ARMENIA'S CONSTITUTION AND THE SEPARATION OF POWERS AMONG THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF GOVERNMENT

The New System of Separation of Powers

The new Constitution of the Republic of Armenia was adopted by referendum held on July 5, 1995. This represented a historic event for both the people and the state of Armenia. Whereas the adoption of the Constitution and the parliamentary elections were indicative of the thrust to adopt democratic processes, they also laid the foundation of the state system in Armenia by establishing the constitutional framework for citizens' participation and the rule of law in the decision-making process. At the same time, however, the Constitution accorded the ruling governmen authority to influence the exercise of these rights. While the Constitution embraced the principles of separation of powers[1], democratic freedoms, and citizens' participation in government[2] , in fact it established a centralized presidential system of government with immense influence on the actions of the legislative, executive, and judicial branches.

Executive Power The Constitution does not make specific reference to the President being head of the government. However, the powers vested in the President are vast the President represents the country in international negotiations; signs agreements and treaties; appoints the chief prosecutor; and is the commander-in-chief of the armed forces, just to name a few. The President appoints the Prime Minister and, following receipt of a slate of candidates presented by the Prime Minister, also appoints the members of the cabinet. The President may, upon consulting the Prime Minister alone, independently and single-handedly decide to dissolve the parliament In accordance with Article 75 of the Constitution, the government stipulates the order of discussion of proposed bills and can demand that they be put to a vote only wit amendments agreeable to the government. Thus, despite established legislative policies, chances for the unconstrained evolvement of the National Assembly's legislative agenda are slim.

Moreover, the National Assembly is somewhat restrained in proceeding with the discussion and adoption of a number of laws without the expressed consent of the government. This situation arises because the adoption and implementation of most laws and/or policies are dependent upon commensurate budgetary decisions and allocation of resources (e.g. the new legal institute and creation of new functions) which requires government approval. The Prime Minister and members of the government must respond to inquiries raised by deputies, as provided by the Constitution.[3] However, given that the National Assembly is not empowered to address inquiries raised by deputies, the government is effectively not accountable to the National Assembly with respect to any such inquiry.

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[1] Constitution of the Republic of Armenia, Chapter 1, Article 5

[2] Op. Cit., Chapter 1, Article 2

[3] Op. Cit., Chapter 1, Article 80

Legislative Power. The National Assembly is a single-chamber parliament comprising one hundred and thirty-one delegates. Laws are adopted by a majority of votes cast by delegates present.[4] A delegate is not bound by any mandate and, after the election, may use prsonal discretion with regard to any issue brought before the Assembly [5] The parliament can express "no confidence" in the government by presenting to the National Assembley a resolution drafted by at least one-third of the total number of delegates and adopted by the majority. The National Assembly declares war and amnesty. At the President's request, it ratifies international agreements or treaties signed by the President.[6] The President can dissolve the Parliament and summon special elections.[7]

Parliamentary Elections and Participation The National Assembly elected at the time of the constitutional referendum, was characterized by party homogeneity and absence of a strong opposition, in stark contrast with the former one (refer to the chart on the distribution of power in the Parliament). Opposition parties and some non-governmental organizations (NGO) blame the authorities for falsifying election results. They also claim that, in effect, the Constitution was rejected by the referendum. To this effect, an independent observers' union, "Vote Armenia," representing six NGOs with a mission to follow the election process (1,700 observers have monitored the elections in 50 districts, comprising 33.3 percent of the regions o Armenia) concluded that the 1995 elections were the first multiparty elections held in Armenia. These elections, however, occurred under the cloud of the banning of the principal opposition party, the Armenian Revolutionary Federation (ARF); privatization of public property; the centralization of Television and Radio in the hands of the ruling party; economic crisis; and the absence of Laws on Citizenship. The voluminous documentation they have collected leads to the conclusion that the laws governing elections and referenda have been violated. The principal reasons cited for the "non-democratic, unequal and non-free" nature of these elections and referendum are the banning of the principal opposition, the ARF, and the unlawful shutdown of its media facilities; the creation of disparate conditions for pre-election campaigns; the anti-constitutional norms of the law on elections; violations of the democratic principles of voting by secret ballot; coercion of voters; oppression and intimidation of a number of electoral committees; mediation in the election process b unauthorized individuals; holding on to information on election results; and other similar violations. The official data and conclusions drawn from these elections and referendum present the opposite view (55.6 percent of eligible voters participated in the referendum, of which 68.04 percent voted "yes." This constitutes 37.89 percent o voters and no violations were registered on the results of the referendum.) Similarly, the conclusions drawn by independent observers are not unanimous. The delegation of the inter-parliamentary summit of CIS countries noted that the elections and the referendum were held in conformity with democratic principles and within the provisions of the law. Subsequently, the UN-OSCE bulletin, dated August 2, expressed concern that the Law on Elections was applied selectively, that several candidates were rashly and unfairly denied, that members of the electora administration allowed gross violations, and that the findings of the election committees were not openly accessible. The fact that the newly-elected Armenian

[4] Chapter 4
[5] Chapter 4, Article 66
[6] Chapter 4, Article 81
[7] Chapter 3, Article 55

Parliament is mono-chamber limits citizens' participation in the process of adopting new legislation and restricts the broader inclusion of public and social groups in the supreme representative body. Under current conditions of parliamentary majority representing the ruling government's interests, enactment of new laws has been more expeditious. However, it would be wrong to deduce that this is due to the enhanced administrative skills of the new parliament compared to the preceding one. In effect, this is attributed to the lack of experience of those few representatives who express opposing views during debates. Given the majority held by the ruling party, it is difficult to imagine an obstacle for enacting any legislation proposed by the government. For the same reason, a "no confidence" vote in the government would be unlikely to secure majority vote. Furthermore, according to the Constitution, amendments proposed by the representatives in reference to a bill could only be adopted by consent of the government.[8] The President's authority to dissolve the parliament is a strong factor that drives the National Assembly's agenda, especially for the fact that the President consults only with the Speaker of the National Assembl and the Prime Minister in making such a decision.

Formally, the President of the Republic of Armenia has no right to initiate new legislation, but he has the power to endorse or veto legislation. This implies that the President holds the final authority over new laws. This makes the President of the Republic of Armenia an active participant in the legislative process. According to the second clause of Article 55 of the Constitution, the President proclaims and signs into law new legislation within twenty-one days from its enactment by the National Assembly. Within that time frame, he can return the law to the National Assembly together with his remarks. In the event that the President's remarks are not acceptable, the Parliament can pass the law by a majority vote of the representatives or, for routine procedural issues, by a majority of those present.

Judicial Power The reforms that took place in Armenia after the declaration o independence had not dealt with the judicial branch, which was preserved in its original form. Changes in this domain began to take place after adoption of the Constitution.

