 2024.* Moscow, 2024. Pp. 96–104.

⁷ **Golovko, L. V.** Preface. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure," Moscow, 29 March 2024.* Moscow, 2024. P. 2.

criminal case examined by a court determined on the basis of the rules established by criminal procedural law and founded upon clear and unambiguous criteria⁸. However, the efforts of individual scholars alone are clearly insufficient to ensure a comprehensive study of the phenomenon of jurisdiction and its significance for the administration of justice.

It appears necessary to place before procedural science the task of intensifying efforts aimed at the multidimensional study of the institution of jurisdiction within the framework of a separate Doctrine of Jurisdiction. By this term, we propose to understand a purposeful scholarly endeavor directed at the comprehensive study of jurisdiction at the present stage of development of judicial organization and procedural legal relations, as well as the formulation of doctrinally substantiated recommendations concerning both the application of the rules on jurisdiction (recommendations for law enforcement practice) and their further improvement (legislative proposals) in criminal proceedings as well as in other forms of judicial proceedings.

The following may be proposed as separate areas of scholarly research within the framework of a unified Doctrine of Jurisdiction.

1. Development of a scientific and practical definition of jurisdiction in criminal proceedings

In contemporary procedural scholarship, there is no consensus regarding the concept of jurisdiction and the constituent elements encompassed by this concept. Nor does the legislator provide a statutory definition of jurisdiction, rightly leaving its formulation to legal doctrine.

Russian criminal procedural textbooks advance the view that the concept of *jurisdiction* denotes: (a) the aggregate of the characteristics of a criminal case by means of which, from among the entire range of courts empowered to hear criminal cases, and in accordance with the rules established by law (types or criteria of jurisdiction), the specific court that must examine the criminal case as a court of first instance is determined; and (b) the rules governing the determination of the lawful composition of the court for the examination of that case⁹.

A similar approach to the concept of jurisdiction is adopted by Tajik scholars, who define jurisdiction as "the characteristics of a criminal case established by law, on the basis of which the question is resolved as to which court, and in what

⁸ **Konovalova, E. E.** *Jurisdiction in Criminal Proceedings: Problems of Theory, Legislation, and Practice: A Monograph*. Moscow, 2026. Pp. 14–15.

⁹ **Course of Criminal Procedure**. Edited by L. V. Golovko. Moscow, 2024. Pp. 658–665.

composition, is competent to examine the particular case"¹⁰. The Belarusian scholar S. V. Boriko defines jurisdiction as "the aggregate of the legal characteristics of a criminal case by virtue of which it is subject to examination at first instance by a particular court"¹¹.

Not all scholars agree with this approach, expanding the concept of criminal procedural jurisdiction to encompass proceedings other than those conducted before the court of first instance. For example, according to S. V. Bekhalo, "the purpose of the institution of criminal jurisdiction has a 'cross-cutting character'"¹². In the legal literature, views have also been expressed advocating the application of the institution of jurisdiction to the determination of the court competent to examine complaints during pre-trial proceedings pursuant to Article 125 of the Criminal Procedure Code of the Russian Federation¹³, as well as at the stage of execution of judicial decisions ...of the sentence¹⁴. I. S. Dikarev¹⁵ writes of the "levels of criminal jurisdiction". A distinctive "conciliatory" approach is proposed by E.E. Konovalova, who argues that, in a broad sense, jurisdiction should be understood as the aggregate of the characteristics of a criminal case specified in criminal procedural legislation, on the basis of which, through the application of established rules, the specific court competent to consider a matter falling within its jurisdiction is determined. In a narrow sense, jurisdiction should be understood as the aggregate of the characteristics of a criminal case on the basis of which,

¹⁰ **Criminal Procedure of the Republic of Tajikistan: A Textbook**. Edited by N. S. Manova, Yu. V. Frantsiforov, and R. R. Yuldoshev. Dushanbe, 2017. P. 361.

¹¹ **Boriko, S. V.** *Criminal Procedure: A Textbook*. Minsk, 2004. P. 218.

¹² **Bekhalo, S.V.** The Institution of Criminal Jurisdiction. *Russian Justice*. 2019. No. 2. P. 103.

¹³ **Andreeva, O.I., Gertsen, P.O., & Rukavishnikova, A.A.** Compliance with Jurisdiction as a Condition for the Realization of the Right to a Lawful Court in Judicial Appeals against Decisions Rendered during Pre-Trial Proceedings. *Bulletin of the Samara Law Institute*. 2023. No. 1 (52). Pp. 17–20; **Kalinovsky, K. B.** Change of Jurisdiction of Motions and Complaints in Pre-Trial Proceedings. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure," Moscow, 29 March 2024*. Moscow, 2024. Pp. 181–187.

¹⁴ **Kachalov, V.I.** On the Territorial and Personal Criteria of Jurisdiction in Resolving Issues Arising during the Execution of a Sentence. *Justice of the Peace*. 2017. No. 5. Pp. 28–31; **Pupysheva, L. A.** Jurisdiction over Issues Related to the Execution of a Sentence. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure," Moscow, 29 March 2024*. Moscow, 2024. Pp. 191–195.

¹⁵ **Dikarev, I.S.** Levels of Jurisdiction in Criminal Proceedings. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure," Moscow, 29 March 2024*. Moscow, 2024. Pp. 59–62.

through the application of established rules, the court of first instance competent to examine the criminal case on its merits is determined¹⁶.

In view of the broad range of opinions expressed in the legal literature, it appears that the following issues may be placed on the scholarly agenda: the expediency of extending the concept of *jurisdiction* to all stages of criminal proceedings requiring judicial participation; the inclusion, within the concept of jurisdiction, of the rules governing the determination of the proper composition of the court as its integral component¹⁷; and the relationship between jurisdiction, the right to a lawful court, and access to justice.

2. Doctrinal development of the types of jurisdiction and the criteria for their determination

The types of jurisdiction have been discussed by many prominent pre-revolutionary and Soviet scholars, and at first glance this issue would appear to have been adequately developed in legal scholarship. Thus, N. N. Rozin distinguished subject-matter jurisdiction (including certain of its "special cases", for example, where subject-matter jurisdiction is determined by an express provision of law or depends upon the identity of the accused)¹⁸, territorial jurisdiction (determined by the place where the criminal offence was committed)¹⁹, and jurisdiction based on the connection between cases (various combinations of subject-matter and territorial jurisdiction designed to "achieve the practical convenience of having all criminal offences committed by one accused examined by a single court, or likewise having the common case involving several accomplices to the crime examined by the same court ...offence")²⁰. The same classification was adhered to by the eminent Russian scholar of criminal procedure I. Ya. Foinitsky²¹.

During the Soviet period of legal scholarship, three types of jurisdiction were likewise generally distinguished: (1) subject-matter (or generic) jurisdiction; (2) territorial (or local) jurisdiction; and (3) personal jurisdiction²². Some

¹⁶ **Konovalova, E. E.** *Op. cit.* P. 31.

¹⁷ It should be noted that there is an ongoing scholarly debate in which many authors deny that the composition of the court constitutes an element of the concept of jurisdiction. For a more detailed discussion, see: Konovalova, E. E. *Jurisdiction in Criminal Proceedings: Problems of Theory, Legislation, and Practice: A Monograph.* Moscow, 2026. Pp. 13, 29–31.

¹⁸ **Rozin, N. N.** *Criminal Procedure.* St. Petersburg, 1914. Pp. 200–207.

¹⁹ *Ibid.*, pp. 207–208.

²⁰ *Ibid.*, pp. 208–211.

²¹ **Foinitsky, I. Ya.** *Course of Criminal Procedure.* Vol. II. St. Petersburg, 1910. Subject-Matter Jurisdiction, pp. 85–135; Territorial Jurisdiction, pp. 135–145; Jurisdiction Based on the Connection of Cases, pp. 145–158.

²² **Strogovich, M. S.** *Course of Soviet Criminal Procedure.* Vol. I. Moscow: Nauka, 1968. P. 268.

contemporary authors, both Russian and from other CIS countries, distinguish only two types of jurisdiction - generic (subject-matter) jurisdiction and territorial jurisdiction²³.

However, are two, or even three, types of jurisdiction sufficient to determine without error the proper court for the examination of every particular criminal case? For example, the well-known Russian *Course of Criminal Procedure* identifies, in addition to the above-mentioned types, alternative jurisdiction at the discretion of the prosecutor, jurisdiction based on the connection between cases, jurisdiction determined by the specific nature of the content of the criminal case, discretionary jurisdiction, and exclusive jurisdiction²⁴.

The issue of the types of jurisdiction requires further scholarly research with a view to developing new classification criteria and, possibly, the subsequent improvement of legislation.

3. Jurisdiction during special periods (martial law and a state of emergency)

At the highest constitutional level, the majority of post-Soviet states have provided that the fundamental rights and freedoms of individuals and citizens may not be restricted even during the operation of a special legal regime (a state of emergency or martial law)²⁵. For example, under the Constitution of the Russian Federation, such rights include: the right to life (Article 20); the right to human dignity (Article 21); the right to judicial protection of rights and freedoms (Article 46); the right to have one's case examined by the court and the judge to whose jurisdiction it has been assigned by law, as well as the right to trial by jury (Article 47); the right to receive qualified legal assistance (Article 48); the right of victims to access to justice and compensation for damage suffered (Article 52); as well as a number of other rights.

As a rule, issues relating to the restriction of citizens' rights under special legal regimes, as well as issues concerning the possible alteration of jurisdiction, are regulated in the post-Soviet states by separate legislative acts²⁶. Thus, in the Russian Federation, pursuant to Article 7(8) of the Federal Constitutional Law "*On Military Courts of the Russian Federation*," the jurisdiction of military courts, as

²³ Criminal Procedure of the Republic of Tajikistan. *Op. cit.*, pp. 361–364; Konovalova, E. E. *Op. cit.*, p. 33.

²⁴ For a detailed discussion of the types of jurisdiction and the rationale for their classification, see: *Course of Criminal Procedure*, ed. by L. V. Golovko. *Op. cit.*, pp. 855–862.

²⁵ *Ibid.*, pp. 208–211.

²⁶ For example, in Belarus—the Law of the Republic of Belarus “On the State of Emergency”; in Kazakhstan—the Law of the Republic of Kazakhstan “On the State of Emergency”; and in Russia—the Federal Constitutional Laws “On the State of Emergency” and “On Martial Law.”

well as the procedure for the administration of justice by such courts during mobilization and wartime, are to be determined by the relevant federal constitutional laws. However, the corresponding federal constitutional laws have not been adopted, which *de facto* renders the implementation of this legal provision impossible. Nor has the authority granted to the Supreme Court of the Russian Federation by the federal constitutional laws (Article 16(2) of the Federal Constitutional Law "On Martial Law" and Article 35(3) of the Federal Constitutional Law "On the State of Emergency") to alter territorial jurisdiction where the administration of justice by courts operating in the territory in which martial law or a state of emergency has been declared is impossible, found its legislative continuation in the Criminal Procedure Code of the Russian Federation.

The absence of legislative regulation governing these specific features of the administration of justice during special periods diminishes the guarantees for the exercise of the constitutional right to judicial protection and the right to a lawful court, both of which are not subject to restriction even under a regime of martial law or a state of emergency²⁷. It therefore appears necessary to undertake a doctrinal elaboration of a new type of jurisdiction - jurisdiction applicable during the declaration of martial law or a state of emergency (jurisdiction of special periods). Such a type of jurisdiction may constitute a complex form of jurisdiction, combining the institutions of subject-matter (generic), personal, and territorial jurisdiction²⁸.

4. On the expediency of establishing specialized courts for certain categories of criminal cases and on the jurisdiction of military courts

The constitutions of the majority of post-Soviet states prohibit the establishment of extraordinary courts²⁹. Such an approach can only be welcomed. At the same time, the question of the necessity of further developing judicial systems through the establishment of specialized criminal courts for certain categories of offences may

²⁷ For a more detailed discussion, see: **Chekulaev, D. P., & Khimichev, M. V.** "Changing the Territorial Jurisdiction of Criminal Cases under Martial Law. Article 1. On the Implementation of the Right to a Lawful Court and the Right of Citizens to Access Justice under Martial Law". *Military Law Journal*, 2023, No. 5, pp. 22–25.

²⁸ **Chekulaev, D. P.** "Jurisdiction during Special Legal Regimes (Martial Law and the State of Emergency) as a New Type of Jurisdiction in the Criminal Procedure of the Russian Federation". *Bulletin of Economic Security*, 2025, No. 2, pp. 159–162.

²⁹ For example, Belarus has adopted the Law of the Republic of Belarus "On the State of Emergency"; Kazakhstan has enacted the Law of the Republic of Kazakhstan "On the State of Emergency"; and Russia regulates these matters through the Federal Constitutional Laws "On the State of Emergency" and "On Martial Law."

arise on the scholarly agenda, which would inevitably entail an expansion of the concept of jurisdiction.

Such specialized courts have been established, for example, in France for the adjudication of terrorism-related cases³⁰. The jurisdiction of the special political courts, which are institutionally separate from the ordinary courts, includes the examination of criminal cases concerning charges of high treason brought against the President of France (the High Court of Justice), as well as criminal cases involving incumbent and former ministers accused of offences committed in the course of performing their official duties (the Court of Justice of the Republic)³¹. In Armenia, a specialized branch of anti-corruption courts has been established. If at least one of the proceedings concerns a corruption-related offence, the criminal case is examined by the Anti-Corruption Court³².

From both doctrinal and practical perspectives, it appears useful to conduct a scholarly discussion on the expediency of establishing specialized courts within the judicial system for the examination of certain categories of criminal cases, whose jurisdiction could be determined, for example, on the basis of the personal status of the accused (such as senior executive officials, members of representative bodies, or judges) or on the basis of the category of offences, including criminal cases concerning terrorism or certain crimes against the peace and security of mankind, among others.

In some states, the jurisdiction of military courts is being expanded to include the examination of certain categories of criminal cases unrelated to military service. This phenomenon requires separate scholarly examination.

For example, in the United States, the jurisdiction of military courts has been extended to persons implicated in the terrorist attacks of 11 September 2001. Subsequently, President George W. Bush issued an order providing that all cases involving persons accused of terrorism should be heard not by ordinary civilian courts but by military courts, a measure that, according to legal scholarship, "was generally met with understanding" within American society³³.

³⁰ **Golovko, L. V.** "The Institution of Jurisdiction in Criminal Procedure: The Boundary Between the Value-Based and Technical Dimensions." In: *The Institution of Jurisdiction in Criminal Procedure. Op. cit.*, p. 13.

³¹ *Ibid.*, p. 13.

³² **Dilbandyan, S. A.** "Subject-Matter and Other Types of Jurisdiction under the Criminal Procedure Code of the Republic of Armenia." In: *The Institution of Jurisdiction in Criminal Procedure. Op. cit.*, p. 101.

³³ *Military Courts in the Contemporary World*. Edited, with a Preface by **A. Ya. Petrochenkov**. Moscow, 2011. P. 22.

The Russian Federation has followed a similar path of expanding the subject-matter jurisdiction of military courts. Since 2010, criminal cases concerning terrorist offences, the list of which is quite extensive³⁴, have been subject to examination at first instance by the courts of the second tier of the military court system (district and naval military courts) and in the only composition of the court established imperatively by law - a panel of three professional judges (Article 30(2)(3) of the Criminal Procedure Code of the Russian Federation), without the possibility of trial by jury.

The well-known Russian scholar in the field of military justice, Professor I. S. Dikarev, substantiates the legitimacy of assigning certain categories of criminal cases unrelated to military service to the subject-matter jurisdiction of military courts by reference to historical traditions³⁵. However, critical observations should not be disregarded. Thus, according to I. A. Gizatullin, the comparatively small number of military courts in the country and the high likelihood of their geographical remoteness from the place of residence of the participants in the proceedings create organizational and financial difficulties³⁶.

The issues of the establishment of military courts and the determination of their jurisdiction are resolved differently by the states established on the territory of the former USSR. In some states, military courts operate on a permanent basis and constitute an integral part of their judicial systems (Kazakhstan, Russia, Tajikistan, and Uzbekistan). Other states (Armenia since 1995, Belarus since 2014, Kyrgyzstan since 2016, and Ukraine since 2010) have abolished military courts both in peacetime and during wartime. In Georgia, pursuant to Article 59(3) of the Constitution, the establishment of military courts is permitted only during martial law and solely within the system of ordinary courts. Such diversity makes scholarly and practical discussions concerning the jurisdiction of military (and other

³⁴ In addition to the offence of a terrorist act itself (Article 205 of the Criminal Code of the Russian Federation), this category includes facilitating terrorist activities (Article 205¹), public incitement to engage in terrorist activities (Article 205²), undergoing training for the purpose of carrying out terrorist activities (Article 205³), organizing or participating in a terrorist organization (Article 205⁴), and several other terrorism-related offences, as well as an act of international terrorism (Article 361 of the Criminal Code of the Russian Federation). Criminal cases concerning certain other offences—namely, encroachment on the life of a state or public official (Article 277), violent seizure or violent retention of power (Article 278), armed rebellion (Article 279), and attacks against persons or institutions enjoying international protection (Article 360)—also fall within the **exclusive subject-matter jurisdiction** of military courts where such offences are connected with terrorist activities.