The July 5th order establishing the Constitutional Court was paramount in terms of it authority in the rule of law. However, the fact that the Constitution contains provisions that allow influence over the decisions of the Constitutional Court creates a dichotomy. The president of the Constitutional Court along with four out of nine members are appointed by the President of the Republic of Armenia and the remaining five members are appointed by the National Assembly.[9] The President of the Republic is authorized to terminate the authorities vested in those members whom he has appointed or order criminal prosecution.[10]

Similar authority is vested in the National Assembly. [11] The President of the Republic can be removed from office for state treason or other serious crimes. The National Assembly requires a simple majority to refer the matter to the Constitutional Court, and upon conclusion of the Court's decision, it then requires a two-thirds majority for final approval.[12] The President of the Republic also presides over the Council of Justice and appoints for a five-year term its fourteen members, of which nine are

[8] Chapter 4, Article 75
[9] Chapter 3, Article 99
[10] Chapter 3, Article 55, Clause 10
[11] Chapter 4, Article 83, Clause 11
[12] Chapter 3, Article 57

judges.[13] He can also terminate the powers of a judge.[14] The President of the Republic has authority to use the armed forces in the event that the Parliament fails to declare war and also when an imminent danger threatens the Republic's constitutional order.[15] In such instances, the National Assembly can revoke the exercise of presidential measures but only upon the determination of the Constitutional Court.[16]

The Degree of Autonomy of Judicial Institutions Article 94 of the Constituti maintains that the President is the guarantor of the autonomy of judicial entities. Similarly, Article 97 proclaims that judges and members of the Constitutional Court work independently and are subservient only to the law. The President of the Republic appoints four of the members of the Constitutional Court and the National Assembly appoints the remaining five based on a list of candidates proposed by the Speaker.It follows that the judges appointed by the President, as well as those elected by the majority of the Parliament (which represents the ruling majority) will, in all likelihood, act in line with the official party line. Furthermore, representatives of the judicial branch do not participate in the selection process of the cadre of personnel of the Constitutional Court. The legislative and executive branches, therefore, are in a more powerful position in comparison with the judicial branch. Two principal reasons exist for making this inference. First, the appointed judge is a proponent of the ruling authorities. Second, there are constitutional provisions which allow the President of the Republic and the National Assembly to terminate the judge's term of office by issuing an order for his arrest or by subjecting him to administrative or criminal prosecution. As mentioned earlier, Article 94 of the Constitution states that the President is the guarantor of the autonomy of judicial bodies. In other words, the autonomy of the judges is not driven by a system of "checks and balances" upheld by constitutional provisions and reinforced by laws specifically defining the activities o judges. In addition, by law, in the process of examining specific activities, which ma be in contradiction with the Constitution, the courts cannot file an appeal with the Constitutional Court. Upon termination of the post of the Vice President of the Republic of Armenia by Constitution, in February, 1996, the incumbent Vice President, who possesses no legal background or experience in legal matters, assumed the post of president of the Constitutional Court.

In our opinion, the above-mentioned provisions do not, in theory, eliminate the possibility of the President's removal from office. But, in effect, such an occurrence is not feasible. Even if the National Assembly were successful in introducing such an issue for consideration by the Constitutional Court and the latter were to concur with the President's removal from office, it would be difficult to imagine that the resolution would be adopted by a two-thirds vote given the prevailing political majority in the National Assembly

A citizen of the Republic of Armenia cannot appeal to the Constitutional Court directly. That privilege resides with the representatives, the candidates, the Presiden of the Republic, the National Assembly, and the government. Gagik Haroutiunian, Chief Justice of the Constitutional Court, stated in a December 14th speech delivered at a Seminar that the list of individuals authorized to appeal to the Constitutional Court would have to be expanded. He had proposed that the appellants should include the Speaker of the Parliament, the Chief Prosecutor, the courts of appeals,

[13] Chapter 6, Article 94
[14] Chapter 3, Article 55, Clause 11
[15] Chapter 3, Article 55, Clause 11
[16] Chapter 4, Article 81, Clause 3

individuals, local self-governing bodies, and the church.[17] The powers of the Council of Justice as defined by law make it the governing body of the entire judicial system. Therefore, the mere fact that the President chairs this body together with his authority to appoint and dismiss judges creates immense possibilities of control over the judiciary. According to Article 95 of the Constitution the President, the Minister of Justice, and the Chief Prosecutor are responsible for the placement of the Council o Justice cadre. In effect, the Council of Justice is formed, governed and overseen b representatives of the executive in office. This bears witness to the lack of autonomy of the Council of Justice and the judicial system, in general.
Because of the above stated relationship between the office of the President, the Constitutional Court, and the Parliament it is highly unlikely that these two bodies would stand against a presidential decision to deploy the armed forces or use other means to suppress an activity that threatens the constitutional order.

Judicial Reforms in Armenia

Representatives of the ruling power in Armenia consider the transformation of the judicial system, which has continued unchanged since Soviet times, the next most important phase. Up until and subsequent to July 5, changes to the state system dealt mainly with the organization of the executive and legislative branches of government. The authorities were cognizant of the necessity to create a legal mechanism for the protection of human rights and freedoms. This, they believed, should begin during the second half of 1996. The appropriate parliamentary and governmental authorities have submitted a conceptual framework for legal reforms, which provides for the creation of tribunal courts, review courts, and the court of appeals to examine administrative and criminal offenses and torts. It is also necessary to create economic and military courts to handle matters of first instance, review and appeals. Parallel with judicial bodies, structures of prosecution shall be formed. In contrast with the Soviet judiciary system, these prosecuting entities shall not have the power to conduct preliminary investigations.
It is stated in the conceptual framework that since the National Security counter-intelligence service falls within the activities of the state's internal affairs, it should therefore, along with its investigative apparatus, be transferred to the Ministry o Internal Affairs. (After the presidential elections the Ministry of Internal Affairs and the service of National Security were merged into one ministry).
Magistrates are administratively independent of the Court and of the Ministry o Justice. This means, that magistrates are free from departmental subordination. The Prime Minister appoints them upon submission of a last of candidates by the Chie Justice. In accordance with Article 93 of the Constitution, the lawyers' institute was founded and given the right to appeal rulings, verdicts and decisions of the legal apparatus.

[17] "Hayk", December 17, 1996

In the conceptual framework, the correctional institutions fall within the purview o the Ministry of Justice whereas the places of detention are under the office of the prosecutor. The court does not bear the burden of proof. According to the curren Soviet system the court and the court proceedings aim to accuse. Thus, the crimina justice code allows court proceedings to go forward in the absence of an attorney to defend the accused.

The principle of arbitration is established. According to the conceptual framework, the burden of proof lies on both sides and participants. This enables the courts to assume the role of independent arbiter. A new criminal code aims to enhance the legal provisions available to the defendant. The court decision to opt for detention as a precautionary measure with respect to an individual is made during a court session. Jurors try those cases stipulated by Article 91 of the Constitution. According to the conceptual framework a jury trial is authorized only for capital crimes and at the defendant's request. The jurors' task expires with the verdict of finding the defendant guilty or not guilty.

The principle of "powerful prosecutor + independent investigator" is noted, whereb the prosecutor conducts the preliminary investigation and inquiry regarding a case. In certain cases the prosecutor can change the subordination of the preliminary investigation and the investigator can appeal to the chief prosecutor on matters relating to the prosecutor's directives.

Following the principle of distribution of jurisdiction and functions of the judicial system, the prosecutors can only initiate actions of criminal nature and charge. The should not have jurisdiction over judicial cases or administer non-public cases outside of the court and in the absence of lawyers. The prosecutors' actions shall be limited to accusations, those of advocates to legal issues, and those of the court to adjudication.

The same instrument provides for the enforcement of a new civil code in which the following principles are stipulated.

a) the equality of participants' property rights
b) the protection of property rights
c) the freedom of contrac
d) non permissibility of any individual's, including public and local self-government
   authorities' and their officials' arbitrary intervention in private affairs
e) the necessity to protect civil rights without exception
f) the unequivocal provision to restore violated rights
g) the judicial protection of right

A new criminal code shall be adopted to ratify procedures dealing with the decriminalization of actions of serious social offense together with the stricter enforcement of the law with respect to professional misdemeanor charges and the efficient utilization of global practices in criminal justice. It is noted, however, tha norms and past practices that have proven to be effective can be preserved.

During the period of internal political turmoil following the presidential elections, President Levon Ter-Petrossian signed, on November 8, a decree dealing with reforms to the Republic's Judicial system by which corresponding state and public bodies were asked to submit, within three months, reform proposals for changing the judicial system.