³⁵ Dikarev, I. S. “Special Procedure before Military Courts in Cases Involving Terrorism-Related Offences: Historical Parallels.” *Rule-of-Law State: Theory and Practice*, 2022, No. 4 (70), pp. 130–137..

³⁶ Gizatullin, I. A. “The Institution of Jurisdiction as an Element of the Procedural Mechanism for Ensuring Access to Justice.” *Lex Russica*, Vol. 79, No. 5, p. 38.

specialized) courts among researchers from the post-Soviet states even more relevant and compelling.

5. On the expediency of unifying jurisdiction-related concepts in procedural legislation (administrative, commercial, civil, and criminal proceedings), conducting joint research into the phenomenon of jurisdiction together with scholars representing other branches of procedural law, and refining and expanding the terminology of criminal procedural science

From both scholarly and practical perspectives, the issue of the joint study of the institution of jurisdiction together with representatives of other branches of law is also of considerable interest, as is the possibility of expanding the concepts employed in criminal procedure by taking into account the developments of other procedural sciences and legislation. For example, in Russia, within civil procedural branches of law, the legislator has abandoned the concept of *podvedomstvennost* (allocation of matters among different jurisdictional bodies) and instead employs the concept of competence when determining the subsystem of courts authorized to administer justice in a particular civil, commercial (*arbitrazh*), or administrative case and, accordingly, the appropriate type of judicial proceedings. The specific court competent to hear the case is then determined in accordance with the rules of jurisdiction established by the relevant procedural codes.

At the same time, some scholars specializing in civil procedural law have expressed the view that there is an excessive "fetishization of jurisdiction"³⁷, arguing that jurisdiction is not a value-based institution but rather a largely technical one, devoid of any "sacred component"³⁸. It is difficult to agree with such approaches. We find more persuasive the position advanced by the prominent Russian scholar of criminal procedure, Professor S. B. Rossinsky, who argues that the existence of the institution of jurisdiction is determined by the constitutional foundations of the Russian state and is intrinsically linked to the special role of the judiciary in ensuring the legal protection of the population³⁹.

The proposed topics for scholarly discussion are preliminary and by no means exhaustive. As the Doctrine of Jurisdiction continues to develop, new issues will

³⁷ **Terekhova, L.** "The Fetishization of Jurisdictional Rules in Civil Procedure." *Arbitration and Civil Procedure*, 2009, No. 6, pp. 9–12.

³⁸ **Sharipova, A. R.** "The Significance of Jurisdiction in Criminal and Civil Procedure." *Legal Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*, 2024, No. 3 (67), p. 263.

³⁹ **Rossinsky, S. B.** "Investigative Jurisdiction of a Criminal Case: A General Condition of the Preliminary Investigation or a Set of Organizational and Administrative Rules?" *State and Law*, 2023, No. 10, pp. 73–74.

undoubtedly emerge that will require profound doctrinal reflection and subsequent scholarly analysis⁴⁰.

The exchange of views among scholars from different states within the framework of a common concept, or Doctrine of Jurisdiction, may prove particularly valuable where it concerns the discussion of issues of jurisdiction by members of what was, until relatively recently, a unified Soviet academic community, historically characterized by a common model of the administration of justice and shared traditions of legal education.

The outcome of such scholarly analysis may consist of proposals for the further development of the criminal procedural legislation and, possibly, the legislation on the judicial system of those states that formerly constituted republics of the USSR, with a view to ensuring the objective examination of every criminal case by a competent, impartial, and non-arbitrarily designated national court.

At the same time, recommendations of this nature may be submitted to the legislator by representatives of criminal procedural scholarship, taking into account the historical, legal, and social traditions common to all post-Soviet states.

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. **Andreeva, O. I., Gertsen, P. O., & Rukavishnikova, A. A.** Compliance with jurisdiction as a condition for the realization of the right to a lawful court in judicial appeals against decisions rendered during pre-trial proceedings. *Bulletin of the Samara Law Institute*. 2023. No. 1 (52). Pp. 16–22.
2. **Bekhalo, S. V.** The institution of criminal jurisdiction. *Russian Justice*. 2019. No. 2. Pp. 101–105.
3. **Boriko, S. V.** *Criminal Procedure: A Textbook*. Minsk, 2004. 320 p.
4. **Gizatullin, I. A.** The institution of jurisdiction as an element of the procedural mechanism for ensuring access to justice. *Lex Russica*. Vol. 79. No. 5. Pp. 33–46.

⁴⁰ These include, in particular, debates concerning the scope of the concept of the “prohibition of jurisdictional disputes”; the determination of jurisdiction in criminal cases involving offences committed remotely through the Internet, as well as offences involving the misappropriation of non-cash funds; the improvement of the existing procedure for transferring criminal cases to the competent court; the excessively broad application in certain jurisdictions of legal provisions governing changes in the territorial jurisdiction of criminal cases; and the need to introduce a separate chapter entitled “Jurisdiction” into the criminal procedure codes of those states (including Russia) whose legislation does not currently contain such a chapter, among other issues.

5. **Golovko, L. V.** The institution of jurisdiction in criminal proceedings: boundaries between the value-based and technical dimensions. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 5–14.
6. **Golovko, L. V.** Preface. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 3–4.
7. **Gusev, L. N.** *Jurisdiction of Criminal Cases.* Moscow, 1955. 20 p.
8. **Dikarev, I. S.** Special procedure before military courts in cases concerning terrorist offences: historical parallels. *Rule-of-Law State: Theory and Practice.* 2022. No. 4 (70). Pp. 130–137.
9. **Dikarev, I. S.** Levels of jurisdiction in criminal proceedings. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 52–64.
10. **Dilbandyan, S. A.** Subject-matter and other types of jurisdiction under the Criminal Procedure Code of the Republic of Armenia. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 96–104.
11. **Kalinovsky, K. B.** Change of jurisdiction over motions and complaints during pre-trial proceedings. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 181–188.
12. **Kachalov, V. I.** On the territorial and personal criteria of jurisdiction when resolving issues arising during the execution of a sentence. *Justice of the Peace.* 2017. No. 5. Pp. 28–31.
13. **Kozhevnikov, M. V.** *Jurisdiction of Criminal Cases.* Edited by I. T. Golyakov. Moscow, 1939. 20 p.
14. **Kondrashin, P. V., & Popova, E. I.** *The Right to a Lawful Court in Criminal Proceedings: A Monograph.* Edited by Yu. P. Garmaev. Moscow, 2024. 183 p.
15. **Konovalova, E. E.** *Jurisdiction in Criminal Proceedings: Problems of Theory, Legislation and Practice: A Monograph.* Moscow, 2026. 168 p.
16. **Course of Criminal Procedure.** Edited by L. V. Golovko. Moscow, 2024. 1041 p.
17. **Pupysheva, L. A.** Jurisdiction over issues related to the execution of a sentence. In: *The Institution of Jurisdiction in Criminal Proceedings: Proceedings of the First All-Russian Scientific and Practical Conference "Current Issues of Russian Criminal Procedure,"* Moscow, 29 March 2024. Moscow, 2024. Pp. 189–196.
18. **Roizin, N. N.** *Criminal Procedure.* St. Petersburg, 1914. 546 p.

19. **Rossinsky, S. B.** Investigative jurisdiction in criminal cases: a general condition of preliminary investigation or a set of organizational and managerial rules? *State and Law*. 2023. No. 10. Pp. 71–78.
20. **Sluchevsky, V.** *Textbook of Russian Criminal Procedure. Judicial Organization and Judicial Proceedings*. St. Petersburg, 1913. 670 p.
21. **Strogovich, M. S.** *Course of Soviet Criminal Procedure*. Moscow, 1958. 703 p.
22. **Strogovich, M. S.** *Course of Soviet Criminal Procedure*. Vol. I. Moscow, 1968. 470 p.
23. **Terekhova, L.** The fetishization of jurisdictional rules in civil proceedings. *Arbitrazh and Civil Procedure*. 2009. No. 6. Pp. 9–12.
24. **Criminal Procedure of the Republic of Tajikistan: A Textbook**. Edited by N. S. Manova, Yu. V. Frantsiforov, and R. R. Yuldoshev. Dushanbe, 2017. 494 p.
25. **Foynitsky, I. Ya.** *Course of Criminal Procedure*. Vol. II. St. Petersburg, 1910. 573 p.
26. **Chekulaev, D. P.** Jurisdiction during special periods (martial law and a state of emergency) as a new type of jurisdiction in the criminal procedure of the Russian Federation. *Bulletin of Economic Security*. 2025. No. 2. Pp. 159–162.
27. **Chekulaev, D. P., & Khimichev, M. V.** Changing the territorial jurisdiction of criminal cases under martial law. Part I. On the implementation of the right to a lawful court and the right of citizens to access justice under wartime conditions. *Military Law Journal*. 2023. No. 5. Pp. 22–25.
28. **Sharipova, A. R.** The significance of jurisdiction in criminal and civil procedural law. *Legal Science and Practice: Bulletin of the Nizhny Novgorod Academy of the Ministry of Internal Affairs of Russia*. 2024. No. 3 (67). Pp. 260–265.

CERTAIN OBSERVATIONS REGARDING THE CLASSIFICATION OF CRIMINAL PROCEDURAL SANCTIONS AMONG THE MEANS OF PROCEDURAL COERCION

Samvel Dilbandyan*, Areg Yolchyan**

Abstract. The article examines the legal nature and classification of criminal procedural sanctions within the system of means of criminal procedural coercion under the Criminal Procedure Code of the Republic of Armenia. It analyses the legislator’s approach of placing all procedural sanctions in the chapter on “Means of Coercion” and compares it with the legislation of continental legal systems (Russian Federation, Italy, Austria, Georgia, Latvia) and the Anglo-American legal system (United States). The study reveals that the uniform treatment of sanctions as coercive measures in Armenian law contradicts both international practice and fundamental theoretical distinctions between means of coercion and sanctions as forms of legal liability. Drawing on doctrinal sources and the jurisprudence of the U.S. Supreme Court (*Gompers v. Bucks Stove & Range Co.* and *International Union v. Bagwell*), the author proposes clear criteria for distinguishing between restorative/coercive sanctions and punitive sanctions. The paper concludes with concrete recommendations for legislative reform, suggesting the separation of sanctions constituting legal liability into a distinct chapter, following the Georgian legislative model, in order to strengthen the principles of legality, proportionality, and the authority of the judiciary.

Keywords - *criminal procedural sanctions, means of criminal procedural coercion, procedural liability, contempt of court, classification of sanctions, comparative criminal procedure, restorative and punitive sanctions.*

Introduction

Under the Criminal Procedure Code of the Republic of Armenia, criminal procedural sanctions are systematically included within the institution of “Means of Coercion,” which implies their perception as means of criminal procedural coercion. However, this approach is not unequivocal, either in theory or in

* **Samvel Dilbandyan** – Doctor of Law, Professor, Head of YSU Chair of Criminal Procedure and Criminalistics, s.dilbandyan@ysu.am, ORCID: <https://orcid.org/0000-0001-6494-2791>

** **Areg Yolchyan** – Lecturer at YSU Chair of Criminal Procedure and Criminalistics, PhD student, areg.yolchyan@ysu.am, ORCID: <https://orcid.org/0009-0009-7039-4707>



comparative law. The study of the criminal procedural legislation of foreign countries demonstrates that criminal procedural sanctions are often not equated with means of coercion and are regarded as an independent legal institution or even as a type of legal liability.

The purpose of this research is to analyse the legal nature of procedural sanctions, the problems of their classification, and their specific features within the criminal procedure system of the Republic of Armenia, while comparing them with the corresponding approaches of both continental and Anglo-American legal systems. Particular attention is paid to the question of whether it is justified to classify all procedural sanctions entirely among the means of criminal procedural coercion, or whether their reinterpretation as a combination of measures of different legal nature is necessary.

Main Research

It is no secret that the Criminal Procedure Code of the Republic of Armenia, like other branch procedural codes, provides separate regulations concerning the grounds and procedure for the application of procedural sanctions. At the same time, unlike the Administrative Procedure Code and the Civil Procedure Code of the Republic of Armenia, where the provisions on sanctions are included in the chapters establishing the general conditions of judicial proceedings, the Criminal Procedure Code of the Republic of Armenia has devoted a separate chapter to the application of criminal procedural sanctions. Thus, Chapter 17 of the Criminal Procedure Code of the Republic of Armenia, entitled “Procedural Sanctions,” is entirely devoted to the grounds and procedure for the application of sanctions in criminal proceedings. The legislator’s approach is conditioned by the fact that, in addition to sanctions common to all types of proceedings (which exist in all procedural codes), the Criminal Procedure Code of the Republic of Armenia provides for a number of special, specifically criminal procedural sanctions, the need for whose separate and comprehensive regulation indeed existed. Moreover, the legislator placed the chapter on procedural sanctions in Section 4 of the Criminal Procedure Code of the Republic of Armenia, entitled “Means of Coercion,” thereby enshrining the position that sanctions constitute means of procedural coercion. In order to form a clear position on the legislator’s approach, it is necessary to study the international experience of classifying procedural sanctions, as well as to discuss at the theoretical level the possibility of sanctions being means of criminal procedural coercion.

The study of the criminal procedural legislation of several countries with developed legal traditions shows that procedural sanctions are not distinguished as means of procedural coercion. Moreover, it should be noted that in the criminal

procedural legislation of a number of countries the term “procedural sanction” does not exist at all and, consequently, there is no unified institution of procedural sanctions. For example, the Criminal Procedure Code of the Russian Federation includes bringing a person to court (Article 113) and a court fine (Article 117) in the list of other types of criminal procedural coercion, while the provisions on warning and removal from the courtroom (Article 258) are placed in the chapter establishing the general conditions of judicial proceedings.¹

Article 131 of the Italian Code of Criminal Procedure stipulates that, in exercising its functions, the court may request the intervention of the criminal police and, if necessary, of national law enforcement agencies, instructing them to carry out all necessary measures to ensure the safe and orderly performance of the functions entrusted to it. Articles 132 and 133 of the same Code provide for the rules concerning the compulsory appearance of the accused and other participants in the proceedings before the court.²

Part 2 of Section 2 of the Criminal Procedure Code of the Republic of Austria is entitled “Means of Coercion, Means of Coercion to Perform Obligations and Monetary Fines” and provides for sanctions for improper conduct by participants in criminal proceedings and for failure to perform their procedural obligations.³ At the same time, Austria has separated means of coercion from court fines, not placing them on the same plane.

The Criminal Procedure Code of Georgia has adopted a different approach: procedural sanctions are applied in Chapter 11 of the Code, entitled “Procedural Liability for Failure to Perform Procedural Obligations and for Violation of Order in Court.” Thus, unlike Russian legislation, Georgian legislation has systematised the rules on the application of procedural sanctions in a single chapter. At the same time, the study of the legislative provisions shows that the Criminal Procedure Code of Georgia, like Russian legislation, does not use the term “procedural sanction” and does not regard the sanction as a type of criminal procedural coercion, but considers it a separate type of procedural liability.⁴

Contrary to the examples presented above, according to Article 288 of the Criminal Procedure Code of the Republic of Latvia, procedural sanctions are means of coercion that the person conducting the proceedings or the investigating

¹ Criminal Procedure Code of the Russian Federation No. 174-FZ of 18 December 2001 (as amended on 27 October 2025).

² Italian Code of Criminal Procedure. Available at: <https://canestrinilex.com/assets/Uploads/pdf/cf70b10e21/Italian-Code-of-Criminal-Procedure-anestriniLex.pdf>

³ **Sopronyuk A.** International Legal Experience of Applying Sanctions in Criminal Proceedings // *Legea și Viața*. – 2019. – Vol. 332. – No. 8/2. – P. 115.

⁴ Criminal Procedure Code of Georgia, Legislative Herald of Georgia – LHG, 31, 03/11/2009. Available at: <https://www.matsne.gov.ge/ru/document/view/90034?publication=171>

judge may apply to a person who fails to perform the procedural obligations prescribed by law, obstructs the performance of a procedural action, or fails to show respect to the court.⁵

It is evident from the foregoing that the majority of the criminal procedural codes of continental legal system countries (with the exception of Latvia) have avoided defining the procedural sanction as a separate institution; moreover, in almost no case have sanctions been regarded as means of criminal procedural coercion.

Under the circumstances of the issue under discussion, the relevant legal regulations of the Anglo-American legal system cannot be left unexamined. Unlike the continental legal system, the Anglo-American legal system lacks the classical institution of the procedural sanction. At the same time, the Anglo-American legal system contains a separate institution of substantive law — contempt of court (literally translated as “disrespect to the court”). In particular, pursuant to Section 401 of Title 18 of the United States Code, a court is authorised, at its discretion, to punish by fine or imprisonment, or both, such contempt of its authority as (1) misbehaviour of any person in its presence or so near thereto as to obstruct the administration of justice, (2) misbehaviour of any of its officers in their official transactions, or (3) disobedience or resistance to its lawful writ, process, order, rule, decree, or command.⁶ In addition, the institution of contempt of court in American law differs from the continental one in that, in American law, “contempt of court” is not an element of procedural law but of substantive law and is perceived as an offence, being divided into civil and criminal “contempt of court.”

Thus, summarising the foregoing, it may be stated that both continental and Anglo-American criminal procedural legislation have for the most part not regarded procedural sanctions as means of criminal procedural coercion. The exceptions are the criminal procedural legislation of the Republic of Armenia and Latvia, which, without any distinction, have regarded all procedural sanctions as means of criminal procedural coercion. This, in our view, is a problematic approach for a number of reasons that will be discussed below.

The Criminal Procedure Code of the Republic of Armenia has not defined the concept of a means of procedural coercion and has used this term only in other relevant articles of the Code. In other words, in the absence of a legislative clarification of the term, it is necessary to refer to theoretical interpretations in

⁵ Criminal Procedure Law of Latvia. Available at: https://sherloc.unodc.org/cld/uploads/res/-document/criminal-procedure-law_html/Latvia_Criminal_Procedure_Law_2005_As_Amended_2013.pdf

⁶ 8 U.S.C. § 401 (2023). Available at: <https://www.law.cornell.edu/uscode/text/18/401>

order to determine its essence and content. Thus, in the narrow sense, means of criminal procedural coercion are the means of coercion applied by state bodies and officials within the scope of their powers to participants in criminal proceedings during the conduct of a criminal case in order to ensure their proper conduct.⁷ According to a broader interpretation, means of procedural coercion are special mechanisms that ensure the compulsory performance of obligations by those participants who are not officials (prosecutor, investigator, inquirer) or defence counsel. Essentially, criminal procedural coercion implies the process of subjecting a private (natural) person to coercion by a person acting with state authority.⁸

It is evident from the above that means of criminal procedural coercion are types of state coercion applied within the framework of criminal proceedings; however, it is clear that criminal procedural coercion is not the only type of state coercion that may be applied within the procedures of criminal proceedings. In particular, according to the position of V.M. Kornukov, the state coercion applied within the framework of criminal proceedings is a broader concept that includes procedural liability, procedural sanctions, and the means of procedural coercion proper.⁹ Moreover, procedural liability is considered a type of legal liability and is always based on the fact of violation or non-performance of the requirements of criminal procedural norms. It manifests itself in the form of punishing a person for unlawful conduct (for example, imposing a court fine or a penalty).¹⁰ The nature of means of criminal procedural coercion is different, and the law does not link the application of the majority of these means to a violation of criminal procedural norms; therefore, they do not constitute means of legal liability.¹¹ In addition, while the purposes of legal liability are universally recognised and specifically punitive, restorative and educational,¹² criminal procedural coercion has its own special purposive orientation, which derives from the general tasks of criminal proceedings and the objectives of the successful administration of justice.¹³

In general, coercive measures are used to compel people to do what they do not wish to do. In criminal proceedings, coercive measures may be applied by the

⁷ **Tepeeov A.A.** The Concept of Measures of Criminal Procedural Coercion and Their Types // Gaps in Russian Legislation. 2020. No. 4. URL: <https://cyberleninka.ru/article/n/ponyatie-mer-ugolovno-protsessualnogo-prinuzhdeniya-i-ih-vidy> (accessed: 26.04.2026). P. 236.

⁸ **Golovko L. V. et al.** Course of Criminal Procedure. – 2017. P. 521.

⁹ **Kornukov V. M.** Measures of Procedural Coercion in Criminal Proceedings. – Saratov University Publishing House, 1978. P. 9.

¹⁰ *ibid.*, P. 10.

¹¹ *ibid.*, P. 13.

¹² **Solovyov A. R.** Goals and Functions of Legal Liability // Bulletin of the Master's Degree. 2019. No. 4-2 (91). URL: <https://cyberleninka.ru/article/n/tseli-i-funktsii-yuridicheskoy-otvetstvennosti> (accessed: 02.05.2026). P. 196.

¹³ **Kovriga Z. F.** Criminal Procedural Coercion. – Voronezh University Publishing House, 1975. P. 23.

bodies conducting the proceedings to compel participants in criminal proceedings to perform their obligations or to refrain from certain actions, and such measures restrict the fundamental constitutional rights of the accused and other persons.¹⁴ In addition, coercive measures are applied without the need to assess guilt, since their application is based on a reasonable presumption of possible unlawful conduct.¹⁵

Summarising the above, it may be asserted that a measure of legal influence is considered a means of criminal procedural coercion if: (1) it is applied by a state official to a private person; (2) its primary purpose is to ensure the performance by the person of his or her procedural obligations and to prevent unlawful conduct; (3) it does not constitute a type of liability for an act; and (4) there is no need to assess the person's guilt for its application.

Therefore, in order to form a well-founded position on the procedural nature of procedural sanctions, it is necessary to compare their content with the criteria set out above.

First of all, it should be noted that theoretical literature itself states that the concepts of "coercive measure" and "punitive measure" (sanction) should not be equated, since all procedural codes distinguish between protective procedural measures and measures of influence on violators of the process (punitive measures, sanctions).¹⁶

At the same time, it is worth noting that there are sanctions that were initially accepted and perceived as means of procedural coercion; for example, compulsory appearance before the body conducting the proceedings is a classic means of procedural coercion. Compulsory appearance before the body conducting the proceedings (bringing to court) is recognised by theory as a classic restorative sanction,¹⁷ which is logical, since its purpose is to ensure the person's participation in the procedural action.

A warning is also a means of procedural coercion; it is an instruction addressed to a person to display proper conduct or to comply with the orders of an authorised person. In other words, a warning has a preventive nature — it is an action of the body conducting the proceedings aimed at preventing a possible gross procedural violation through an instruction.

¹⁴ **Róth E.** Coercive Measures in Criminal Proceedings. In: Váradi-Csema E. (Ed.), *Criminal Legal Studies: European Challenges and Central European Responses in the Criminal Science of the 21st Century*. Central European Academic Publishing, 2022. P. 337.

¹⁵ **Melnikov V. Y., Garaeva T. B.** Grounds, Conditions and Purposes of Application of Other Measures of Procedural Coercion // *Law and Practice*. 2019. No. 4. URL: <https://cyberleninka.ru/article/n/osnovaniya-usloviya-i-tseli-primeneniya-inyh-mer-protsessualnogo-prinuzhdeniya> (accessed: 03.05.2026). P. 193.

¹⁶ **Popova Z. V.** Sanctions in the Law Enforcement Process: Concept, Types, Grounds for Application: PhD Thesis in Law. Moscow, 2008. P. 27.

¹⁷ **Zaderako K. V.** Other Measures of Procedural Coercion: PhD Thesis in Law. Rostov-on-Don, 2005. P. 73.

Restriction of the exercise of a right has a preventive character, since it prevents actions of a participant in the proceedings aimed at abusing the right. In other words, like a classic coercive measure, it aims to neutralise the possibility of a future violation.

Removal from the courtroom, however, has a punitive character, since it is applied in the event of a violation or non-performance of a warning — that is, a preventive action — and in fact punishes the offender by depriving him or her of the right to be present at the court session. A court fine is by its nature a punitive procedural sanction, since it creates adverse consequences for participants in criminal proceedings and other persons in the form of a financial burden — property losses resulting from the commission of an offence, failure to perform procedural obligations, or non-compliance with lawful orders of state bodies.¹⁸

The situation is more complicated with regard to removal from the proceedings. Under the ground provided for in point 1 of part 2 of Article 147 of the Criminal Procedure Code of the Republic of Armenia — that is, failure to appear at a court session more than twice without a valid reason — the application of the sanction may also be regarded as a restorative means of coercion, viewing it as ensuring the performance of their obligations by the defence or the prosecution. However, under the ground provided for in point 2 of part 2 of the same Article — malicious continued non-performance of obligations after having been subjected to a procedural sanction three times — the matter is already one of the application of a sanction of a punitive nature, since the ground is the establishment of a new, stricter liability in the conditions of previous offences when the measures of influence applied were lenient.

It is clear from all of the foregoing that part of the procedural sanctions established by the Criminal Procedure Code of the Republic of Armenia are indeed means of procedural coercion, whereas several sanctions do not meet the criteria of a means of procedural coercion and constitute separate types of legal liability. Our position is also based on Decision No. SD O-851 of the Constitutional Court of the Republic of Armenia, by which the High Court, addressing Article 314.1 of the former Criminal Procedure Code of the Republic of Armenia, recognised judicial sanctions as a type of legal liability and the acts constituting the grounds for procedural sanctions as offences.¹⁹

¹⁸ **Kuzovenkova Yu. A.** Monetary Penalty in the System of Measures of Criminal Procedural Liability: PhD Thesis in Law. Samara, 2009. P. 59.

¹⁹ Decision No. SD O-851 of the Constitutional Court of the Republic of Armenia of 14 January 2010.

Consequently, the problem arises of distinguishing between procedural sanctions that constitute means of procedural coercion and sanctions that constitute a separate type of legal liability, and of drawing a clear boundary between them.

This problem has been addressed by American doctrine and judicial practice. As we have already noted, in United States law the sanction is regarded as a separate type of liability — contempt of court — within the framework of the legal doctrine, which is intended to prevent and punish conduct that obstructs the administration of justice. Having arisen in English common law as a mechanism for protecting the authority of the Crown, it gradually came to be regarded as a power inherent in the courts themselves.²⁰

Moreover, the nature of contempt of court is traditionally divided into two main classifications that serve entirely different purposes: criminal contempt and civil contempt. The former is intended to restore the authority and dignity of the court and to punish the offender for past disobedience. Civil contempt, on the other hand, is primarily of a restorative and coercive nature, intended for the benefit of the plaintiff to compel the resisting defendant to comply with the court's decision.²¹ Consequently, in the case of the application of sanctions of a restorative or coercive nature, ordinary civil procedural rules suffice, whereas in the case of sanctions of a punitive nature, criminal procedural rules are required.²²

The boundary between civil and criminal contempt was addressed by the United States Supreme Court, which established clear criteria for distinguishing them, particularly in the decision in *Gompers v. Bucks Stove & Range Co.*²³ In particular, the Court stated in that decision: “If the case is one of civil contempt, the legal effect is of a restorative nature and directed to the protection of the interests of the complainant. If the case is one of criminal contempt, the legal effect is of a punitive nature, aimed at protecting and restoring the authority and power of the court.”

In addition, the most important feature of civil contempt is its conditional nature; that is, the offender must be able to “purge” the contempt and avoid punishment by complying with the requirements.²⁴

In another case, *Bagwell*, the United States Supreme Court advanced a new criterion, according to which the application of civil contempt has a prospective, that is, future-oriented, purpose.²⁵ In other words, fixed, specific fines or other

²⁰ **Goldfarb R.** The History of the Contempt Power // Washington University Law Quarterly. – 1961. – P. 7.

²¹ **Livingston M.** Disobedience and Contempt // Washington Law Review. – 2000. – Vol. 75. P. 9.

²² *ibid.*, P. 4.

²³ *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418 (1911).

²⁴ **Livingston M.** Disobedience and Contempt // Washington Law Review. – 2000. – Vol. 75. P. 33.

²⁵ *International Union, United Mine Workers of America v. Bagwell*, 512 U.S. 821 (1994).

liability measures imposed for past disobedience are of a strictly criminal sanction nature. By contrast, daily fines or indefinite imprisonment that accumulate until the respondent complies are classified as coercive civil contempt.

We consider that the foregoing may be compared with the legal regulations of the domestic legal system in order to distinguish between sanctions established by the Code of Procedure as means of coercion and other sanctions constituting judicial legal liability. For this purpose, we propose the following criteria:

- The function of the applied measure — for example, whether it has a punitive function, as in the case of a court fine, or serves to ensure the performance of a specific action, as in the case of compulsory appearance before the body conducting the proceedings;
- The primary purpose of the measure — for example, whether it is to impose legal liability for an already committed offence or to ensure future lawful conduct;
- The primary object of the offence — that is, whether the offence encroached upon the authority of the judiciary or upon the normal course of proceedings or the rights of another participant in the proceedings.

In the light of the aforementioned criteria and the theoretical interpretations cited in the work, we classify the entire body of procedural sanctions into two groups: means of procedural coercion and types of legal liability (sanctions). The sanctions constituting means of procedural coercion are: warning, compulsory appearance before the body conducting the proceedings, and restriction of the exercise of a right. The sanctions constituting types of legal liability are: removal from the proceedings, court fine, and removal from the courtroom. Therefore, in the context of the above, we consider it expedient to separate in the Criminal Procedure Code of the Republic of Armenia the sanctions regarded as types of legal liability from the means of coercion, following the example of the Criminal Procedure Code of Georgia already cited. Under such conditions, it will be possible to ensure the lawfulness of the application of these measures as a type of legal liability.

Conclusion

The foregoing analysis permits the conclusion that the institution of procedural sanctions established by Chapter 17 of the Criminal Procedure Code of the Republic of Armenia, despite its extensive regulation, contains internal inconsistencies. The legislator's uniform treatment of all sanctions as means of procedural coercion does not correspond either to international practice or to the fundamental provisions of criminal procedural theory. The study of continental and

Anglo-American legal systems shows that procedural sanctions are, as a rule, not equated with means of coercion but are often regarded as a separate type of legal liability (Georgia, Russia, the United States) or as an institution regulated within the framework of general procedural conditions.

At the theoretical level, a clear distinction is drawn between means of procedural coercion (as an instrument of state authority directed towards the compulsory performance of obligations) and sanctions of procedural liability (as punitive-restorative influence for an offence). Among the sanctions provided for by the Criminal Procedure Code of the Republic of Armenia, warning, compulsory appearance before the body conducting the proceedings, and restriction of the exercise of a right correspond to the criteria of means of coercion, whereas a court fine, removal from the courtroom, and removal from the proceedings (in certain cases) are of a punitive nature and constitute forms of legal liability.

On the basis of the theoretical foundations of this distinction, as well as the criteria developed by the United States Supreme Court (*Gompers* and *Bagwell* cases), it is proposed to carry out a systemic reform of procedural sanctions in the Criminal Procedure Code of the Republic of Armenia. In particular, it is expedient to follow the legislative model of Georgia by transferring the sanctions of procedural liability to a separate chapter or subsection and by clarifying the grounds, procedures, and guarantees for their application. Such a distinction will strengthen the principles of legality, proportionality, and fairness of proceedings, will enhance the authority of the judiciary, and will correspond to the requirements of contemporary criminal procedural theory.

Thus, the further improvement of the institution of procedural sanctions should become the subject not only of legislative but also of scientific-practical discussion aimed at increasing the effectiveness of domestic criminal procedure.

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

Reference list

1. Criminal Procedure Code of the Russian Federation No. 174-FZ of 18 December 2001 (as amended on 27 October 2025).
2. Italian Code of Criminal Procedure. Available at: <https://canestrinilex.com/assets/Uploads/pdf/cf70b10e21/Italian-Code-of-Criminal-Procedure-anestriniLex.pdf>
3. Sopronyuk A. International Legal Experience of Applying Sanctions in Criminal Proceedings // *Legea și Viața*. – 2019. – Vol. 332. – No. 8/2. – P. 115.

4. Criminal Procedure Code of Georgia, Legislative Herald of Georgia – LHG, 31, 03/11/2009. Available at: <https://www.matsne.gov.ge/ru/document/view/90034?-publication=171>
5. Criminal Procedure Law of Latvia. Available at: https://sherloc.unodc.org/cld/uploads/res/document/criminal-procedure-law_html/Latvia_Criminal_Procedure_Law_2005_As_Amended_2013.pdf
6. 18 U.S.C. § 401 (2023). Available at: <https://www.law.cornell.edu/uscode/text/18/401>
7. Teppeev A. A. The Concept of Measures of Criminal Procedural Coercion and Their Types // Gaps in Russian Legislation. 2020. No. 4. URL: <https://cyberleninka.ru/article/n/ponyatie-mer-ugolovno-protssessualnogo-prinuzhdeniya-i-ih-vidy> (accessed: 26.04.2026). P. 236.
8. Golovko L. V. et al. Course of Criminal Procedure. – 2017. P. 521.
9. Kornukov V. M. Measures of Procedural Coercion in Criminal Proceedings. – Saratov University Publishing House, 1978. P. 9.
10. Solovyov A. R. Goals and Functions of Legal Liability // Bulletin of the Master's Degree. 2019. No. 4-2 (91). URL: <https://cyberleninka.ru/article/n/tseli-i-funktsii-yuridicheskoy-otvetstvennosti> (accessed: 02.05.2026). P. 196.
11. Kovriga Z. F. Criminal Procedural Coercion. – Voronezh University Publishing House, 1975. P. 23.
12. Róth E. Coercive Measures in Criminal Proceedings. In: Váradi-Csema E. (Ed.), Criminal Legal Studies: European Challenges and Central European Responses in the Criminal Science of the 21st Century. Central European Academic Publishing, 2022. P. 337.
13. Melnikov V. Y., Garaeva T. B. Grounds, Conditions and Purposes of Application of Other Measures of Procedural Coercion // Law and Practice. 2019. No. 4. URL: <https://cyberleninka.ru/article/n/osnovaniya-usloviya-i-tseli-primeneniya-inyh-mer-protssessualnogo-prinuzhdeniya> (accessed: 03.05.2026). P. 193.
14. Popova Z. V. Sanctions in the Law Enforcement Process: Concept, Types, Grounds for Application: PhD Thesis in Law. Moscow, 2008. P. 27.
15. Zaderako K. V. Other Measures of Procedural Coercion: PhD Thesis in Law. Rostov-on-Don, 2005. P. 73.
16. Kuzovenkova Yu. A. Monetary Penalty in the System of Measures of Criminal Procedural Liability: PhD Thesis in Law. Samara, 2009. P. 59.
17. Decision No. SD O-851 of the Constitutional Court of the Republic of Armenia of 14 January 2010.
18. Goldfarb R. The History of the Contempt Power // Washington University Law Quarterly. – 1961. – P. 7.
19. Livingston M. Disobedience and Contempt // Washington Law Review. – 2000. – Vol. 75. P. 9.
20. Gompers v. Bucks Stove & Range Co., 221 U.S. 418 (1911).
21. International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821 (1994).