The new code of justice is currently under development. The criminal justice code is in its initial development stage; and the civil justice code was completed in September 1997. The latter has been submitted to the Administrative State Commission in compliance with the decision of the state commission on judicial reforms. These

codes are intended to be representative of the highest international standards, as stipulated in the February 28, 1984 No R-(84)5 recommendations of the member states of the European Council. In the opinion of leading Armenian scholarsand experts in the field, there exist two schools of law on civil justice systems: the European (Continental) or Roman-Germanic; and the Anglo-Saxon or Anglo-American systems. It is believed that the civil law of Armenia, as well as that o Russia and other CIS countries falls within the framework of the European (continental) system. The Armenian justice system contains provisions from both of these systems.

1. The provision of a powerful state
2. The guarantees of judicial autonomy
3. Recognition of the civil code as the main source applicable to civi proceedings
4. The optimum consolidation of collegial and individual hearings of civil cases
5. The expert development and separation of specialized courts for economic, military, administrative, labor, and family courts
6. The expansion of judicial review and the elevation of the counsel's role during court proceedings
7. The need to make use of professional lawyers
9. The expansion of rights and assurance of equality of both sides in civil proceedings
10. The constant refinement of the civil code and the conduct of court proceedings in compliance therewith
11. The establishment of the formal or judicial justice syste
12. The full justification of court decisions.[18] In the opinion of Ed. Yegorian, former Chairman of the Standing Commission on State and Legal Affairs of the National Assembly, the new codes' principal focus has changed. "If previously the main objec was the protection of the administrative system, then that becomes even more essential in the new codes." He argues that is important to establish new appeal and collegiate institutions. Under such a system it would be difficult even for the authorities to exert influence over court proceedings.[19] On February 27, 1997 the President proclaimed a decree articulating the timetable for the improvement of codes and laws on enforcement. Most noteworthy among these was the law on "The Status of a Judge." Taking into account the vital importance of this law for the entire judicia system, it is worth highlighting the key provisions of the draft. Namely, the non-permissibility to intervene in a judge's actions, the characterization of a judge as apolitical, the insusceptibility of the judge, his permanency, responsibility to the court, responsibility in the event of misdemeanor; and the oath of office. The law also defines the judge's material and social guarantees. Further, the draft entitled "The Status of a Judge" reflects a progressive global experience in the judicial system. However, this and other codes will become effective only in January, 1999, which makes one infer that the shift from an authoritarian regime to a democratic system will be further delayed and the judicial system of Armenia will continue to function as subordinate to the executive branch.

[18] See: Hayastani Hanrapetutyun, September 17, 1997
[19] See: Hayots Ashkharh, September 9, 1997

Presidential Elections and Crisis for Legitimacy

Description of the Situation The presidential elections that took place on September 22 represent a principal milestone in the state of affairs. The pre-election politica situation can be defined as stable and free of disruptions. During this period, the opposition criticized the "Lraber" and "Zinouzh" state television programs for expressed favoritism for Levon Ter-Petrossian's candidacy and the composition of the Regional Electoral Committees for being represented overwhelmingly by the pro-government "Hanrapetutyun" alliance (bloc). In August, the incumbent Levon Ter-Petrossian was a registered presidential candidate on behalf of the "Hanrapetutyun" bloc, the Armenian National Movement (ANM) and dozens of other organizations. The other registered candidates were: Sergei Badalian for the Armenian Communis Party (ACP), Vazgen Manukian for the National Democratic Union (NDU), Asho Manoucharian for the Scientific Industrial Civil Union (SICU), Parouir Hayrikian for the Union for National Self-Determination (UNSD), Aram Sargsian for the Democratic Party of Armenia (DPA), and Lenser Aghalovian, representing the Compatriot Union "Artsakh". In general, the polls did not indicate major variances in the ratings of these candidates until September 7, at which time the situation changed abruptly. A new alliance comprising the NDU-UNSD-DPA-ARF (Armenian Revolutionary Federation)-Compatriot Union "Artsakh" was formed in support of the candidacy of Vazgen Manoukian. Three different ideologies thus joined forces -- liberal (the faction "Hanrapetutyun", ANM), social (ACP) and national (the alliance NDU-UNSD-DPA-ARF -Compatriot Union "Artsakh"). To some extent this mirrored the platform presented by President Levon Ter-Petrossian at the 7th Congress of the ANM held in 1995 - identified as "right-left-national" - with the exception that the President allowed marginal power to the national wing which, given the current political environment, was attributed to the communists (the main reason was the defeat of the communists in Russia).

The possibility of nominating a candidate on behalf of a united bloc, which had raised serious doubts in preceding elections, gave way to a bipolar electoral struggle and drove the proponents of the opposition and the socially discontent electorate in favor of the new alliance. One must take into account the factors that surround the presidential electoral process in Armenia.

a) Elections, whether parliamentary or presidential, run around the individual candidate rather than the candidate's platform or party. Under the circumstances, the programs presented by the candidates were quite similar.

b) When elections deal with the interests of specific power groups (whether parliamentary or local elections) they are held in a close-knit manner which are effective under prevailing circumstances in Armenia. But when they deal with national issues (Constitution, election of the President, referendum for independence), they are held in a more democratic fashion.

c) During the period prior to the presidential elections there was a lack of trust in the ruling authorities and a strong tendency for protest.

d) The authorities' disposition to use power was considered to be a more probable means and one that was previously justified.

e) The inability of external evaluators to prevent arbitrary ruling and the prospect of international organizations and interested nations to adopt a diplomatic policy t "turn a blind eye." There was a turning point when, at a rally on September 22, the opposition announced that according to their data Vazgen Manukian had won the elections and that the authorities were falsifying the results. Based on preliminary

data, on September 23 the incumbent president prematurely announced his victory by 55-56 percent of votes cast. On September 25, at a rally sponsored by the opposition and designed to pressure the Central Electoral Committee, participants stormed the National Assembly building where the latter was located. This resulted in clashes between law enforcement officials and the invaders, the Speaker and his Deputy were beaten and dozens of people were injured.
Law enforcement officials used arms to disperse the demonstrators. The next day, the Parliament held an extraordinary session to address these riots. During this session delegates of the opposition were deprived of their parliamentary immunity and were assaulted by the pro-government bloc and were subsequently arrested. On September 26, the soldiers and police took control of the Republic. Hundreds of people were arrested, party headquarters were shut down and broken in.
On October 24 presidential candidate Vazgen Manoukian filed his appeal and supporting documentation with the Constitutional Court, contesting the results of the presidential elections held on September 22.

Assessment of the Election Results The following counts are reported in the final results of the Central Electoral Committee's report on the Presidential elections:

Levon Ter-Petrossian - 51.75%
Vazgen Manoukian - 41.29%
Sergey Badalian - 6.34%
Ashot Manoucharian - 0.6%
(Vazgen Manoukian got 54% of votes in Yerevan)
In its turn, the National Consensus Alliance (NCA) made the following assessment based on data they had collected from those precincts over which they had oversight. Vazgen Manoukian received 60-65 percent of the votes and Levon Ter-Petrossian under 35 percent. NCA's candidate Vazgen Manoukian in his October 22 press conference stated that according to 70-80 percent of the voting stations at their disposal more than 50 percent of votes were cast in his favor and 35 percent for Levon Ter-Petrossian.
The evaluation of observers varied immensely. In the opinion of the CIS Parliamentary Assembly group, the elections were held in a normal and democratic fashion. In contrast, the OSCE group, in a statement made on September 24, noted that serious violations took place, which, it claimed, did not have an impact on the election results. However, in that time frame, the votes cast in favor of Levon Ter-Petrossian were revised from the earlier 57 percent down to 51.75 percent. Given the small margin for victory the election results became suspect. On October 1 the OSCE observers' group presented its second more precise account that challenges the presidential election results. Thus, the document cites that the OSCE Mission had observed a number of breaches in the accounting of votes as well as serious violations of the electoral law. A concern was thus expressed with regard to the official results stating "that the numbers do not correspond to the number of voters or to the number of ballot tickets handed out (22,013). This is especially evident in Yerevan where the number of votes exceeds the number of total ballot tickets handed out by 21,701. Serious concern is also expressed with respect to 21,128 missing votes. Given tha candidate Levon Ter-Petrossian has won these elections by 21,941 votes over the 50 percent limit, the observed deviations from acceptable standards can only lead to deeper mistrust in the election process and, therefore, call the results into question."