ISSUES OF CLASSIFICATION OF THE TYPES OF ACTIONS IN THE ADMINISTRATIVE PROCEEDINGS OF THE REPUBLIC OF ARMENIA

Sergey Meghryan*, Gohar Avagyan**

Abstract. The correct choice of the type of action in the administrative proceedings of the RA is crucial in the context of the outcome of the case, the distribution of the burden of proof, and the effectiveness of judicial protection.

The purpose of this research is to reveal the legal nature of administrative actions and to identify scientific and practical issues by analyzing the peculiarities of administrative actions, studying the claims underlying them, and, accordingly, the main criteria for differentiating these types of actions in the context of existing problems.

As a result of the research, conditioned by the significance of the institute of types of actions and their impact on the realization of the right to effective judicial protection, it is proposed: to merge actions for performance and actions for obligation; to interpret the procedural restrictions on filing a declaratory action (action for recognition) through the substantive impossibility of filing another type of action and the ineffectiveness of other types of actions in the context of achieving the goal pursued by the plaintiff; to consider the submission of a claim for compensation for damages caused by improper administration to the court as a derivative claim to the main claim of recognizing the administration as unlawful; as well as to confirm the fact of recognizing an administrative act as void also by a judicial act rendered as a result of the examination of an action for annulment (action for challenging), regardless of the outcome of the examination of the claim.

In the context of the above, this research contributes to the clarification of the criteria for differentiating types of actions, as well as to the regulation of existing legislative gaps.

Keywords - *action; administrative action; type of action; action for annulment; action for obligation; action for performance; action for recognition.*

* **Sergey Meghryan** - Judge of the Civil Chamber of the Court of Cassation, Associate Professor, Department of Civil Procedure, Faculty of Law, Yerevan State University, email - meghryan@ysu.am, ORCID - <https://orcid.org/0000-0002-5847-4829>

** **Gohar Avagyan** - Senior Lawyer at “ELL Partnership” Law Firm, Attorney, Mediator, Lecturer at the Chair of Civil Procedure, Faculty of Law, YSU, Yerevan, RA, email - goharavagyan@ysu.am, ORCID - <https://orcid.org/0000-0003-2809-4849>



Introduction

The Administrative Procedure Code of the Republic of Armenia¹ establishes four types of action, the study of the legal nature of which is of paramount importance for a comprehensive analysis of the institution of action in administrative proceedings, particularly in the context of identifying the grounds for differentiating between these types of action.

The theoretical and practical significance of studying the institution of types of action is largely predetermined by the fact that this institution currently dictates such vital issues as the acceptance of the action for proceedings, the allocation of the burden of proof among the parties, and the submission of potential claims to the administrative court, up to the final outcome of the case. This is because a claim can ultimately be satisfied only if the appropriate type of action has been selected.

Accordingly, the importance of the proper selection of the type of action cannot be overlooked. Such selection is conditioned by the criteria that distinguish the types of action from one another. The identification of these criteria, in turn, is possible only through the examination of the specific features of each type of action.

Each of the aforementioned types of action is revealed not only through the scope of possible claims established by legislation for submitting these types of action, but also through the case law developed in practice by the Court of Cassation. The study of the latter demonstrates that the criteria for their differentiation generate a number of practical issues.

Taking into account the aforementioned, this scientific research entitled "Issues of Classification of the Types of Actions in the Administrative Proceedings of the Republic of Armenia" aims to reveal the legal characteristics of each type of action in administrative proceedings, to define the criteria for their differentiation, and to examine the legislative problems arising in practice, through a comparative legal analysis of international best practices, as well as practical and doctrinal sources.

Research

Legal Characteristics and Features of the Types of Action to Challenge and to Oblige:

Article 66 of the Administrative Procedure Code (APC) stipulates:

"1. Through an action to challenge, the plaintiff may claim to completely or partially annul an interfering administrative act (including the interfering

¹ Administrative procedure act of the RA, ՀՕ-139-Ն, ՀՀՊՏ 2013.12.28/73(1013).1 Art.1186.1, passed 05.12.2013

provisions of a combined administrative act). 2. If, prior to submitting the administrative action, the interfering administrative act has been appealed through an administrative procedure, the action shall also include a claim to challenge the interfering administrative act adopted regarding the administrative appeal."

In the case of an action to challenge, the action may be filed to the court within a two-month period from the moment the administrative act enters into force. According to Part 2 of the same Article, in cases where the act adopted by the administrative body, or the failure to adopt an act, or the performance or non-performance of an action has been appealed through an administrative procedure, the action may be submitted within a two-month period after the expiration of the time limit set for the examination of the appeal.

In fact, an action to challenge may present a claim to completely or partially annul an interfering administrative act or the interfering provisions of a combined administrative act. From this formulation, it follows that the admissibility of an action to challenge requires the presence of the following circumstances:

1. there must be an administrative act that is interfering for the plaintiff; furthermore, the provisions of a combined administrative act that are interfering for the plaintiff may also be challenged within the scope of the specified type of action;
2. the plaintiff's claim must be directed at the complete or partial annulment of that administrative act.

Moreover, the impact of the administrative act on the challenging party is essential; accordingly, it is determined whether the administrative act is favorable or interfering. Meanwhile, the subject of an action to oblige can only be a claim for the adoption of a favorable administrative act.

Thus, Article 67 of the APC defines the type of action to oblige, which entails:

"1. Through an action to oblige, the plaintiff may claim the adoption of the favorable administrative act, the adoption of which was refused by the administrative body.

2. The action to oblige includes a claim to challenge the interfering administrative act specified in Part 1 of this Article by the administrative body."

It stems from the aforementioned norm that a mandatory condition for the admissibility of an action to oblige is that the plaintiff, prior to submitting the action, must have applied to the administrative body with a claim to adopt a favorable administrative act and must have been refused. Furthermore, the action to oblige encompasses the claim to challenge the interfering administrative act by which the administrative body refused the plaintiff's claim. In this case, we are dealing with a non-independent action to challenge.

Addressing the criteria for the type of action to oblige, the Court of Cassation has highlighted the following²:

1. Applying to the court with an action to oblige requires the existence of a dispute, which may arise in the event that a person has applied to an administrative body with a corresponding claim.

2. A precondition for submitting an action to oblige is the fact that the administrative body has refused to adopt a favorable administrative act. Furthermore, the action to oblige, in addition to the claim to adopt a favorable administrative act, inherently includes by virtue of law the claim to challenge the interfering administrative act regarding the refusal to adopt the administrative act, regardless of whether such a claim has been submitted by the plaintiff.

3. The core objective of the action to oblige is to achieve the adoption of a favorable administrative act for the person. If the administrative court, within the scope of the acquired evidence and based on the laws in force at the time of adopting the judicial act, considers the lawfulness of the requested favorable administrative act to be established, the latter must adopt a judicial act resolving the case on its merits regarding the satisfaction of the action by invalidating the decision of the administrative body refusing to adopt the requested administrative act and obliging the administrative body to adopt that administrative act. In other words, within the framework of an action to oblige, the lawfulness of the interfering administrative act regarding the administrative body's refusal to adopt the requested administrative act is not examined in the procedure established for the examination of an action to challenge, and establishing the lawfulness of the requested favorable administrative act within the scope of the acquired evidence and based on the laws in force at the time of adopting the judicial act inherently leads to the invalidity of the interfering administrative act regarding the administrative body's refusal to adopt the requested administrative act.

Summarizing the aforementioned, we can state that a person's right to submit an action to oblige may arise only if they have applied to the administrative body claiming the adoption of a favorable administrative act, but the administrative body has refused its adoption. In the opposite scenario, namely, in the absence of a decision by the administrative body refusing the adoption of a favorable administrative act, i.e., if no interfering administrative act has been adopted, the right to submit an action to oblige does not arise for the person, and a non-existent "dispute" is not subject to examination by the court.

Accordingly, if, in the case of submitting an action to challenge, the

² Decision of the Court of Cassation dated 26.08.2022 on administrative case No. **VD/2598/05/21**, "MBDesign" LLC v. State Revenue Committee of the RA.

administrative body bears the burden of proving all the facts underlying the adoption of the administrative act, then in this case, the court places the burden of proving the facts serving as the basis for the adoption of the favorable administrative act on the plaintiff. If such facts are not considered proven, the court no longer bears the obligation to address the examination of the grounds for refusal. Moreover, if within the scope of the type of action to challenge, the lawfulness of an already adopted administrative act is evaluated based on the legislation in force at the time of the adoption of that act, then in the case of the type of action to oblige, when obliging the adoption of a favorable administrative act, the Court relies on the legislation in force at the time of examining the dispute.

Within the framework of the aforementioned interpretations, certain practical problems arise when submitting an action to oblige.

Thus, the first practical problem is that in every case where a person pursues the adoption of a favorable administrative act, they may submit an action to oblige to the court. On the other hand, it is also not excluded that, despite the absence of conditions serving as a basis for a favorable administrative act, a person still has a legal interest in invalidating an unlawful administrative act (for example, if that act established circumstances that violate or may subsequently lead to a violation of the person's rights). Based on the stated, we believe that when an action to oblige is submitted, the court must, in each case, also address the adopted interfering administrative act and, in the presence of grounds, have the authority to partially satisfy the claim by invalidating the adopted administrative act without obliging the administrative body to adopt a favorable administrative act.

The second practical problem is connected with submitting a claim for compensation for damages. The APC does not link the submission of a claim for compensation for damages to any specific type of action; essentially, it can be submitted as a consequence of improper administration established by the court as a result of submitting any type of action, but it cannot be submitted immediately with the initially submitted action.

According to Article 100 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings," the claim for compensation for damages must be submitted to the administrative body whose administration resulted in the damage.

According to Article 102 of the RA Law "On the Fundamentals of Administration and Administrative Proceedings," the claim for compensation for damages is discussed and resolved in the administrative body in accordance with the general rules established by the same law for discussing an application. In case the administrative body fully or partially refuses the claim for compensation or

fails to discuss the application, the person who suffered the damage may appeal this—for appealing the administrative act, the action, or inaction of the administrative body—in the general procedure established by the same law.

As a result of the analysis of the aforementioned provisions, the Court of Cassation has recorded that, for a claim for compensation for damages resulting from administration, it is primarily necessary that the legal act, action, or inaction of the administrative body that caused damage to the person be recognized as unlawful, after which the person is obliged to first apply to the administrative body that caused the damage. If the latter fully or partially refuses the claim for compensation or fails to discuss the application, the person may appeal the administrative act, action, or inaction through a hierarchical or judicial procedure.³

The problem is that when a person applies to the court within the framework of an action to challenge or to oblige, and the court establishes the unlawful administration by the administrative body, the compensation for damages becomes a derivative claim arising from the submitted claim. In other words, it is a consequence of the legal violation committed by the administrative body, which is inextricably linked to the main claim. Therefore, we believe that in such cases, when improper administration is established within the framework of any type of action, the conditions stipulated by Article 100 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" should be considered observed, and the person should have the opportunity to submit a derivative claim for compensation for damages without applying to the administrative body.

Legal Characteristics and Grounds for Submission of the Type of Action for Performance:

Article 68 of the APC defines the type of action for performance:

"1. Through an action for performance, the plaintiff may claim the performance of certain actions or abstention from such actions that are not directed at the adoption of an administrative act.

2. Through an action for performance, the plaintiff may also claim the provision of the relevant document prescribed by law in the event that an administrative act is deemed adopted as a result of the failure to adopt an administrative act within the period prescribed by law."

In practice, the problem of differentiating between the action to oblige and the action for performance frequently arises.

Part 1 of Article 67 of the APC stipulates that through an action to oblige, the

³ Decision of the Court of Cassation dated 03.01.2010 on administrative case No. **VD/0277/05/09**, Zhora Sargsyan v. Kanaker-Zeytun District Municipality of Yerevan.

plaintiff may claim the adoption of the favorable administrative act, the adoption of which was refused by the administrative body.

According to Part 1 of Article 69 of the APC, through an action for performance, the plaintiff may claim the performance of certain actions or abstention from such actions that are not directed at the adoption of an administrative act.

Accordingly, if the plaintiff's goal in the case of an action for performance is to oblige the administrative body to perform a certain action or to abstain from it, then the goal of an action to oblige is inherently to oblige the adoption of an administrative act.

According to Article 53 of the RA Law "On Fundamentals of Administration and Administrative Proceedings":

"An administrative act is the decision, directive, order, or other individual legal act with external impact, which an administrative body has adopted in the field of public law for the purpose of regulating a specific case, and which is directed at establishing, altering, eliminating, or recognizing rights and obligations for persons."

In its decisions, the Court of Cassation has recorded the following characteristic features of an administrative act⁴: *being an individual act of an administrative body, having an external impact, being adopted in the field of public law, regulating a specific case, and establishing, altering, eliminating, or recognizing rights and obligations.*

From the aforementioned legal analyses, it follows that in each case, to consider a decision made by an administrative body as an administrative act, it is primarily necessary to ascertain whether it is adopted by an administrative body in the field of public law, and whether it is directed at establishing, altering, eliminating, or recognizing certain rights or obligations for a specific person within the framework of a specific case.

Accordingly, for the differentiation of the specified types of action, when submitting an action, it is necessary to verify whether the adoption of an administrative act is a prerequisite for the performance of the requested action. If the adoption of an administrative act is necessary, then an action to oblige, rather than an action for performance, must be submitted.⁵

The analysis conducted above does not at all imply that when applying through

⁴ Decision of the Court of Cassation dated 30.04.2015 on administrative case No. **VD/4651/05/12**, Robert Hovhannisyan v. Yerevan Municipality.

⁵ **Chilingaryan A.**, Problems of Classification of Administrative Actions, scientific article, YSU Publishing House, pp. 374-375, available at the following link: URL: http://publishing.yసు.am/-files/Iravagitutyan_aspirantner.pdf (last accessed: 22.04.2026).

the type of action for performance, an administrative act must be completely absent from the legal relations; the emergence of such a claim can stem from conditions of both the presence and the absence of administrative acts.

For example, the assignment of a pension entails the adoption of an administrative act, which can be achieved by submitting the type of action to oblige. On the other hand, a dispute related to receiving a payment based on an already assigned pension is subject to examination through the type of action for performance, because the requested action does not entail the adoption of an administrative act, but rather the obligation to make a payment based on an already adopted act.

The former Administrative Procedure Code included within the concept of the action to oblige those cases where a person had applied to an administrative body for the adoption of a favorable administrative act for them, and the administrative body had not adopted it. This, of course, is not identical to a refusal to adopt an administrative act; in this case, the point is that the administrative body has not addressed the person's application at all, and no written refusal exists⁶ or there is an indefinite response; for example, the administrative body continuously fails to adopt the favorable administrative act, stating that the person's application will be considered within an indefinite timeframe.

The new Code abandoned this regulation, excluding these cases from the scope of the action to oblige. Article 48 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" provides that, in the event that an administrative body competent to adopt an administrative act fails to make any decision within the period prescribed by law as a result of administrative proceedings initiated on the basis of an application, the administrative act is deemed adopted, and the applicant may proceed with the exercise of the corresponding right.

In the specified cases, we are dealing with the type of action for performance, which establishes the institution of fiction for cases when a person has applied to an administrative body and has not received any response within the period prescribed by law. Consequently, the administrative act is deemed adopted, and the person applies to the administrative body not with a claim for the adoption of an administrative act, but for the provision of the already adopted administrative act.

At the same time, Article 72 of the APC stipulates that, *inter alia*, the action may be submitted to the administrative court:

(...) c. within a three-month period from the moment the application was

⁶ **Danielyan G. B.**, Administrative Procedure and Litigation: Study Guide, Yerevan, "Tigran Mets" Publishing House, 2011, p. 355.

submitted to perform the requested action, provided the cases envisaged by sub-points "a" and "b" of this point are not present.

It follows from the aforementioned that in cases where a person applies to an administrative body for the performance of a certain action but receives indefinite responses, in this case as well, the administrative act requested by the person is not considered refused; rather, the actual response is missing. Therefore, the person must exercise the protection of their rights within the framework of an action for performance, also basing it on sub-point "c", point 3, Part 1 of Article 70 of the APC, which specifically regulates these cases.

In the context of the aforementioned, one of the important questions subject to discussion is whether applying to the administrative body in advance is mandatory for submitting the claim defined by the first part of the type of action for performance. In this context, we deem it necessary to introduce a distinction between the claims to oblige the performance of an action and to oblige the abstention from a certain action.

While it stems from the logic of the law that the performance of an action can be requested from the court in cases where the administrative body fails to perform the action within the appropriate time limits or refuses to perform a certain action, the situation is different in the case of a claim to abstain from actions. Thus, the administrative body might carry out certain implied (conclusive) actions that the person considers unlawful (e.g., eviction). In such cases, demanding the cessation of the action from the administrative body in a written manner prior to applying to the court is no longer mandatory, because the dispute between the parties regarding the given action has already arisen at the moment the action was performed. Consequently, observing an extrajudicial procedure on this ground falls outside the legislator's intent, which is also evidenced by the fact that the APC does not provide for a mandatory extrajudicial procedure for such cases.

In its positions, the Court of Cassation has emphasized⁷ that a person, by submitting an action for performance, pursues the goal of achieving the performance of a certain action or the manifestation of an inaction by the administrative body, in which the person has an interest. Therefore, during the examination of the action for performance, the court's task is, first and foremost, to ascertain the lawfulness of the requested action or inaction.

Based on the aforementioned, the Court of Cassation has recorded that, within the framework of the examination of an action for performance, the court must ascertain the following circumstances:

⁷ Decision of the Court of Cassation dated 13.10.2023 on administrative case No. VD/10153/05/19, "Haverzhutyun AM" LLC v. Yerevan Municipality.

1. is the person's claim directed at the adoption of an administrative act or not? That is, will the administrative body adopt a corresponding administrative act as a result of the satisfaction of the person's claim or not?

2. is the requested action or inaction lawful and does it stem from the legislation of the Republic of Armenia?

If we place these criteria in correlation with the questions subject to ascertainment within the framework of examining an action submitted through the type of action to oblige, it will be obvious that, except for the requirement to verify the presence of an administrative act, they are identical.

Taking into account the functional features of the types of action, the purpose of their definition, and their connection with the effectiveness of judicial protection, we believe that such a division of types of action should be in place that will fully reflect the features of the statement of claim as a regime of procedural examination and the criteria for differentiation. Accordingly, the types of action should be defined based on those procedural features of the examination of the case that are necessary for the effective judicial examination of the plaintiff's claim.

The primary difference between these types of action is the substantive law requirement: in one case, a person claims to oblige the administrative body to adopt an administrative act, the adoption of which has been refused; in the other case, to perform an action or abstain from performing an action. However, the procedural features that dictate the necessity of defining the types of action are identical, including in the context of the allocation of the burden of proof and the applicable legislation.

Ultimately, the concept of "action" is much broader and may encompass the adoption of an administrative act by an administrative body, since it is also the result of performing a specific action.

Taking the aforementioned into account, we believe that the separation of the specified types of action is strictly conditional, and the claim to oblige the adoption of an administrative act should be defined as a subtype of the type of action for performance.

Legal Characteristics and Grounds for Submission of the Type of Action for Recognition:

Within the legal system of the Republic of Armenia, the type of action for recognition is perhaps one of the least studied administrative types of action, which establishes three possible claims for applying to the administrative court:

1. Through an action for recognition, the plaintiff may claim the recognition of the existence or absence of any legal relationship if they cannot submit an action in

accordance with Articles 66-68 of this Code.

2. Through an action for recognition, the plaintiff may claim the recognition of an administrative act as void ab initio.

3. Through an action for recognition, the plaintiff may claim the recognition of an interfering administrative act that no longer has legal force, or an action or inaction that has exhausted itself through execution or in any other way, as unlawful, if the plaintiff is legitimately interested in recognizing the act, action, or inaction as unlawful, meaning:

1. there is a danger of adopting a similar interfering administrative act or performing a similar action again in a similar situation;

2. the plaintiff intends to claim compensation for property damage, or

3. it pursues the goal of restoring the plaintiff's honor, dignity, or business reputation.

Driven by the imperative of a systemic analysis of the action for recognition and the extraction of its distinguishing features, let us address each ground separately.

The most important precondition for the admissibility of the first subtype of the action for recognition is the absence of the possibility to submit all other types of action.

In practice, the aforementioned precondition is usually made the subject of discussion purely in the light of performing a procedural action. However, it is very important to record the substantive nature of such a restriction. Thus, it is important to record in which cases there is a factual prohibition to submit the other types of action. We consider it important to divide such a prohibition into two grounds:

1. *When, from a substantive point of view, it is impossible to submit any other type of action, and the plaintiff's goal is the recognition of the existence or absence of a specific legal relationship.*

2. *The person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection.*

In the first case, it is important to record the substantive impossibility of submitting another type of action. Thus, a person cannot submit a type of action for recognition instead of a type of action to challenge purely on the ground that they have violated the procedural time limits for submitting a type of action to challenge. This cannot under any circumstances be considered an impossibility to submit another type of action.

According to Doctor of Legal Sciences G. Danielyan, *the term "cannot" should also be understood to include the case where the time limits for the type of action*

to challenge have been missed⁸. However, it is our conviction that the APC provides a person with the opportunity to restore the missed time limit through a corresponding motion, provided there is an appropriate ground. If this provision were to be interpreted in that sense, the institution of recognizing a missed time limit as excusable would be rendered meaningless, as would the very essence of the procedural time limits established for the other type of action in general. Furthermore, in cases where a person, due to circumstances beyond their control, did not know and could not have known about the existence of the administrative act, they may substantiate this fact, and the calculation of the time limit will run from the moment they became aware or could have become aware of the administrative act.

Taking the aforementioned into account, we believe that by establishing this provision, the legislator intended to provide an additional institution for all those cases where the submitted claim does not correspond to any type of action prescribed by legislation; therefore, it can be interpreted solely in the context of impossibility in a substantive sense.

The aforementioned is also substantiated by the practice developed by the Court of Cassation, which states that *"in all those cases where the challenged act is not an administrative act, meaning the material object of the specified types of action is absent, yet the dispute arises from public legal relations subject to the jurisdiction of the Administrative Court of the Republic of Armenia, the examination of the given dispute must be ensured through an administrative procedural order, regardless of the nature of the challenged act, in order to guarantee the realization of the rights to access to court and to a lawful court. According to the consistently developed law-enforcement practice of the Court of Cassation of the Republic of Armenia, in specific cases, under the condition that the challenged act is not an administrative act, the given dispute arising from public legal relations may be examined either under the rules of the action to challenge or within the framework of the action for recognition provided for by Part 1 of Article 69 of the Administrative Procedure Code of the Republic of Armenia."*⁹

At the same time, referring to the position established by the Court of Cassation of the Republic of Armenia, we deem it necessary to record that the assessment of impossibility—conditioned by the claim's non-conformity with the other

⁸ **Danielyan G. B.**, Administrative Procedure and Litigation: Study Guide, Yerevan, "Tigran Mets" Publishing House, 2011, p. 360.

⁹ Decision of the Court of Cassation dated 25.03.2024 on administrative case No. VD/4748/05/23, Ashot Kocharyan v. Yerevan Municipality.

established types of action—does not stem from the essence of the type of action for recognition. This is because, in order to submit a claim on this ground, the mere substantive existence of impossibility is not sufficient; it can be submitted only if the claim itself is directed at the recognition of the existence or absence of any legal relationship.

Thus, the Court of Cassation has emphasized that *an action regarding the recognition of the existence or absence of a legal relationship may be brought, for example, in the event that the plaintiff pursues the goal of obtaining from the court an answer regarding a specific legal issue with specific factual circumstances that is disputed between them and the administrative body, as a result of which the existence or absence of the legal relationship requested by the plaintiff can be recognized. In other words, when separate rights and obligations stemming from the norms of public law are disputed between a natural or legal person and an administrative body, while simultaneously there is an impossibility of submitting all other types of action*¹⁰.

As a result of the aforementioned analysis, we can record that the impossibility of submitting the type of action for recognition must be interpreted through the Plaintiff's ability to achieve the pursued goal—aside from the claim to recognize the existence or absence of a legal relationship—by means of submitting other types of action.

For example, when the same goal can be achieved both by the recognition of a legal relationship and by the invalidation of an administrative act, there is a possibility to submit another type of action; consequently, the type of action for recognition cannot be submitted. On the other hand, in every case where the protection of a subjective interest can be achieved exclusively by the recognition of the existence or absence of a legal relationship, there is an impossibility to submit another type of action.

Making the revelation of the Plaintiff's goal when submitting an action the subject of discussion in the context of the mentioned conclusion, we deem it necessary to record that impossibility should be considered present also in every case where the person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection.

Thus, in light of the interpretations of the Court of Cassation, the issue subject to ascertainment for recognizing the existence of a legal relationship comes down to *establishing the existence of a legal relationship between the plaintiff and the*

¹⁰ Decision of the Court of Cassation dated 10.05.2022 on administrative case No. **VD/5076/05/20**, "STARLINE" LLC v. Yerevan Municipality.

administrative body in general, which does not exclude the invalidation of any administrative act as a consequence¹¹. Therefore, in parallel with submitting this type of action, the invalidation of an administrative act, or the obligation to adopt a corresponding administrative act, or to perform an action, may also become the subject of examination as a derivative claim.

In theoretical literature, this subtype of the type of action for recognition is characterized by the differentiation of the subject matter of the dispute, emphasizing that in this case, the subject matter of the dispute is not the administrative act, a specific action, or inaction, but rather the existence of certain public legal relations or the absence of those legal relations¹².

The specified ground of the type of action for recognition is also characteristic of the administrative procedures of other states.

Thus, the Administrative Procedure Code of the Federal Republic of Germany stipulates: *"The plaintiff may apply to the administrative court with a claim for the recognition of the existence or absence of a legal relationship, if the latter has an interest in the recognition of the legal relationship. The action for recognition cannot be submitted if the plaintiff can or could protect their rights through another type of action."*¹³.

Similar norms are also contained in the administrative procedural legislation of Croatia¹⁴, Kosovo¹⁵, and Georgia¹⁶.

This type of action can be submitted only in connection with specific legal issues; it cannot pursue the sole objective of establishing facts.

Making this type of action the subject of discussion, the Federal Administrative Court of Germany has emphasized that *an action regarding the recognition of the existence or absence of a legal relationship is admissible in cases where, based on any norm of public law, a legal relationship of one person concerning another person or object arises from a specific factual situation, and there is a dispute between the parties as to which of them has what rights or obligations. This refers to specific legal issues; in such cases, the plaintiff wishes to obtain from the court an answer to the disputed legal issue between them and the administrative body.*

¹¹ Decision of the Court of Cassation dated 17.11.2022 on administrative case No. **VD/3138/05/20**, "KMG Consulting" LLC v. State Revenue Committee of the RA.

¹² Administrative Litigation of the Republic of Armenia: Book One / **T. Khachikyan, H. Bedevyan, A. Gharslyan, T. Markosyan, Y. Khundkaryan, V. Hovhannisyan**. - Yerevan: "Hayrapet" Publishing House, 2022, pp. 298-301.

¹³ Article 43 of the Administrative Procedure Code of the FRG.

¹⁴ Article 22 of the Law on Administrative Disputes of Croatia (Zakon o upravnim sporovima).

¹⁵ Article 14 of the Law on Administrative Conflicts of Kosovo (Law No. 03/L-202 on Administrative Conflicts).

¹⁶ Article 25 of the Administrative Procedural Code of Georgia.

*Such a situation is, for example, the case when separate rights and obligations stemming from legal norms are disputed between a citizen and an administrative body*¹⁷.

Having examined the judicial practice and doctrinal sources of the Federal Republic of Germany, we come to the conclusion that the legislator has provided the exception under the discussed claim—in the context of submitting another type of action—for the purpose of concentrating the means of legal protection within a single proceeding¹⁸. This is because a legal relationship is broader and may exist in parallel with the claims submitted through other types of action, while at the same time acknowledging certain exceptions to the established rule:

- *if the other type of action is available only theoretically but, in correlation, is not the most effective means for the protection of legitimate interests;*
- *if the other type of action becomes possible only as a consequence of the type of action for recognition*¹⁹.

At the same time, German judicial practice defines this type of action by envisaging the existence of an objective to restore a legitimate interest. This abstracts the purpose of the claim from the interpretation of submitting this claim as being conditioned purely by the impossibility of submitting claims not prescribed by law, thereby distinguishing it as a type of action possessing an independent substantive legal claim with the presence of a specific consequence.

The concreteness of the legal issue is manifested in the fact that it refers to a clearly and distinctly outlined factual situation. In particular, when separate rights and obligations stemming from a legal norm are disputed between a citizen and an administrative body²⁰.

Nevertheless, in practice, there are many cases where a person cannot achieve the desired result merely through the adoption or invalidation of an administrative act, because the pursued goal is broader, encompassing the recognition of a legal relationship in general, which will subsequently preclude the possibility of adopting similar administrative acts. It is in this context that when assessing impossibility, it is necessary to ascertain what goal the plaintiff pursues when submitting the action: merely to invalidate a certain administrative act, or to recognize a legal relationship in order to preclude the possibility of adopting such administrative acts in the future. In the first scenario, the administrative act or

¹⁷ **Treushnikov M. K.**, Administrative Legal Proceedings: Textbook for students of law universities, faculties, and lawyers improving their qualifications, "Gorodets", 2017, p. 464.

¹⁸ BVerwG, Beschluss vom 14. Dezember 2018 - 6 B 133.18, ECLI:DE: BVerwG:2018:141218B6B133.18.0.

¹⁹ BVerwGE 54, 177 (179) = BVerwG, Urteil vom 23. März 1977 - VII C 2.76.

²⁰ **Detterbeck**, Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht, point 1395.

action itself becomes the subject matter of the challenge, in which case an action for recognition cannot be submitted, as the dispute can be resolved through other types of action. Meanwhile, in the second case, the administrative act or action is merely the initial cause of the dispute, whereas the actual dispute between the parties comes down to the clarification of a certain issue stemming from the interpretation of the law. Therefore, in such cases, judicial protection through other types of action has exhausted itself for the person, and the type of action for recognition becomes the sole means of protection.

In other words, in every case where the resolution of the submitted legal dispute is conditioned by the plaintiff not through the continuous appeal of specific administrative acts, but through the recognition of the existence of a specific legal relationship that will preclude the adoption of acts on the same ground in the future, the Court, based on the impossibility of submitting other types of action, must make the type of action for the recognition of a legal relationship the subject of examination.

Taking the aforementioned into account, we believe that judicial practice should not interpret this provision merely by the conformity of the claim with any type of action, but should make it the subject of a substantive examination to determine whether the submission of the corresponding type of action is ultimately directed at the full realization of the plaintiff's goal in applying for judicial protection.

Closely connected with the type of action to challenge is the ground for the type of action for recognition provided by Part 2 of Article 69: through an action for recognition, the plaintiff may claim the recognition of an administrative act as void ab initio. If in the case of an action to challenge the plaintiff claims to invalidate the administrative act, then in an action for recognition, the plaintiff's claim refers to recognizing the administrative act as void ab initio.

An administrative act is void ab initio if it contains, in particular, the following glaring gross errors: *a) it is not clearly evident or unambiguously clear from the act which administrative body adopted it; b) the act was adopted by an incompetent administrative body; c) it is not clear from the act to whom specifically it is addressed, or it is unknown what issue it regulates; d) the act imposes an obviously unlawful obligation on its addressee, or grants them an obviously unlawful right .*

In all those cases where there is any ground for an act to be void ab initio, the plaintiff cannot challenge the same administrative act on another ground, claiming to recognize it as invalid. This is because Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings," while enumerating the grounds for the invalidity of an administrative act, has made an important reservation that an administrative act which is not void ab initio is invalid.

The submission of the proper type of action is particularly important in this case, because the court, upon its own initiative, cannot satisfy the action in the event of the submission of a claim for voidness ab initio by applying the grounds for invalidity rather than those for voidness ab initio.

The Court of Cassation has also addressed this issue, noting that the Administrative Procedure Code of the Republic of Armenia clearly separates the types of action to challenge and for recognition. Therefore, in the event of submitting any of these actions, the Administrative Court of the Republic of Armenia is obliged to determine the issue of fully or partially satisfying the action or dismissing it within its framework²¹.