The Central Electoral Committee subsequently responded that the missing votes were equal in number to those unaccounted.
Gerald Mitchell, adviser of the OSCE Office for Democratic Institutions and Human Rights and Daniel Rouch, OSCE president, member of the Switzerland mission evaluated the administration's mode of operation (modus operandi) during these presidential elections in Armenia. They particularly noted that the observers had cited differences between the number of voter signatures to receive the ballot ticket and the number of ballots in the boxes. Whether this number corresponds to the above can only be determined upon the Central Electoral Committee's examination of the records of the Precinct Electoral Committees and those of the Regional Electora Committees. The representatives of the OSCE were pleased that Armenia was open to the process of review of the election proceedings and recommendations for improvement
The OSCE Final Report reiterated that the observed violations might have distorted the results of the first round. To regain the trust towards the electoral process the OSCE/ODIHR (Office for Democratic Institutions and Human Rights) calls for necessary amendments in the electoral code. In particular, they have recommended to revalidate the list of individuals authorized to be present at the polling stations, to update the voter register, to stop the practice of pressuring members of the armed forces, to reexamine the process of accounting as well as the issue of committees' partisanship.
On November 14, 1996, the European Parliament adopted a resolution on the presidential elections in Armenia. The document noted that "according to official results candidate Levon Ter-Petrossian has been re-elected by a small margin and the observed irregularities and infringements render the overall fairness of the elections questionable." The European Parliament recommended that new elections be held in those precincts where serious violations were recorded and condemned the "antidemocratic attitude with respect to the opposition."[20] According to the International Foundation of Electoral Systems (IFES) the events preceding the September 22 presidential elections, the election day itself, and the post-election process of counting the votes reflect acts of negligence, and non-compliance with the Law on the Elections of the President of the Republic of Armenia. They also violat the principle of transparency. Further, according to IFES accounts there is a discrepancy in the number of invalid votes, since within a finite period of time the ratio of the number of voters against the number of invalid votes is 1:5.[21] Unlike the July 5 elections and the referendum, following these presidential elections the issue of the election results became a matter of political agenda and was dealt a commensurate legal proceedings.
A grave situation ensued the presidential elections in Armenia characterized by the question of legitimacy of the ruling authorities. Regardless of which version of election results corresponds to reality, public opinion is equally divided in the countr (30-50, 41-52 or other combination). The social irregularities, the lack of democratic processes, and the clannish behavior of political groups may induce confrontational use of force.

[20] "Aravot"/Morning/ daily, November 20, 1996
[21] "Ayzhm" Weekly, 18-24 October 1996

Comparative Analysis of US and Armenian Constitutional Provisions

The most typical forms of presidential government are found in the US and France. This is supported by the fact that this form of government is most effective where the establishment of the republic has resulted in the elimination of the right to succeed to the throne. In contrast, the monarchy continues to be the symbol of the nation in Great Britain, Belgium, Holland, Spain, Luxembourg, Denmark and Sweden. Simply speaking, a system of government is considered presidential when the president is empowered to dissolve the parliament. But, a review of the US history reveals that no such precedent exists due to the fact that the US constitution does not authorize the president to dissolve the parliament, better known as the Congress, before its term officially expires. In the American system there are balancing powers of equa leverage vis-à-vis the President and the Congress. On the one hand, the Congress cannot express its lack of confidence in the cabinet or dismiss from office any cabine level secretary or the cabinet itself. On the other hand the President cannot dissolve either chamber of the Congress.

The practice of dissolving the parliament is characteristic in the so-called parliamentary systems of government (Germany) and parliamentary monarchies (France). In Germany the government falls under the purview of the parliament and is accountable to it. This highest legislative body can therefore express non-confidence in the government and demand its resignation. Generally speaking, the requisite for the stability of the presidential system lies in the method of election -by direct referendum or indirect, parliamentary, Electoral College, or some other method. In Italy, for instance, where the government has changed 55 times since World War II, adoption of the direct electoral method is considered to be the guarantor of political stability. It is believed that this will enable the President to get the necessary leverage to govern.

Conversely, in Germany, it is believed that the internal political stability depends on the parliamentary system whereby elections are held to elect the parliament, and the President is subsequently elected from the party with the majority in parliament. Bu in both of these constitutions, the Italian and the German, full authority of the ruling government is vested in the chancellor, in one case, and in the Prime Minister, in the other. In the US system the balance of power is maintained by the separation o powers between the executive and legislative branches of government. In the French model there is the Premier's establishment. The President of France can dissolve the parliament and appoint a new Premier without being subjected to any direct reproach. In fact, in the French presidential system of government, the President is less vulnerable than in the American system, given the authority to dissolve the legislative branch and summon new elections. Both the US and France have a system o separation of powers. The only difference is that in the case of the US the Presiden and the administration together form the executive branch. Whereas in the French system the President, through his capacity to maneuver the Premier's establishment, is not held responsible for the failures of the government.[22] The current governmen system of Armenia is much more similar to the French than the US. The President o the Republic of Armenia possesses similar authorities to those of the President o France on top of which the President Armenia has powerful leverages over the judicial branch. This demonstrates that from a judicial/legislative perspective the centralization of power in Armenia exceeds that in the US and in France.

Two principal features characterize the presidential form of government:

[22] Presidential Institutions and Democratic Politics, edited by Kurt von Mattenheim, London 1997, p. 240

first, the elected President of the state is simultaneously both head of government and head of state. In the model of the US system, which is considered the classical model, the President is empowered with broad and diverse authorities. However, although he is head of the government he is not authorized to control the entire government apparatus on his own precisely because of the separation of power and functions stipulated by the Constitution. The most powerful balancing forces are the Congress with the legislative and the Supreme Court within the judicial branches of government. In the US, the President has more power when he has the support of the majority in Congress. But in the event of disagreement between the President and Congress, as it is currently, the nation is not exempt from disturbances. Due to the absence of a premier's establishment in the US, there is no confrontation between president and premier. At first glance, it seems strange that the authorities vested in the President with regard to administration have increased since the adoption of the Constitution. Thus, since 1787 the constitutional provisions with respect to the President have been practically kept intact. The additional authorities vested in the president have taken place outside of amendments to the constitution. At the time of the founding of the US the President had limited authority given by the fact that the Federal government itself had limited power in the country's government. Mainly the state governments and the courts regulated the economy. Today, many of the basic state functions are entirely handled by the central national apparatus. [23] In the sphere of international relations the President and the Congress act jointly. [24] The President is authorized to sign international agreements and treaties, by consent of the Senate. The process of ratification is considered complete when, upon enactment of the legislation by the Senate, the President signs it into law and the documents are exchanged with the heads of states party to the agreement or treaty. Issues dealing with war and peace are, by law, distributed between the executive and legislative branches of government. In certain instances, the US President can as the commander-in-chief deploy the armed forces into action provided Congress subsequently acts in favor of such action. [25] The President's authorities in the forei policy domain have changed with the establishment of the US as a superpower. Previously congressional accord was necessary for the use of military power. The framers of the Constitution believed that congressional approval was essential to declare war. However now, under certain circumstances, the President can solely decide on the use of military force. [26]

Legislative authority According to the Constitution, the Congress is not the ultimat authority in the US. The Congress is not authorized to make changes to the rights and freedoms of the people (US citizens). In contrast with the Armenian Parliament, the US Congress is bicameral and operates according to the principles of competition. Both houses have a central role although with a separation of functional domains. [27] The Bill of Rights, the Fourteenth Amendment and the oversight by Federal courts limit the authorities of the Congress in the administration of the Federal government. The Congress is empowered with the authorities envisaged by the Constitution, which it exercises regardless of the preferences of the President. The political parties do not

[23] See A. Sh. Haroutyunian, The Presidential Institution in the World, Yerevan 1996, Page 95 and 115 and QUID 1995, page 1057-1058, (in Armenian)
[24] The Constitution of USA, Article I, Sections 7-8
[25] The Constitution of USA, Article I, Sections 7-8
[26] Ibid., pp. 96, 115
[27] The Constitution of USA, Article I, Sections 2-3

control the appointment of administrators and, therefore, are not in a position to hol accountable those members of Congress who do not support the party line. Since the Congress is independent of the office of the President, and its members do not operate under strict party discipline, every individual member is free to express his/her views on issues and vote according to his/her will. [28] One of the best indicators of the autonomy of the US Congress is its relative freedom from party influence. In contrast, the Armenian Parliament has a definite partisan character and the parliamentary majority corresponds to the presidential majority.

The Congress has the power to impeach the President.[29] Under the current situation, not only does the US Congress represent a counterbalance vis-à-vis the President in legislative matters, but it also plays the role of policy maker.

After the Vietnam War and the Watergate scandal Congress increased its oversight o the executive branch of government. In the US the President does not have the authority to initiate new legislation. Only the Congress can do that. But the President must sign into law new legislation enacted by Congress or he can veto it. The right to veto is applicable to the entire legislation and not line items thereof. The Congress can override the President's veto by a two-thirds vote, in which case the law is enforceable. In the event that the Congress transmits new legislation to the Presiden within a period of ten days from the end of its term of office, then the President can hold on to the legislation without taking action or returning it to the Congress along with his comments. This procedure is provided by the Constitution and is called the right to "pocket veto" [30] And if the President takes action on the new law and returns it to the Congress, within the required time frame, the legislators as a rule are allowed to either agree or reject the president's objections.[31] In Armenia, the President has the right to return the law to the National Assembly along with his comments or recommendations requiring new debate. But if the National Assembly does not accept his recommendations, it can still adopt the new law by a majority vote of the total number of representatives. In contrast, the US Congress needs a two-thirds majority to override a presidential veto.

Almost all of the political appointments in the US require Senate approval.[32] The right to appoint belongs with the President, and the Senate approves or rejects the appointee. The fact that presidential appointees require Senate approval is one of the more important components of the built-in checks and balances of the US system. The Constitution of the Republic of Armenia does not require the confirmation of presidential appointees by parliament. Although it is rare that the US Senate fails to confirm the appointment of a presidential candidate, it is important to note that the US Constitution empowers the legislative branch to reject a candidate. The power of rejection of a presidential candidate is so strong that usually presidents withdraw the candidacy of an appointee once they sense opposition by the majority of committee members, even before it is brought to a vote. In the US, the head of the state or the government has no authority to dissolve the Congress, and the Congress in its turn has no right to dissolve the government. In contrast, according to the Armenian Constitution, the National Assembly can express non-confidence in the government. In his turn, the President can dissolve the Parliament. This is impossible in the US since the President is head of the executive branch. Considering the US President's

[28] James Wilson, US Congress, Yerevan, 1993, p.4, (in Armenian)
[29] The Constitution of USA, Article I, Sections 2-3
[30] " The Constitution of USA, Article I, Section 7
[31] Ibid., page 98 and page 1059
[32] The Constitution of USA, Article I, Section 7

ultimate responsibility for National Security, his responsibility in preparing the annua budget and agenda setting, and media visibility, the President holds a strong positi of power vis-à-vis the Congress.
As was mentioned earlier, the President of Armenia can dissolve the Parliamen (however, he cannot do this during the last six months of his term of office). Similarly, the National Assembly cannot be dissolved within a one-year period following the elections, or during martial law, or in the event that the question of removal of the President from office has come up. Similar restrictions exist when there is a threat to the constitutional order. In its turn, the Parliament can impeach the President.
The U.S. President submits the proposed budget and the greater part of his legislative proposals to the Congress. In Armenia, the Prime Minister has responsibility for doing that. Although the US Constitution does not clearly define the President's responsibilities in the legislative domain, his authority is clear with regard to proposing the budget and initiating new legislation. The President's right to veto legislation presents another dimension for influencing the content of new bills. The President's authority in proposing the legislative agenda is a strategic move, which drives him and his staff to engage in lobbying activities in the Congress. Having the President and the majority in both houses of Congress controlled by the same party does not guarantee that the President's priorities will always prevail. Such is the case because the President is not the chairman of his party and has no binding commitment to the party on which ticket he may have won the presidential race. Conversely, in Armenia the winning party is the most important link to presidential authority in all three branches of the government as well as in local politics.

Executive Power In the US, the executive branch of government has two elected members: the President and the Vice President.[33] Unlike the Presidency, both the US Congress and the Supreme Court are multi-member institutions.[34] Previously, much like the US, Armenia did have the Vice Presidential post, which was subsequentl eliminated with the adoption of the new Constitution. As head of government, the US President administers the Federal government, he selects the political appointees, and makes executive decisions. The Senate must confirm most political appointments, which creates an effective balance of power. The Senate also confirms the President's appointees to the Supreme Court.[35] This creates effective mechanisms for managing the interactions among the three branches of government. The US President has no direct authority over the two other branches of government, but he has a wide array of avenues to make an impact. One of the most influential powers of the US President is his authority to set the agenda. The President possesses other privileges (such as veto power, the right to amnesty).[36] According to the Armenian Constitution, the President of the Republic appoints the Prime minister and the members of the cabinet. Additionally, the President appoints the chief justice, the diplomatic corps, the president and members of the Constitutional Court and other courts, judges and prosecutors, high command officers, and other officials as provided by law. In some cases these appointments are made according to proposals received from other government officials.

[33] The Constitution of USA, Article II, Section 1
[34] Nigel Bowles, The Government and Politics of the United States, New-York 1993, p. 89
[35] The Constitution of USA, Article II, Section 2
[36] The Constitution of USA, Article I, Section 7

In the US, the President presides over most cabinet sessions. In presidential systems the government is convened only at the discretion of the head of the executive power. In Armenia, the government is similarly convened by the President or by the Prime Minister if so delegated by the President. In the US the final decision rests on the President, even if the majority of the cabinet is opposed to his decision. In presidential systems of government the head of state or the administration can demand a full account of any activity that falls within the executive branch. In the US the President can ask any department within the executive branch for a written opinion on any question or issue. In the case of authoritarian regimes, presidents have ultimate authority over the structural design of the government.
In Armenia, the government structure is defined by presidential decree.
In the US the Cabinet serves as expert consultant to the President and in the event that cabinet member is opposed to the President's policies, he either resigns from office or the President asks for his resignation. In the US no new department can be established without authorizing legislation passed by the Congress and ratified by the President. Whereas in Armenia, changes in the government and the order of activities is decided by the President. As was mentioned earlier, in the US the right to declare war belongs with the Congress.[37] However, the President serving as the commander-in-chief can deploy the armed forces under certain conditions [38] Similarly, in Armenia, the Constitution empowers the President to make a decision on the use of armed forces, but it is only the National Assembly who can declare war.