In the context of the cited regulations, the ground that an administrative act is invalid due to being adopted in violation of the law may be problematic. This provides a broad opportunity for evaluating invalidity, stipulating the adoption of an administrative act as a result of the application or misinterpretation of the law.

A detailed study of the aforementioned legislative grounds for invalidity and voidness ab initio allows for a clear distinction: an administrative act can be considered void ab initio if it was also adopted in violation of the law, but within the framework of the established grounds, these violations are so obvious that they are indisputable. That is to say, they are unlawful by the ground of their adoption, from the moment of their adoption, and based on clear grounds established by legislation, which lead to voidness ab initio.

Accordingly, if the consequences of the invalidity of an administrative act arise from the moment the administrative act is recognized as invalid by the court, then in the case of voidness ab initio, the court establishes that the administrative act is void ab initio, but the consequences of the voidness ab initio flow from the moment of the adoption of the administrative act, regardless of the court's recognition of that fact.

At the same time, we deem it necessary to address the following question: when an action for the invalidity of an administrative act is submitted, must the Court address the verification of the ground for voidness ab initio or not?

While in the case of a claim to recognize an administrative act as void ab initio we can clearly state that by establishing invalidity the Court goes beyond the scope of the subject matter of the action, in the opposite scenario, such a conclusion cannot be perceived unequivocally.

Thus, as we noted above, when defining an invalid administrative act, Article 63 of the RA Law "On Fundamentals of Administration and Administrative

²¹ Decision of the Court of Cassation dated 02.04.2010 on administrative case No. VD/2514/05/09, Martin Zoroyan v. Traffic Police of the RA Police.

Proceedings" made a specific reservation, namely: an administrative act that is not void ab initio is invalid. This directly implies the court's authority, when verifying the invalidity of an administrative act, to ensure that the grounds for the voidness ab initio of the administrative act are absent. In the event that such grounds are present, we believe that the court's authority to establish the voidness ab initio of the administrative act directly stems from the specified article. This does not imply that the court must have the authority to satisfy the statement of claim by recognizing the administrative act as void ab initio within the framework of the type of action to challenge. No, in this case as well, the court can suggest that the plaintiff choose the proper type of action, as a result of which it will either satisfy or dismiss the action depending on the plaintiff's choice. However, even in the event of rendering a judgment to dismiss the statement of claim, the court is obliged to establish the fact of the administrative act being void ab initio in the judgment, basing this on the corresponding reservation in Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings."

The distinct feature of the third ground of the type of action for recognition is that for the submission of the specified ground, the legislator emphasizes the consequential objective that the plaintiff strives to achieve with the submitted action.

The distinguishing characteristic of this ground is its object: administrative acts that no longer have legal force for the addressee (exhausted acts) and an action (inaction) that has exhausted itself through execution or in any other way. In such cases, submitting an action to challenge or an action for performance is inadmissible because the administrative act or action subject to challenge no longer exists; however, the prerequisites that the legislator establishes to reveal the plaintiff's interest are present.

For administrative acts, the legislator uses the term "no longer having legal force," and for actions or inactions, the term "exhausted through execution or in any other way." From this formulation, it follows that the terms "execution" and "exhaustion" are not identical. An action may be executed, but that does not yet mean it has exhausted itself. The basis for differentiating these concepts is whether the given action can still be reversed or not, meaning whether the interference of that action with the citizens' rights continues.

An administrative act loses its legal force if the period of the act's validity expires or the administrative body revokes it.

If subjected to a literal interpretation, we must address the recognition of an administrative act that no longer has legal force as unlawful, which inherently assumes that a certain administrative act existed that once had legal significance

and now does not, for example, administrative acts conditioned by a certain period.

The purpose of defining such a claim is the consequences in light of the three components of point three of Article 69 of the APC, which generate an interest for the plaintiff: there is a danger of adopting a similar interfering administrative act or performing a similar action again in a similar situation; the plaintiff intends to claim compensation for property damage, or it pursues the goal of restoring the plaintiff's honor, dignity, or business reputation.

Furthermore, it is noteworthy that in light of the interpretation given by the Constitutional Court, the term "action" also encompasses the inaction of the administrative body. Therefore, if a person's rights have been violated by the administrative body manifesting inaction, that is also a ground for submitting this type of action²².

Making the aforementioned second ground the subject of discussion—namely, that the plaintiff intends to claim compensation for property damage—the Constitutional Court has emphasized that insofar as the legislator does not provide a person with the opportunity to submit an action for recognition on the ground of intending to claim compensation for non-property damage established by law, the specified ground contradicts the Constitution. From this, it follows that the type of action for recognition may be submitted not only in the presence of an intention to claim property damage, but also non-property damage.

Conclusion

Summarizing the research conducted above, in connection with the problems raised in this work, we come to the following main conclusions:

1. In cases where the conditions serving as a basis for the adoption of a favorable administrative act are absent within the framework of an action to oblige, but the person still has a legal interest in invalidating an unlawful administrative act, we believe the Court must address the adopted interfering administrative act. In the presence of grounds, the Court should have the authority to partially satisfy the claim by invalidating the adopted administrative act without obliging the administrative body to adopt a favorable administrative act, if the grounds for the adoption of a favorable administrative act are absent.

2. The APC does not link the submission of a claim for compensation for damages to any specific type of action; essentially, it can be submitted as a consequence of improper administration established by the court as a result of

²² Decision of the Constitutional Court No. SDO-942 dated 22.02.2011.

²³ Decision of the Constitutional Court No. SDO-1497 dated 17.12.2019.

submitting any type of action. However, according to current practice, it cannot be submitted immediately with the initially submitted action, but only after receiving a refusal from the administrative body based on a judicial act rendered in a separate case on that action and entered into legal force. In our opinion, the institution of compensation for damages entails a consequence of a legal violation in every case. Therefore, when a person applies to the court and unlawful administration by the administrative body is established by the court, the compensation for damages becomes a derivative claim arising from the submitted claim—in other words, a consequence of the legal violation committed by the administrative body, which is dependent on the main claim. Consequently, in such cases, when improper administration is established within the framework of any type of action, the conditions stipulated by Article 100 of the RA Law "On Fundamentals of Administration and Administrative Proceedings" should be considered observed, and the person should have the opportunity to submit a claim for compensation for damages as a derivative claim without applying to the administrative body for a secondary extrajudicial stage.

3. Taking into account the functional features of the types of action, the purpose of their definition, and their connection with the effectiveness of judicial protection, we believe that such a division of types of action should be in place that will fully reflect the features of the statement of claim as a regime of procedural examination and the criteria for differentiation. Accordingly, the types of action should be defined based on those procedural features of the examination of the case that are necessary for the effective examination of the plaintiff's claim. Guided by the aforementioned, we believe that the procedural features for differentiating the types of action to oblige and for performance are absent. The primary difference between these types of action is the substantive law claim; in one case, a person claims to oblige the administrative body to adopt an administrative act, the adoption of which has been refused; in the other case, to perform an action or abstain from performing an action. However, the procedural features that dictate the necessity of defining the types of action are identical, including in the context of the allocation of the burden of proof. Ultimately, the concept of "action" is much broader, and the adoption of an administrative act by an administrative body is also the implementation of a specific action. Therefore, considering that it also includes the claim to challenge an interfering administrative act, we believe the claim to oblige the adoption of an administrative act should be defined as a subtype of the type of action for performance.

4. Guided by the aforementioned goals of defining types of action, we believe it is also essential to interpret the current restriction on submitting the type of

action for the recognition of a legal relationship—in the context of the impossibility of submitting another type of action—with the following two exceptions:

- When, from a substantive point of view, it is impossible to submit any other type of action, and the plaintiff's goal is the recognition of the existence or absence of a specific legal relationship.
- The person substantiates that the other types of action, although substantively corresponding to the submitted claim, have exhausted themselves as tools of judicial protection. Furthermore, the first ground must be interpreted in the context of submitting another possible claim apart from the recognition of the existence or absence of a legal relationship, and not any claim not provided by law. Within the framework of the proposed second ground, the Court must examine the claim through the type of action for recognition of a legal relationship when, despite the possibility to submit another type of action, the resolution of the submitted legal dispute by the plaintiff is not conditioned by the purpose of the claim underlying that type of action, and it does not fully guarantee the protection of the person's rights.

5. While in the case of a claim to recognize an administrative act as void ab initio we can clearly state that by establishing the invalidity of an administrative act the court goes beyond the scope of the subject matter of the action, in the opposite scenario, we believe the court is obliged, when verifying the invalidity of an administrative act, to ensure that the grounds for the voidness ab initio of the administrative act are absent. In the event that such grounds are present, we believe that the Court, even if the Plaintiff does not change the type of action, is obliged to establish the fact of the administrative act being void ab initio in the judgment dismissing the action, basing this on the corresponding reservation in Article 63 of the RA Law "On Fundamentals of Administration and Administrative Proceedings."

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

BIBLIOGRAPHY

Legal and judicial acts

1. Law on Administrative Conflicts of Kosovo (Law No. 03/L-202 on Administrative Conflicts):

2. Administrative Procedural Code of Georgia) (Administrative Procedural Code of Georgia):
3. Administrative Procedure Code of the Republic of Armenia:
4. Decision of the Federal Administrative Court of Germany: BVerwG, Beschluss vom 14. Dezember 2018 - 6 B 133.18, ECLI:DE: BVerwG:2018:141218B6B133.18.0:
5. Decision of the Federal Administrative Court of Germany: BVerwGE 54, 177 (179) = BVerwG, Urteil vom 23. März 1977 - VII C 2.76:
6. Law of the Federal Republic of Germany "On Administrative Procedure":
7. Law of the Republic of Armenia "On Fundamentals of Administration and Administrative Proceedings":
8. Law on Administrative Disputes of Croatia (Zakon o upravnim sporovima):
9. Decision of the Constitutional Court No. SDO-1497 dated 17.12.2019:
10. Decision of the Court of Cassation dated 02.04.2010 on administrative case No. VD/2514/05/09, Martin Zoroyan v. Traffic Police of the RA Police:
11. Decision of the Court of Cassation dated 03.01.2010 on administrative case No. VD/0277/05/09, Zhora Sargsyan v. Kanaker-Zeytun District Municipality of Yerevan:
12. Decision of the Constitutional Court No. SDO-942 dated 22.02.2011:
13. Decision of the Court of Cassation dated 30.04.2015 on administrative case No. VD/4651/05/12, Robert Hovhannisyanyan v. Yerevan Municipality:
14. Decision of the Court of Cassation dated 26.08.2022 on administrative case No. VD/2598/05/21, "MBDesign" LLC v. State Revenue Committee of the RA:
15. «Decision of the Court of Cassation dated 10.05.2022 on administrative case No. VD/5076/05/20, "STARLINE" LLC v. Yerevan Municipality:
16. Decision of the Court of Cassation dated 17.11.2022 on administrative case No. VD/3138/05/20, "KMG Consulting" LLC v. State Revenue Committee of the RA:
17. Decision of the Court of Cassation dated 13.10.2023 on administrative case No. VD/10153/05/19, "Haverzhutyun AM" LLC v. Yerevan Municipality:
18. Decision of the Court of Cassation dated 25.03.2024 on administrative case No. VD/4748/05/23, Ashot Kocharyan v. Yerevan Municipality:

Doctrinal sources

19. A. B. Zelentsov, "The Concept and Types of Administrative Action", Department of Administrative and Financial Law, Peoples' Friendship University of Russia, Miklukho-Maklaya St. 6, 117198 Moscow, Russia, 81 p:
20. A. Chilingaryan, "Problems of Classification of Administrative Actions" // *Collection of Materials of the Session of Post-Graduate Students and Applicants of the YSU Faculty of Law*, 2(2) 2018, 2019, YSU Publishing House, pp. 374-375:
21. *Administrative Litigation of the Republic of Armenia: Book One* / T. Khachikyan, H. Bedevyan, A. Gharslyan, T. Markosyan, Y. Khundkaryan, V. Hovhannisyanyan. - Yerevan: "Hayrapet" Publishing House, 2022.:
22. Detterbeck, *Allgemeines Verwaltungsrecht mit Verwaltungsprozessrecht*, 2023, 780:

23. G. B. Danielyan, *Administrative Procedure and Litigation: Study Guide*, Yerevan, "Tigran Mets" Publishing House, 2011, 354 p.:
24. L. Chanturia, *The System and Competence of Administrative Courts in Georgia*:
25. Loll D. and Schutt H., *Das öffentliche Recht und Wirtschaftswissenschaftler. Ein klausurorientiertes Lehrbuch*, 2004, 106:
26. M. K. Treushnikov, *Administrative Legal Proceedings: Textbook for students of law universities, faculties, and lawyers improving their qualifications*, "Gorodets", 2017, 464 p.:
27. T. Khachikyan, "Judicial Evaluation of the Lawfulness of Administrative Acts in the Context of Realizing the Principle of Ex Officio Ascertainment of the Factual Circumstances of the Case", *Collection of Materials of the Conference of the Faculty of Law of YSU (2)*, Yerevan, 2019, 292 p.:

REVOCATION OF INTERIM MEASURES IN ARMENIAN ADMINISTRATIVE PROCEEDINGS: DISRUPTED PROCEDURAL BALANCE AND THE MEANS OF RESTORING IT

Tigran Markosyan *, Satik Ghimoyan **

Abstract. An interim measure (securing a claim) is a key institution safeguarding the right to effective judicial protection. At the same time, it must not be transformed into a punitive or coercive mechanism that undermines the procedural position of the party against whom it is ordered. It is, therefore, particularly important to determine which procedural instruments can prevent the unlawful imposition of an interim measure in administrative proceedings and, where such measure has already been granted, ensure its revocation, while preserving a fair procedural balance grounded in the principle of equality of arms.

Drawing on an analysis of relevant theoretical sources, legislation, and judicial practice, the article examines the development and legal nature of the institution of interim measures, identifies the conditions governing the lawfulness of its application, and considers the revocation of an interim measure as a procedural remedy for overcoming its unlawful imposition.

The authors put forward a number of scholarly and practical conclusions that may guide the further development of legislation and law-enforcement practice concerning the institution of interim measures, including its revocation.

Keywords - *preliminary measures of legal, inaudita altera parte, interim measures (securing a claim), errare humanum est, revocation of interim measures, principle of equality of arms, procedural balance, procedural law, principle of proportionality, legal deadlock.*

* **Tigran Markosyan** - YSU, Associate Professor at the Chair of Civil Procedure, YSU, Faculty of Law, Lecturer-Coordinator at the Legal Clinic, Member of the Commission for the Qualification of the Bankruptcy Managers, Member of the Competition and Consumer Protection Commission RA, PhD in Law, Associate Professor, e-mail: tigranmarkosyan@ysu.am, ORCID: <https://orcid.org/0000-0002-4671-1663>

** **Satik Ghimoyan** - Head of Legal Department of the Competition and Consumer Protection Commission RA, e-mail: satgimoyan@gmail.com, ORCID: <https://orcid.org/0009-0007-3682-6700>

The article received 04 June 2026,
reviewed 20 June 2026,
accepted for publication 22 June 2026



I. Introduction

The right to effective judicial protection is a fundamental constitutional guarantee through which the principles of the rule of law and the primacy of human rights are given practical effect. It serves as a pivotal mechanism for safeguarding fundamental human rights and freedoms, ensuring not only their protection but also acting as an instrument to limit and balance public authority. Furthermore, this constitutional right is not characterized merely by formal access to justice – it also presupposes the effectiveness of the court as a state body vested with independent and impartial judicial power, the presence of which is indispensable for ensuring the full protection of an individual's rights.¹

In order to ensure the effectiveness of judicial protection, it is necessary that positive law provides for appropriate and adequate organizational and legal mechanisms commensurate with that right; otherwise, lacking any genuine possibility of implementation, the right will remain merely declaratory in nature.²

It follows that if the right to effective judicial protection serves as a guarantee for other fundamental rights and freedoms, then the existence of appropriate mechanisms is similarly necessary for the effectiveness of that right itself.

Among such mechanisms, preliminary measures of legal protection play a particularly important role. In administrative justice, these include the suspension of execution of a disputed administrative act, interim measure (securing a claim), the imposition of an attachment on the claimant's property in disputes involving public-law monetary claims³, and the suspension of the operation of a disputed normative legal act (or its disputed provision). Accordingly, in administrative proceedings these measures serve to protect not only the rights and legitimate interests of the claimant, but also those of the respondent, and, in certain cases, those of the public as well.⁴

Interim measure is a temporary judicial measure characterized by its unilateral nature. In other words, it is applied through a special procedural mechanism based on the principle of “without hearing the other party” (*inaudita altera parte*).⁵

¹ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

² Decision of the Constitutional Court of May 19, 2026, No. SDO-1828

³ Although, in Decision No. SDO-1725 of April 16, 2024, the Constitutional Court identified three types of preliminary legal protection measures, including the attachment of the claimant's property, which it treated as falling within the institution of interim measure, this measure in fact falls outside the logic of interim measure and is of an independent character.