Judicial power The US judicial branch represents an 'adversary' system. Given that the Constitution has provisions that are general and vague, the justices have ultimate authority to interpret them. The highest body of this branch of government is the Supreme Court.[39] As mentioned earlier, it resolves issues dealing with the interpretation of legislation and legal disputes among the states. The jurisdictions of this body are specifically referenced in the US Constitution - to investigate actua cases and act on litigation brought before it. The judicial branch cannot initiate new cases.
At the state level, the judicial system similarly is responsible for state legislation, interpretation and enforcement of the state constitution. Though the judicial system is hierarchical and the state courts are subordinate to the Supreme Court, only a ver small part of court cases reach the federal courts. The states are at liberty to choose among the courts available in the judicial system. In the US, the justices do not perform incriminating functions. Those are the responsibility of the Department of Justice and its representatives - the attorneys general. The President has the authority to appoint or dismiss the attorney general for each district.
In Armenia, the Constitution grants similar rights to the President vis-à-vis the prosecutors. In the US the President only appoints the associate justices of the US Supreme Court and other federal judges, but these appointments require the consen of the Senate, whereas in Armenia the President directly appoints four members of the Constitutional Court. The National Assembly appoints the Chairman of the Constitutional Court.

[37] The Constitution of USA, Article III, Section 1
[38] After the World War II American forces were sent without the authorization of the Congress to Korea, Lebanon, Grenada, Cuba, Panama, Kuwait, Somalia, Rwanda. See: James MacGregor Burns, Government by the people, New Jersey, 1997, p.317
[39] The Constitution of USA, Article III, Section 1

However, if this is not done within thirty days from the placement of the Constitutional Court it is up to the President of the Republic to fill the appointment. In the US the members of the Supreme Court are appointed for life, which is intended to guarantee a justice's autonomy and independent thought.
Generally, all federal judges are appointed for life. There are special laws applicable to the election of judges at the state level. A member of the Supreme Court leaves office only on his/her own will or by impeachment. In the US, much like President and other high ranking officials of the government, federal judges are removed from office after being charged with treason, bribery, or other high crimes and misdemeanor.[40] The House of Representatives brings the charges upon a justice, but only the Senate is authorized to convict. The laws of the Republic of Armenia delineate the constitutional rights of terminating the permanency of a judge by consent of the President and National Assembly to his arrest and submission to administrative or criminal liability. Although in the US the head of the executive power appoints the officers of the Supreme Court, the President can make such an appointment only when there is a vacancy. This may often prove to be a length process since the Senate must approve the President's appointees to the Supreme Court. The same is true at the state level as applied to governors' authority. The executive power has the power to grant relieves and pardons.
In accordance with the Constitution, the US Congress has the right to set the authorities and structure of federal courts.[41] Further, the Congress can file charges against judges, annul the court's decision on legislative matters by the adoption of a new law or by constitutional amendment. Although these actions are seldom used, they do represent important elements of the balance of power inherent to the US system. Similarly, judicial review is an important checking mechanism of presidential power. As a result, it is possible to prevent a situation hereby the President strongly favors a particular action which, from a technical standpoint, has no binding legal provisions.
Judicial reform in Armenia is currently in progress and has received attention only upon the formation of the two other branches of power.According to the conceptual framework the judicial power will be an 'adversary' system with all its components. In the Soviet system, only the prosecutor performs the judge's adversary function. Reform plans include the formation of a three-level court system - courts of first instance, courts of appeal, and courts of 'cassation'. They would respectively examine administrative, criminal and civil cases. The framework also includes the establishment of economic and military courts, which also will have courts of firs instance, courts of appeal, and courts of 'cassation'. Parallel to the judicial powers there would be structures of prosecution, which in contrast with the Soviet judicial system shall not have the power of preliminary investigation. The democratization o the Armenian State depends on the success of these judicial reforms. The postponement of the establishment of an independent judicial power indicates the administration's lack of interest in creating a system of checks and balances.

The Comparative Analysis of the Constitutional rules/order of France and Armenia

The adoption of the new system of government in Armenia on July 5th became target to both analysis and criticism. The political opposition assessed it as an authoritarian

[40] The Constitution of USA, Article II, Section 4
[41] The Constitution of USA, Article III, Section 1

regime and an attempt for the legalization of individual power. But no attempts were made to make comparisons with the administrative systems of other countries. For a thorough analysis and evaluation of the new system, one should approach the issue from different standpoints. Comparative analysis has two advantages: it enables to study the system from a historical perspective; and seeks to find benchmarks o administrative systems that have worked well. For that matter, we attempt to analyze the Armenian and French models of public administration taking into account tha there exist a number of legal conceptual similarities as well as differences in application. This comparative study does not evaluate the similarities of the Armenian Constitution with that of France as right or wrong, although the President of the Armenian Republic has publicly acknowledged the role of French analysts in framing the Armenian constitution. Similarly, a few Armenian officials have declared that a number of the provisions in the Armenian Constitution were borrowed from the French Constitution. This comparative analysis aims to clarify the viability of the system given that the French administrative model has been in force for four decades and the comparison can be made in a historical context. It is to be noted first of all that the presidential power established in Armenia on July 5 is totally similar in appearance to the administrative system in France (established in 1958).
What are the characteristics of this form of administrative system? They are the President's independence from membership in any of the three branches of power. Also, the abolishment of the office of petitions in the process of decision making, the role of arbiter with respect to the three branches of government and the President's election not by the electoral colleges, but directly by the people. It is important to note that this form of government is directly associated with Charles de Gaulle and the post world war political situation in Europe. In this respect, we must underline the different historical-political conditions in those two countries. The French system of 1958, being similar to the Armenian system of July 5, has two characteristic features, which are fundamentally different from the Armenian. On the one hand the personality and vision of de Gaulle played a decisive role in the workings of this administrative system with respect to winning consensus worldwide. On the other hand, the need for the resurgence of the role of France and the necessity for success o the new administration stood out as top priorities, which were brilliantly accomplished thanks to 'gaullism.' There were also other internal issues to be resolved, namely the crisis facing the French parliamentary system itself.[42] The modification of the administrative system in France was also directly associated with the critical situation in Algeria and with the activities of the national liberation front in Algeria. The unstable political situation and bloody events in Algeria drove the Committee of Salvation, headed by General Masiu, demand Charles de Gaulle's return to power. On May 15, 1958 Charles de Gaulle adopted Rene Kotiy's proposal to form a governmen which would have the authority to implement legislative and constitutional amendments. The draft constitution was thus framed during period between June and September. It would however be misleading to conclude that all the concepts emerged in that time frame. Rather, the fundamental Gaullian principles of administration find their origin in the general's earlier speeches, the most famous of which is considered the June 16, 1946 Bayeux speech. These are: the separation and balance of the three powers; the creation of an institution with power to mediate with political groups, the so-called "political contingent" by de Gaulle's terminology the supreme position of the head of state over political parties. Presidential elections were originall

[42] Small parties, the immense power of the parliament, the President's dependence on the Parliament and members of the government in the decision making process

envisioned in the form of an Electoral College. Subsequently, Charles de Gaulle refined presidential elections to represent the outright choice of the people, which b referendum held on October 28, became part of the constitution. This amendment was essential for recognizing the office of the President as the people's mandate and for establishing its autonomy from the parliament. In effect, this method of presidentia elections is a variation of centralized power given that it is characterized by the people's choice and can be annulled in the same fashion. The functions of the parliament rest in the adoption of laws and the budget and oversight of government activities. Ideological approach to public administration is one of the cornerstones o gaullism, albeit the claim by experts that gaullism is itself an ideology. The nation stands above all political interests. The 1958 system was based on these national and fundamental Gaullist provisions. Without ignoring the facts of political unrest and rejection of the French parliamentary system, de Gaulle attributes this to the French national characteristic - individualism

Continuing our comparison, the historical context surrounding the establishment of the constitutional system in both countries was one hundred years, in Armenia it was a matter of legitimizing the newly created parties. In Armenia, the adoption of the system of presidential government occurred under different circumstances. As a newly created independent state, Armenia was facing different challenges. The lack o experience in statehood led to problems associated with the establishment of public institutions. There were fundamental differences in existing party systems in Armenia and post-war France.

The new Constitution of France clearly stipulated the President's independence from the Parliament. The bicameral parliamentary system was preserved to maintain the system of checks and balances and to have an electorate different from that of the National Assembly (professional groups, representatives of local authorities and organizations, family associations, national minorities and so on). There is no bicameral system in Armenia. Further, claims that bicameral parliaments are typical of federal states do not seem to be relevant (Ireland and Italy are examples). In the event that dual citizenship is allowed for Armenians living abroad, representation for those citizens could have been secured in the second chamber.

There is yet another similarity in the two systems: both governments can actively intervene in the legislative process.[43] In France's case, the legislative power could previously intervene in all matters of government right up to the activities of the executive power, and the latter had execution responsibilities only. Both the French and Armenian parliaments are authorized to oversee the activities of the governmen and to use sanctions (inquiries and 'no-confidence' vote). And although both constitutions clearly delineate these leverages of influencing the highest representative body, in one case this works effectively and in the other case it merely has a symbolic meaning. In the parliament of the Republic of Armenia the practice of investigation carries the weight of ordinary public queries, due to the fact that the same politica forces are represented in both the government and the parliament. Under both constitutions, the President can take appropriate action in the event of a threat to nationa security or to the constitution. The French Constitution clearly articulates the circumstances warranting such action. The Armenian version does not provide details in this regard (there is only mention of an immediate danger threatening constitutional order) and empowers the President to judge the degree of the threat and decide on the

[43] Article 75 of the Constitution of Armenia and Section 5 of the Constitution of France

appropriate measure. The Constitutional Court of Armenia can act on the measures taken but is not authorized to judge if indeed a threat existed.
The change in the electoral process in France was driven by the change in the party system and the growth in political parties. During the preceding four decades a majority emerged in the French parliament in a systematic manner, regardless whether this majority was the same as the President's. A two-phased system was introduced in lieu of the proportional electoral system to assert by-partisanship. Previously, smaller parties were able to permeate the parliament and the forming of coalitions in the parliament was too difficult to achieve, and ensuing governments quickly dissolved. The underlying strategy was that parties, which had received the majority of votes, united in the second phase and only one of them prevailed in the second round o voting. The former proportional electoral order of a parliamentary multi-party system yielded to a government backed by the parliament, a real coalition in the electora campaign and, most importantly, the formation of right/left wings and the victory of either bloc that received the majority. This change also had negative implications. In the opinion of French experts, it weakens the parliamentary control of government activities. The French parliament is often referred to as "a registrar," suggesting tha it only gives legal opinion on government policy. Out of 30 instances of censure during the entire duration of the original 1958 system of government, only one was upheld in 1962, and parliaments have been dissolved in 1962, 1981, and 1988. Here too there are differences with Armenia, which has two forms of electoral systems (majoritarian and proportional). However, when elections are not held in a free environment any electoral system becomes inconsequential. The practice of free elections in France has more than a hundred years of history behind it. This leaves no room to argue that the Armenian system is more democratic.
The French version has proven its viability, but mostly due to democratic principles and established internal mechanisms. First, the people can question the President's authorities, as it happened in the 1969 regionalization and rejection of Senate reform by referendum, at which time de Gaulle submitted his resignation from office. In 1962 George Pompidou was elected President who did not represent any party wit parliamentary majority. Another example is found in the 1986 period o "condominium" during which foreign policy and defense matters were vested in the President and economic and social matters in the Prime minister. The governmen had relative independence due to Article 20 of the French Constitution which made reference to the government's independence in setting national policy. The government became independent from the Parliament, but was dependent on the President. The government initiated new law, but its direct dependence on the President turned this authority into an executive function. There is no article in the Armenian Constitution with such broad interpretation of the government and the culture of political parties together with their incompatibility make the concept o cooperation improbable. In the French application of separation of powers the parliament is in third place of importance. The same is true in Armenia.
Similarly, we find striking similarities in the sphere of judicial power. According to the 1958 system in France, the parliament cannot solely have the power o constitutional review. Instead, the intent in creating the institute of constitutional council was to have a centralized constitutional review form (delegates and separate judges).
The functions of the Armenian Constitutional court and those of the French are similar, but the functional mechanisms have obvious differences. The Presidents o both countries appoint the judges and council presidents. Compared to the authorized

appointment of judges in the French system: 3 (President) + 3 (National Assembly) + 3 (Senate) and 8 former chairmen, the Armenian Constitution allows 4 (appointees b the President) + 5 (by the National Assembly). This gives the President of Armenia control over 45 percent of the appointments, compared to the 17.6 percent in France. Further, the remaining 8 members of the Constitutional council are former Presidents of France. This too is impractical in Armenia since there are no former presidents. The President of Armenia has much broader influence than that of France.

There are distinct differences concerning the bodies of local self-government. At the local level in France all positions, whether, mayoral, municipal or regional, are elected. The mayor represents both the state and the community. Conversely, in Armenia he/she represents the state only. In accordance with the 1982 law the distric administration cannot a priori annul the decision of the municipal council which is subject to implementation upon adoption. In Armenia the dominant structure is one of centralization (and not decentralization) with the elected community representatives being subordinate to the appointed state representative (Marzpet) who, in fact, pulls the strings for making regional policy.

The Gaullist administrative form has been called by different names such as, "plebiscite democracy", "plebiscite monarchy", "republican monarchy", and "presidential parliamentarism". The President's election by referendum legitimizes his activities, but also places him under tremendous responsibility. In the process o solving internal state disputes threats are normally directed toward the President and to a great extent executive direction depends on the President's activities. This means that power is centralized, to a great extent, in his person - a system, which functions effectively in developed societies. The nature of public activities is dependent upon the President's vision and degree of self-discipline, which does not ensure efficacy under extraordinary circumstances. In a relatively weaker and newly formed socia system, one would naturally opt to the full use of power and even the use of force by the President. This also has other material reasons, such as external and internal threats inherent to the transitional phase, an antipodal polarized situation in the prevailing political life, struggle to participate in the redistribution of assets and supplies, a lack of political culture, and so on. The Armenian public system has various elements, which are difficult to describe in a simple way.

Theoretically it is characterized as having the ingredients of authoritarianism, presidential power and parliamentary system. From a legal standpoint, it can be described as presidential power with a few characteristics of the parliamentary system. But when assessed from a functional perspective, it shows the qualities of a pure presidential power with components of authoritarianism.

The Constitution is a protection from monarchy and a guarantee for individual and collective rights. Notwithstanding that, discussion whether the constitution is a document intended to delineate the separation of powers and executive effectiveness or is simply the ultimate rule of law continues. It is typical that opposition politicians argue on the issue of balance of power when the ruling authorities refer to the Constitution as the rule of law thus legitimizing their activities. We believe that both interpretations are equally important and should serve as elements for assessment.

Comparative Analysis of the Constitutional Rules of the Russian Federation and the Republic of Armenia

The constitutional vacuum that was created upon the collapse of the USSR was handled differently by each of the newly independent states. The legislative

uncertainty that prevailed in the initial phase of the creation of these republics was gradually changed through the process of the adoption of national constitutions. The framing and adoption of the constitution in each of the newly independent republics proceeded on the basis of their recognition of human rights as well as the peculiarities of each nation vis-à-vis the state structure.