⁴ Khachikyan, T., Bedevyan, H., Gharslyan, A., Markosyan, T., Khundkaryan, Ye., & Hovhannisyan, V., *Administrative Procedure of the Republic of Armenia*, Book I (Yerevan: Hayrapet Publishing House, 2022), p. 350.

⁵ Selkova A.A., *The Institution of Interim Measures in the Procedural Legislation of Russia and England: A Comparative Legal Aspect*, Ph.D. dissertation, Yekaterinburg, 2018, pp. 190-191

On the other hand, the nature of the addressee of an interim measure in administrative proceedings – namely, the fact that the addressee is a public authority – makes apparent not only that such a measure constitutes an interference with that body, but also that such interference touches upon the public interest, given that the activity of a public authority is directed toward the realization of the public interest.⁶

Furthermore, a decision on interim measure is not subject to immediate appeal, while the administration of justice, including the application of interim measure, is carried out by human beings, to whom error is inherent (*errare humanum est*).⁷ This problem is further accentuated by the fact that the conditions for applying interim measure are not clearly defined in procedural law.

Within this context, it becomes particularly important to determine what instruments can prevent and remedy instances of unlawful application of interim measures in administrative proceedings, thereby ensuring the procedural balance between the parties.

II. The General Characteristics of Interim Measures and the Conditions of Lawfulness of Its Application

In procedural law scholarship, interim measures have traditionally been regarded as procedural acts undertaken by the court to ensure the enforcement of the judgment ultimately rendered in the case.⁸

This indication was generally consistent with the procedural legislation previously in force. In particular, prior to the entry into force of the former Administrative Procedure Code⁹, proceedings arising from public law relations, including matters of interim measure, were governed solely by the former Civil Procedure Code¹⁰. Pursuant to Article 97(1) of the Civil Procedure Code, the court, upon the motion of a party to the case or on its own initiative, shall apply interim

⁶ E.g., Decision of the Court of Cassation of April 13, 2023, in administrative case No. VD/2355/05/20

⁷ Markosyan T.A., Proceedings for the Review of Judicial Acts Based on Newly Discovered Circumstances in Civil Procedure, Yerevan: YSU Press, 2013, p. 8.

⁸ E.g., Petrosyan R.G., Civil Procedure of the Republic of Armenia (ed. Doctor of Legal Sciences L.Z. Tadevosyan), Fourth Edition, Yerevan: "Voskan Yerevantsi" Publishing House, pp. 261–262; Civil Procedure / Abushenko D.B. et al.; ed. V.V. Yarkov, 7th ed., revised and supplemented, Moscow: Wolters Kluwer, 2009, p. 301; Vlasov A.A., Civil Procedure: A Textbook for Undergraduates, 4th ed., revised and supplemented, Moscow: Yurait Publishing, 2012, p. 278; Zhenetl S.Z., Nikiforov A.V., Civil Procedure: A Textbook, 3rd ed., Moscow: RIOR: INFRA-M, 2012, pp. 105-106.

⁹ Adopted November 28, 2007. Repealed January 7, 2014. RA Official Gazette 2007.12.19/64(588), Art. 1300.

¹⁰ Adopted June 17, 1998. Repealed April 9, 2018. RA Official Gazette 1998.09.09/20(53).

measures if failure to do so may render impossible or impede the enforcement of a judicial act.¹¹

In essence, this legal framework persisted even after the entry into force of the former Administrative Procedure Code, since Article 88 thereof provided that, in the course of the examination of cases before an administrative court, the application of an interim measure was to be carried out on the grounds and in the manner established by the Civil Procedure Code

In this regard, it is worth recalling the position of M.Yu. Starilov, who rightly observed that the judicial nature of preliminary protection measures in administrative proceedings is rooted in the theory and normative framework governing interim measures in civil procedure. Furthermore, according to the author, in the absence of corresponding norms in administrative procedure, the relevant provisions of civil and arbitration procedure may be applied.¹²

This leads to the conclusion that the institution of interim measures in civil procedure is of a foundational nature, by virtue of which the procedural theories, concepts, and approaches developed around it can be presumed applicable in administrative justice as well, insofar as they do not contradict the distinctive features inherent in administrative proceedings.

This approach has also been implicitly endorsed in judicial practice. That is to say, even under the new RA Administrative Procedure Code¹³, where the relations concerning an interim measure are regulated separately and no reference is made to the new RA Civil Procedure Code¹⁴, the Constitutional Court and the Court of Cassation nonetheless develop their analyses with regard to the positions expressed in relation to the institution of interim measures under civil procedure. Thus, for example, the Constitutional Court, in examining the question of the constitutionality of the relevant articles of the Administrative Procedure Code, relied, among other things, on the position recorded in Decision No. SDO-1561 of November 24, 2020, concerning the provisions on interim measures under the. Similarly, the Court of Cassation, in a number of administrative cases, has referred

¹¹ Since 2022, the possibility of deterioration of the condition of the property that is the subject matter of the dispute has also been provided for as a ground for interim measure.

¹² Starilov M.Yu., Preliminary Protection Measures in an Administrative Claim as a New Procedural-Legal Institution: From the Civil Process to the Administrative, *Journal of Administrative Justice*, 2017, No. 1, pp. 71, 73.

¹³ Adopted December 5, 2013. Entered into force January 7, 2014. RA Official Gazette 2013.12.28/73(1013).1, Art. 1186.1.

¹⁴ Adopted February 9, 2018. Entered into force April 9, 2018. RA Official Gazette 2018.03.05/16(1374), Art. 208.

to the approach formulated with respect to the institution of interim measures in its decision of November 27, 2015 in civil case No. EKD/1807/02/13.¹⁵

At the same time, it is important to note that the evolution of the domestic legal framework governing interim measures reflects a significant transformation and a substantive expansion of the institution. In particular, with the adoption of the Civil Procedure Code, the statutory grounds for granting interim measures were expanded to include situations where the failure to grant such measures could result in a change in the factual or legal status of the property forming the subject matter of the dispute or cause substantial harm to the person filing the motion.

Notably, these grounds were incorporated into the Administrative Procedure Code only in 2024¹⁶, following a considerable delay. This amendment made it possible to grant interim measures not only in actions seeking enforcement but also in respect of declaratory claims and adverse circumstances unrelated to the enforceability of a judicial act, while, on the other hand, eliminating the institutional incongruity between the Civil Procedure Code and the Administrative Procedure Code. Unlike its predecessor, the Administrative Procedure Code no longer referred to the provisions of the Civil Procedure Code; instead, it established its own regulatory framework, which, as noted above, corresponded to the grounds for granting interim measures contained in the version of the former Civil Procedure Code that was in force prior to 2002.

It is worth emphasizing that this expansion in the purpose of interim measure application is also reflected in the Constitutional Court's case law, which can be summarized as follows:

1. *“The significance of the institution of interim measures lies in the fact that, on the one hand, it constitutes one of the legislative guarantees for the protection of individual rights, safeguarding the claimant's legitimate interests in situations where the respondent may act in bad faith or where the failure to grant interim measures may render the enforcement of the future judicial act impossible, and, on the other hand, as a procedural act performed by a court pursuing the objective of ensuring guarantees for the enforcement of the judgment to be rendered in the case.*

Accordingly, the institution of interim measures is intended, through measures adopted in advance by the court, to protect the rights and legitimate interests of participants in the proceedings from potential adverse consequences and to secure

¹⁵ E.g., decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; No. VD/6321/05/23 of September 25, 2024; and No. VD/14113/05/25 of May 15, 2026

¹⁶ Adopted May 2, 2024. Entered into force May 30, 2024. Unified Website 2024.05.13-2024.05.26. Official publication date: May 20, 2024.

the genuine and full restoration of their infringed rights, thereby ensuring the effective exercise of the constitutional right to effective judicial protection”¹⁷;

2. “Addressing the objectives pursued by the above-mentioned preliminary legal protection measures provided for by the Code, the Constitutional Court finds that these are: (1) ensuring the effective enforcement of a judicial act (including preventing the impossibility of enforcing a judicial act), and (2) **preventing the occurrence of irreversible consequences for the claimant**”¹⁸;

3. “[...] This institution constitutes a temporary procedural measure ordered by the court to ensure the conditions necessary for the effective enforcement of the judgment ultimately rendered in the proceedings and to **prevent potential infringements of the rights and legitimate interests of the participants in the proceedings**”.¹⁹

Thus, it must be noted that the institution of interim measures has undergone a significant conceptual transformation. Whereas its original purpose was confined to preventing the impossibility or undue difficulty of enforcing a future judicial act, the institution now also serves to prevent adverse consequences unrelated to the enforceability of that act but capable of adversely affecting the rights and legitimate interests of the claimant. In this way, it ensures the effective attainment of the objective pursued through judicial protection.

However, this expanded purpose of the institution of interim measures does not, in itself, justify restrictions on the rights and legitimate interests of the opposing party or, in the context of administrative proceedings, on the public interest. Accordingly, the conditions that must be satisfied before a court may lawfully grant interim measures require separate consideration.

In legal scholarship, these conditions are conventionally divided into two categories. The first comprises the procedural requirements applicable to a motion for interim measures, such as the individuals entitled to submit the motion and the procedure governing its submission. The second encompasses the substantive conditions governing the granting of interim measures themselves.²⁰ While procedural legislation contains relatively detailed provisions regarding the first category, it is, with respect to the second, largely confined to prescribing the statutory grounds for granting interim measures together with only limited indications concerning the relevant conditions.

¹⁷ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561.

¹⁸ Decision of the Constitutional Court of April 16, 2024, No. SDO-1725

¹⁹ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

²⁰ Starilov M.Yu., Preliminary Protection Measures in Administrative Proceedings in Courts of General Jurisdiction: Ph.D. dissertation: 12.00.14, Voronezh, 2020, pp. 131–132.

The issue outlined above has received considerable attention in the jurisprudence of both the Constitutional Court and the Court of Cassation. In its Decision No. SDO-1561 of 24 November 2020, the Constitutional Court held:

“Accordingly, the existence of such an institution is, in itself, lawful and justified, provided that adequate and sufficient grounds exist for restricting the rights and freedoms of the opposing party prior to the delivery of the judicial act.

In deciding whether to grant an application for interim measures, the court must satisfy itself, in light of the circumstances set out in the application, that the failure to grant such measures may render the enforcement of the future judicial act impossible or impede its proper enforcement should the claimant's claim ultimately be upheld”.²¹

The Court of Cassation, in turn, has made the following findings:

1. “[...] *interim measures may be granted only where adequate and sufficient grounds exist for restricting the rights and freedoms of the opposing party prior to the delivery of the judicial act. In such circumstances, the court is under an obligation to substantiate the existence of those grounds when granting an application for interim measures*”;²²

2. “[...] *the aforementioned grounds for granting interim measures derive directly from the function and purpose of the institution of interim measures and constitute the criterion for assessing whether the granting of such measures is necessary*”.²³

At first glance, these judicial positions may give the impression that the sole condition for granting interim measures is the establishment of one of the statutory grounds set out in Article 91(1) of the Administrative Procedure Code. Under that provision, an administrative court may grant interim measures where the failure to do so may: (a) render the enforcement of a future judicial act impossible; (b) impede its enforcement; (c) result in a change in the factual or legal status of the property forming the subject matter of the dispute; or (d) cause substantial harm to the person submitting the motion.

Nevertheless, a more comprehensive and systematic analysis of the relevant case law reveals that the lawfulness of granting interim measures is also contingent upon the following additional conditions as well:

1. **Prima facie justification of the claim:** in determining whether interim measures should be granted, the court must assess, depending on the nature of the claim, the prima facie justification of the amount claimed (in monetary claims), the

²¹ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

²² Decision of the Court of Cassation of June 29, 2022, in administrative case No. VD/6921/05/21

²³ Decision of the Court of Cassation of May 15, 2026, in administrative case No. VD/14113/05/25

prima facie necessity of performing or refraining from specific acts (in actions seeking mandatory or prohibitory measure), or the prima facie existence of rights in respect of the property concerned (where the requested measure involves the suspension of the realization of property or the attachment thereof).²⁴

2. **Adherence to the principle of proportionality**²⁵: in assessing whether the requested measures are justified, the court must conduct a proper proportionality assessment, since proportionality constitutes one of the essential elements of the requirement that an application for interim measures be well founded. The court's conclusions in this regard must likewise be reasoned, specific, and supported by the factual circumstances of the case.²⁶

Legal scholarship identifies a number of additional conditions for granting interim measures. However, these largely overlap with or fall within the conditions already discussed above.²⁷ The legal scholarship identifies additional conditions for granting an interim measure, though these, in one form or another, fall within the conditions already discussed above. One possible exception is the requirement of a nexus between the interim measure sought and the subject matter of the administrative claim, given that interim measure is, by its nature, accessory to the subject matter of the claim²⁸. On this basis, it is well-founded to maintain that a court should deny preliminary protection where no genuine and proper connection exists between the measure requested and the subject matter of the administrative claim.²⁹

Thus, the *conditio sine qua non* (condition without which it is not possible) conditions ensuring the lawfulness of the application of securing a claim (interim measure) are:

1. the prima facie justification of the claim;
2. the existence of any ground for interim measures;
3. the existence of a sufficient nexus between the requested interim measure and the subject matter of the administrative claim;
4. the observance of the principle of proportionality.

²⁴ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

²⁵ In 2026, the legislature supplemented Article 91 of the Administrative Procedure Code with a provision according to which applying an interim measure is permitted if it does not violate a public interest that, in the given situation, prevails over the interest of the person submitting the motion.

²⁶ Decision of the Court of Cassation of September 25, 2024, in administrative case No. VD/6321/05/23

²⁷ E.g., *Administrative Proceedings: A Textbook* / ed. S.V. Nikitin, Moscow, 2018, p. 96; *Yearbook of Public Law, 2015: Administrative Process*, Moscow: Infotropic Media, 2015, pp. 254-255.

²⁸ Selkova A.A., *The Institution of Interim Measures in the Procedural Legislation of Russia and England: A Comparative Legal Aspect*, Ph.D. dissertation, Yekaterinburg, 2018, pp. 31–34.

²⁹ Starilov M.Yu., "Preliminary Protection Measures in an Administrative Claim as a New Procedural-Legal Institution: From the Civil Process to the Administrative," *Journal of Administrative Justice*, 2017, No. 1, pp. 76–77.

III. Balancing the Interests of Procedural Participants within the Framework of the Institution of Interim Measures

The intensity of the impact that interim measures may have on the opposing party to the proceedings, as well as on the public interest, necessitates a reasonable balance between the interests of the procedural participants. Otherwise, interim measures may be transformed into a punitive or coercive mechanism, undermining the procedural standing of the individual against whom they have been imposed³⁰.

The aforementioned circumstance, in turn, presupposes the existence of effective procedural safeguards for the protection of the respondent's interests. These safeguards are grounded in the principle of equality before the law, guaranteed at both the constitutional and procedural levels, and the principle of "equality of arms" derived therefrom.

Naturally, the fulfilment of such a function may primarily be associated with the institution of appellate review of judicial acts, which is aimed at achieving the objectives of justice through the improvement of potential judicial errors³¹. Appellate review is not merely a mechanism for verifying the lawfulness of the granting or dismissal the claim brought before the court; it also serves as the principal means of ensuring that the lower court instance has complied with the fundamental components of the right to a fair trial.³²

Nevertheless, it should be noted that the legislature has not included decisions granting interim measures within the scope of interlocutory judicial acts subject to appeal. This approach is justified from the perspective of ensuring legal certainty within the legal order, guaranteeing proper and effective judicial protection, as well as safeguarding the ordinary course of proceedings.

At the same time, the Code provides for the possibility of filing a motion seeking the substitution, modification, or revocation of an interim measure. In relation to these procedural mechanisms, the Constitutional Court has expressed the following position:

1. "[...] both the motion to apply an interim measure and the motion to fully or partially

lift an interim measure may be submitted up until the conclusion of the trial of the case. In such circumstances, the court, under conditions of greater awareness, may revisit the question of the effectiveness of the applied (or to be applied) interim measure. This constitutes an important procedural guarantee in terms of balancing the rights and procedural opportunities of the parties to the case.

³⁰ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

³¹ Decision of the Constitutional Court of February 8, 2011, No. SDO-936

³² Decision of the Constitutional Court of July 18, 2012, No. SDO-1037

[...] As regards the applicant's position that, under the existing legal regulations concerning the application of interim measures, the restrictions on the rights of the other party are not protected against unsubstantiated claims, the Constitutional Court records that the legislation provides legal regulations both with respect to the possibility of applying by motion for the revocation of an interim measure and with respect to counter-security. Therefore, the individual against whom a decision granting an interim measure has been rendered may, where that measure is unsubstantiated, present their position and objection by requesting the revocation of the applied interim measure; and for the purpose of compensation for possible damages, may file a motion demanding security (counter-security) from the participant in the proceedings who submitted the motion for interim measures."³³

2. "[...] in the present case, although the legislature has not provided for the possibility of immediate appeal against a decision granting interim measures through appellate review, it has nevertheless provided for the possibility of submitting a motion to substitute one interim measure with another, to modify it, or to lift it. The provision of such legal mechanisms by the legislature constitutes an effective guarantee of the right of a participant in the proceedings to effective judicial protection. It is designed to ensure a reasonable balance between the absence of a legislative possibility of immediately appealing, through appellate review, a decision granting interim measures, and the availability to a participant in the proceedings of an adequate legal remedy. Otherwise, one party to the proceedings, having effective legal remedies at their disposal, would find itself in a more favourable position than the other party."³⁴

3. "[...] the legislator, for the purpose of ensuring procedural balance and the principle of procedural equality and adversarial proceedings among the participants in the case, has established a number of procedural mechanisms for protecting the interests of participants in the proceedings in relation to interim measures, including the legislative mechanisms of substituting one interim measure with another, modifying an interim measure, and revocation an interim measure."³⁵

Whereas, in the case of revocation of an interim measure, the essence of that measure is revealed by its very name, the situation is different with respect to the other measures. Thus, according to the Court of Cassation:

"The substitution of one interim measure with another presupposes the selection, in place of the initially applied measure, of another measure provided for by the Code. A participant in the proceedings submitting a motion for the

³³ Decision of the Constitutional Court of November 24, 2020, No. SDO-1561

³⁴ Decision of the Constitutional Court of April 16, 2024, No. SDO-1725

³⁵ Decision of the Constitutional Court of November 11, 2025, No. SDO-1802

application of this procedural measure must substantiate that there exists another interim measure which, by its effect, is more appropriate to the nature and essence of the claim submitted.

The modification of an interim measure may be characterized as the alteration of the scope, content and nature of the applied measure. As a rule, the modification of an interim measure is aimed at increasing the effectiveness of the measure previously applied.”³⁶

Accordingly, in the first case the court lifts the interim measure initially applied and applies another, new interim measure. In the case of modification of the interim measure - or, in other words, alteration of the form of the interim measure - the court removes a component of the initially applied interim measure, such as its scope, content or nature, and in fact applies the same interim measure with a different component, that is, with a different scope, content or nature.

On the basis of the foregoing, the following conclusions may be drawn:

1. In the context of interim measures, the legislature has vested other participants in the proceedings with a set of instruments for excluding and mitigating the unlawful impact of interim measures, that is, for restoring a disrupted procedural balance.

2. The substitution and modification of an interim measure may serve not only to restore the procedural balance disrupted by interim measures, but also to establish new guarantees in favor of the claimant. Accordingly, these measures may be used not only for “defensive” but also for “intrusive” purposes.

3. The revocation of an interim measure is predominantly directed at restoring a disrupted procedural balance; this does not, however, exclude its use by the claimant for other motives as a manifestation of the principle of party disposition.

IV. The Revocation of Interim Measures as a Means of Overcoming the Unlawful Application of Interim Measures

The absence of a possibility of immediate appeal, through appellate review, against a decision granting interim measures gives even greater importance to the conditions ensuring the lawfulness of their application. Nevertheless, this alone is not sufficient to overcome possible shortcomings. Situations are not excluded in which interim measures should not have been applied at all and, consequently, their continued maintenance violates not only the rights and legitimate interests of the participant in the proceedings against whom the measure is directed, but, as noted above, may also endanger the realization of public interests. The resolution of this

³⁶ Decision of the Court of Cassation of November 7, 2024, in administrative case No. VD/6321/05/23

problem appears possible through the revocation of interim measures, and it is therefore necessary to examine the applicability of that mechanism.

Thus, in establishing the procedural framework for interim measures, the Administrative Procedure Code has confined itself to describing the existence of those measures and the procedure for their application, leaving outside the scope of regulation the grounds for revocation of interim measures.

Having recorded that a decision granting interim measures is not appealable and that the legislation contains no statutory grounds for the revocation of an interim measure, the Court of Cassation has developed and reaffirmed in a number of cases the following positions:

“(…) the arguments presented in a motion for the revocation of an interim measure cannot be framed within the logic of challenging the substantiation and lawfulness of the decision granting the interim measure. In other words, the exercise of the right to seek the revocation of an interim measure must not be transformed into a disguised appeal against the decision granting interim measures, since the legislature has not provided for such a legal possibility. Accordingly, within the framework of examining a motion for the revocation of an interim measure, the substantiation and lawfulness of the decision granting the interim measure cannot become the subject of assessment.”³⁷

“(…) an interim measure may be lifted where:

- upon assessing the necessity of applying the interim measure in light of a new fact and/or evidence presented in the motion for the revocation of the interim measure and emerging after the decision granting the interim measure, the court concludes that the necessity of maintaining the applied interim measure has ceased to exist, that is, that there is no longer a likelihood that enforcement of the judicial act will become impossible or difficult; or

- upon assessing a fact and/or evidence which was not at the court’s disposal at the time of examining the motion for the application of the interim measure and which is relied upon in the motion for the revocation of the interim measure, the court concludes that, by virtue of that fact, the necessity of applying the interim measure was absent.”³⁸

In such circumstances, before turning to the analysis of the cited positions of the Court of Cassation, it is essential to recall the emphases in Decision No. SDO-1802 of 11 November 2025 of the Constitutional Court, which raised law-enforcement practice to a qualitatively new level:

³⁷ Decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; and No. VD/14113/05/25 of May 15, 2026.

³⁸ Decisions of the Court of Cassation in administrative case No. VD/3731/05/20 of December 27, 2022; No. VD/10849/05/21 of March 7, 2023; and No. VD/6321/05/23 of November 7, 2024

“(…) the fundamental component of the functioning of a rule-of-law state is not only the constitutional recognition and enshrinement of fundamental rights and freedoms, but also the establishment and implementation of a complete system of mechanisms aimed at their effective exercise and protection. This may be fully brought to life, on the one hand, by the legislature through the adoption of laws regulating fundamental rights and freedoms and establishing the organizational mechanisms and procedures necessary for their effective exercise, and, on the other hand, by the law-applying authority through the interpretation and application of those laws in harmony with constitutional-legal values and, accordingly, with the will of the legislature. Together, these two components form the constitution-based environment within which constitutional values are transferred into normative reality.

(…) the effectiveness of organizational mechanisms and procedures for the exercise of fundamental rights and freedoms is conditioned not only by the institutional structure of their enshrinement, but also by the quality of the interpretation given to them in law-enforcement practice and by the culture of their application.

(…) the constitutional-legal imperative enshrined in Article 75 of the Constitution may be fully realized also in terms of law-enforcement practice, provided that laws regulating fundamental rights and freedoms and establishing the organizational mechanisms and procedures necessary for their effective exercise are interpreted in a manner consistent with constitutional-legal ideas and values and in harmony with their spirit and letter. Moreover, the law-applying authority must create the integrative space in which the spirit and the letter of the law harmoniously balance one another, thereby guaranteeing legal foreseeability and axiological equilibrium.”

In light of the foregoing, it becomes evident that the definition by the Court of Cassation of such a limited range of grounds for the revocation of interim measures in administrative proceedings is problematic for a number of reasons.

First, administrative procedural legislation does not provide for any grounds for the revocation of interim measures. In such circumstances, it is unclear on what normative and/or legal-axiological basis this position has been developed. In this respect, the situation remains unchanged even if one considers, as the interpretative point of departure invoked by the Court of Cassation, the function and purpose of the institution of interim measures and the grounds for their application, since none of these does or can give rise to the above-cited positions concerning the grounds for the revocation of interim measures.

Second, the Court of Cassation has in no way addressed, and has not refuted by weighty arguments, the grounds for the revocation of interim measures in civil procedure, which have an originating and foundational significance for administrative proceedings. Moreover, the wording “are absent or have ceased to exist” contained in Article 134(2)(1) of the Civil Procedure Code - “the grounds provided by this Code for applying an interim measure are absent or have ceased to exist” - indicates the possibility of the revocation of interim measures in cases where they were unlawfully applied.

Third, the Court of Cassation's position that the substantiation and lawfulness of a decision granting an interim measure are not subject to judicial review in proceedings concerning the revocation of interim measures stands in direct contradiction to the Constitutional Court's conclusion that: “The individual against whom a decision granting an interim measure has been rendered may, where that measure is unsubstantiated, present their position and disagreement by requesting the revocation of the applied interim measure.”

Fourth, the restrictive interpretation adopted by the Court of Cassation regarding the grounds for the revocation of interim measures is incompatible with the constitutional principles underpinning that institution, which serves as a legal remedy for restoring procedural balance, safeguarding procedural equality, and guaranteeing the right to effective judicial protection. As a result, that interpretation effectively deprives the remedy of its practical significance.

Fifth, in the absence of a legislative possibility of immediate appeal, through appellate review, against a decision granting interim measures, and under the current interpretation by the Court of Cassation of the grounds for the revocation of interim measures, in cases of unlawful application of interim measures the procedural balance between the participants in administrative proceedings will remain disrupted for a prolonged period, taking into account the average duration of such proceedings. In addition, certain public interests will be blocked from materialization as a consequence of the interim measures, thereby creating a legal deadlock.

In such circumstances, it is undeniable that, from the perspectives of both constitutional axiology and procedural-law understanding, the grounds for the revocation of interim measures inevitably include cases of unlawful application of such measures. There is no normative or non-normative basis to the contrary. In these circumstances, the resolution of the situation lies precisely in the development of the law by the Court of Cassation, through a combination of constitution-oriented and procedural-law approaches to defining the scope of the

grounds for the revocation of interim measures, thereby restoring the disrupted procedural balance and ensuring the unhindered realization of public interests.

V. Conclusion

On the basis of the research conducted, the following main conclusions may be drawn:

1. The institution of interim measures has undergone significant changes, with its functional purpose now encompassing both the assurance of effective enforcement of the judicial act to be delivered and the prevention of any other irreversible consequences for the claimant.

2. The institution of securing the claim (interim measures) in civil procedure plays a foundational role. By virtue of this, procedural-law ideas, understandings and approaches concerning that institution are presumed to be applicable in administrative justice unless administrative procedural legislation expressly provides otherwise.

3. The condition *sine qua non* conditions ensuring the lawfulness of the application of interim measures are: (1) the *prima facie* substantiation of the claim; (2) the existence of at least one ground for applying interim measures; (3) the existence of an interconnection between the specific interim measure and the subject matter of the administrative claim; and (4) compliance with the principle of proportionality.

4. In the context of interim measures, the absence of a legislative possibility of immediate appeal against such a decision through appellate review has been “compensated” by the legislature through the provision to other participants in the proceedings of a set of instruments for excluding and mitigating the unlawful impact of interim measures, that is, for restoring the disrupted procedural balance.

5. The substitution and modification of an interim measure may serve not only to restore the procedural balance disrupted by interim measures, but also to establish new guarantees in favor of the claimant. Accordingly, these measures may be used not only for “defensive” but also for “offensive” purposes.

6. The revocation of an interim measure is predominantly directed at restoring a disrupted procedural balance; this does not, however, exclude its use by the claimant for other motives as a manifestation of the principle of party disposition.

7. The unconditional position of the Court of Cassation that, within the framework of examining a motion for the revocation of an interim measure, it is impossible to make the substantiation and lawfulness of the decision granting the interim measure the subject of assessment has no normative basis. It contradicts the constitutional-legal ideas and procedural-law approaches underlying the revocation

of interim measures as a legal remedy for ensuring procedural balance and equality, as well as an effective guarantee of the right to effective judicial protection.

8. It is urgent for the Court of Cassation, through the instrument of developing the law, to expand the scope of the grounds for the revocation of interim measures and to include within that scope cases of unlawful application of interim measures, thereby restoring the disrupted procedural balance and ensuring the unhindered realization of public interests.

Conflict of Interests

The authors declare no ethical issues or conflicts of interest in this research.

Ethical Standards

The authors affirm this research did not involve human subjects.

Reference List

1. Abushenko, D. B., et al. (2009). *Civil procedure* (V. V. Yarkov, Ed.; 7th ed.). Wolters Kluwer.
2. Khachikyan, T., Bedevyan, H., Gharslyan, A., Markosyan, T., Khundkaryan, Ye., & Hovhannisyanyan, V. (2022). *Administrative procedure of the Republic of Armenia (Book I)*. Hayrapet Publishing House.
3. Markosyan, T. A. (2013). *Proceedings for the review of judicial acts based on newly discovered circumstances in civil procedure*. YSU Press.
4. Nikitin, S. V. (Ed.). (2018). *Administrative proceedings: A textbook*. Moscow.
5. Petrosyan, R. G. (n.d.). *Civil procedure of the Republic of Armenia* (L. Z. Tadevosyan, Ed.; 4th ed.). Voskan Yerevantsi Publishing House.
6. Selkova, A. A. (2018). *The institution of interim measures in the procedural legislation of Russia and England: A comparative legal aspect* [Unpublished doctoral dissertation]. Yekaterinburg.
7. Starilov, M. Yu. (2017). Preliminary protection measures in an administrative claim as a new procedural-legal institution: From the civil process to the administrative. *Journal of Administrative Justice*, 2017(1), 71–77.
8. Starilov, M. Yu. (2020). *Preliminary protection measures in administrative proceedings in courts of general jurisdiction* [Unpublished doctoral dissertation, 12.00.14]. Voronezh.
9. Vlasov, A. A. (2012). *Civil procedure: A textbook for undergraduates* (4th ed.). Yurait Publishing.
10. *Yearbook of public law, 2015: Administrative process*. (2015). Infotropic Media.
11. Zhenetl, S. Z., & Nikiforov, A. V. (2012). *Civil procedure: A textbook* (3rd ed.). RIOR: INFRA-M.

Legislation

12. Administrative Procedure Code of the Republic of Armenia. (2013). RA Official Gazette, 2013.12.28/73(1013).1, Art. 1186.1.
13. Civil Procedure Code of the Republic of Armenia. (2018). RA Official Gazette, 2018.03.05/16(1374), Art. 208.
14. Code on Administrative Procedure of the Republic of Armenia. (2007) (repealed 2014). RA Official Gazette, 2007.12.19/64(588), Art. 1300.
15. Code on Civil Procedure of the Republic of Armenia. (1998) (repealed 2018). RA Official Gazette, 1998.09.09/20(53).

Case law

16. Constitutional Court of the Republic of Armenia. (2011). Decision No. SDO-936.
17. Constitutional Court of the Republic of Armenia. (2012). Decision No. SDO-1037.
18. Constitutional Court of the Republic of Armenia. (2020). Decision No. SDO-1561.
19. Constitutional Court of the Republic of Armenia. (2024). Decision No. SDO-1725.
20. Constitutional Court of the Republic of Armenia. (2025). Decision No. SDO-1802.
21. Constitutional Court of the Republic of Armenia. (2026). Decision No. SDO-1828.
22. Court of Cassation of the Republic of Armenia decisions (chronological)
23. Court of Cassation of the Republic of Armenia. (2022, June 29). Decision in administrative case No. VD/6921/05/21.
24. Court of Cassation of the Republic of Armenia. (2022, December 27). Decision in administrative case No. VD/3731/05/20.
25. Court of Cassation of the Republic of Armenia. (2023, March 7). Decision in administrative case No. VD/10849/05/21.
26. Court of Cassation of the Republic of Armenia. (2023, April 13). Decision in administrative case No. VD/2355/05/20.
27. Court of Cassation of the Republic of Armenia. (2024, September 25). Decision in administrative case No. VD/6321/05/23.
28. Court of Cassation of the Republic of Armenia. (2024, November 7). Decision in administrative case No. VD/6321/05/23.
29. Court of Cassation of the Republic of Armenia. (2026, May 15). Decision in administrative case No. VD/14113/05/25.

ABOUT THE PUBLISHING HOUSE OF YEREVAN STATE UNIVERSITY

The Publishing House of Yerevan State University works closely with the academic community to publish high quality academic journals, monographs and textbooks, and provides services to promote teaching and research. Our main mission is to internationalize, make open, accessible and transparent the scientific work of the Armenian scientific community.

Our publications include digital, print and open access content spanning the humanities and social sciences, natural sciences and technology. In cooperation with authors, we distribute the best academic materials in the region and in the world.

Publish your journal and book with The Publishing House of Yerevan State University and you will join the scientific community of distinguished authors whose published work has helped shape and influence learning in the region and around the world.

- If you need information on how to apply to publish a book, you can read our guide [here](#).
- For information on how to write for a scientific journal, please visit our journal author page [here](#).

Open research

As a university press and not-for-profit publisher, we are committed to the advancement of open research, exploring and innovating new models that will ensure sustainability and quality, while maximising the benefits that openness can offer.

Author Services

In order to continue to publish the best local, regional and international researchers, it is important that we support researchers preparing their research for publication in our journals. In order to help prospective authors to prepare for submission and to reach their publication goals, we offer a range of high-quality manuscript preparation services - including language editing and video abstract creation.

Director of the Publishing House of Yerevan State University is Dr. Karen Grigoryan
E-mail: publishing@ysu.am



[YEREVAN STATE
UNIVERSITY]
PUBLISHING HOUSE