The above-mentioned thoughts are expressed in the Constitutions of the Republic of Armenia and the Russian Federation (Russia). Their comparative analysis gives additional understanding of the corresponding processes in each country.

The process leading to independence began with the decision adopted by the Supreme Council of the Armenian SSR on August 23, 1991. The first step was the adoption of the Declaration of Independence by the Republic of Armenia. This being a constitutional act, it lay the foundation for future legislative activity. [44] But, in effect, within the confines of the Republic of Armenia, the constitution of the former Armenian Soviet Socialist Republic, adopted back in 1978, continued to be in force. Subsequently, the Supreme Council of the Republic of Armenia approved the proposal developed by the Constitutional Court and decided to hold a referendum for adoption of the Constitution. On July 5, 1995, a referendum was held parallel to the elections of the National Assembly.

The question posed in the referendum was: "Do you agree to adopt the Constitution of the Republic of Armenia as approved by the Supreme Council of the Republic o Armenia?" The Constitution of the Republic of Armenia was thus adopted b referendum. The Declaration, which was certified by Constitution, became an ingredient part of the latter.

The independence of the Russian Federation is directly linked to the "Belovezh Agreement," signed by the heads of Russia, the Ukraine and Belarus on December 14, 1991. This agreement ratified the demise of the USSR as a state. In contrast with the other republics in the USSR, the Russian Federation proclaimed itself the inheritor o the USSR legacy. Similarly, the Constitution of the Russian Soviet Federal Socialis Republic, as adopted in April 1978 and amended by the Congress of the People's Delegates of Russia in 1989-93, was still in effect in Russia. In October 1993, the President of the Russian Federation by Decree No.1400 dissolved the Parliament o the Russian Federation and called for the elections of the highest legislative power and the bicameral Federal Assembly. The referendum was also set for the same day. The constitution approved by the Constitutional Conference held for that specific purpose was submitted to referendum. The Constitution of the Russian Federation was thus adopted by referendum on December 12, 1993.

Both the constitution of the Republic of Armenia and that of the Russian Federati include chapters that are based on international experience. These include principles of constitutional rule, fundamental human and civil rights and freedoms, the President of the Republic, the Branches of Power, the local self-government, as well as constitutional adoption and amendment provisions. In contrast to the Constitution of Armenia, the articles governing the transition to the new constitution of the Russian Federation are provided in a separate section. Similarly the Russian constitution devotes a separate section to the structure of the republic.

Given that the resolution to resign from soviet rule was unanimous across the former Soviet Union, both the Constitution of Armenia and that of Russia fully acknowledge the principles of democracy, human and civil rights and freedoms. The second chapter of both constitutions refers to human and civil rights and freedoms and

[44] The Referendum of Independence on September 21, 1991; Presidential elections of October 14, th activity of the Republic's Supreme Council during 1990-95

contains content of internationally used language. This is stipulated in both the United Nations' Universal Declaration of Human Rights, dated December 10, 1948 and in the Covenants on Economic, Social and Cultural Rights and Covenant on Civil and Political Rights, ratified on December 16, 1966.

Generally, the parameters on human rights restrictions applicable in extraordinary, warlike and similar circumstances are alike. There are however differences in matters of legislative nature. These are discussed below. The creator as well as the ultimate vanguard of both Armenian and Russian Constitutions is the people. In the Russian Constitution the emphasis is placed on the state-territory, and the citizens are defined as "people of various origins of the Russian Federation," (The Preamble of the Constitution). In contrast, the Constitution of Armenia places emphasis on the nation without territorial-state specification (e.g. "the people of the Republic of Armenia"). For Russia this emphasis on territory is natural because of its multinational nature. However, given that Armenia is a mono-national republic, the emphasis is naturally placed on the nation. Further comparison of the constitutions, especially the excerpts on citizenship, shows that the state of Armenia tries to place limitations on the participation of the Armenian communities abroad in the Republic of Armenia, while the Constitution of Russia enables to maximize the participation of a larger multinational community.

According to the Constitution of the Russian Federation, Article 6, Chapter I, citizenship can be secured by following the specific federal laws on this topic. Also, the Constitution allows dual-citizenship and provides the mechanics in this respect. Conversely, article 14, chapter II of the Armenian Constitution stipulates that "Individuals of Armenian origin shall acquire citizenship of the Republic of Armenia through a simplified procedure". However, Armenia does not allow dual-citizenship, which automatically leaves out millions of Armenians living abroad. This stands in contradiction with the above referenced emphasis on "nation" articulated through the concept of placing the "Armenian people" as the vanguard of the Constitution of the Republic of Armenia.

One of the authors of the Armenian Constitution, Vladimir Nazarian, attributes the absence of a dual-citizenship provision to the threat of external influence in the republic's internal affairs. This threat of influence arises from the great number o Armenians who are citizens of countries other than Armenia in comparison with the number of local Armenians (page 28-29). During the period of constitutional discussions, the issue of dual-citizenship became the target of criticism by the Armenian opposition and especially by the Armenian Revolutionary Federation, which has traditionally pursued the interests of Armenians living abroad. In the drafts originally submitted by six different parties (the National Democratic Party, the Democratic Party of Armenia, the Republican Party of Armenia, the Armenian Revolutionary Federation, the Armenian Liberal Democratic Party, and the Union of Constitutional Union) consensus was in favor of dual-citizenship.

Further, there are other limitations that emanate from the absence of dual-citizenship in the Constitution of the Armenian Republic. According to Article 27, Section 2, clause 1 of the Russian Constitution "Everyone who is legitimately within the territory of the Russian Federation has the right to move freely, choose a place of location and residence."

Conversely, the Armenian Constitution - Section 2, Article 28 - accords that right to citizens only. The right to property is also limited in Armenia. Article 28, Section 2 states that "Foreign citizens and stateless persons do not enjoy the right of land

ownership except in cases provided by law," whereas the Constitution of the Russian Federation does not place such restriction on ownership.
There also are differences in the domain of citizenship and political rights of parties and public associations as stipulated by constitution. The basic laws of the Russian Federation are rather liberal in defining the activities of political parties and other public associations.
Clauses 3 and 4 of Article 13, Chapter 1, of the Constitution of the Russian Federati political diversity and a multiparty system are acclaimed in the Russian Federation and all public associations are equal before the law. Further, Clause 1, Article 30, Chapter 2 defines that every person possesses the right to association and freedom o participation in public associations. However, the Constitution of Armenia while making provision for a multi-party system in Article 7 of Chapter 1 goes on to segregate public associations from political parties in Article 25 of Chapter 2. According to Article 25, "Every individual has the right to found and become a member of an association. Whereas in the case of political parties, the right to for and join a them is restricted to citizens only." In other words, members of associations functioning in Armenia can be both the citizens of the Republic of Armenia and residents having other than citizenship status, while the participation in parties is limited to the citizens of the Republic only. The Constitution of the Russian Federation remains unwavering to Article 22 (1966) of the Covenant on Civil and Political Rights, while the Constitution of the Republic of Armenia departs from it
This Constitutional provision was stipulated in the Declaration of Independence of Armenia and was component of the Constitution, which was adopted at that time. The Supreme Council of the Republic of Armenia had placed such a restriction emphasizing that it would prevent the CPSU's (Communist Party of the Soviet Union) from "leading and directing the role of society." Although the above referenced provision became devoid of its original intent and meaning upon the dissolution of the USSR, it was nevertheless preserved in the Constitution adopted on July 5, 1995. Subsequently, this restriction had its mark in the July 5, 1995 injunction banning the Armenian Revolutionary Federation from activity in Armenia given that the latter had members living abroad not only in the rank and file but also in the leadership of the party. This restriction will be enforced as long as the concept of dual citizenship is not adopted.
The Armenian Constitution also emphasizes the sovereignty of the state. One of the important aspects is that priority is now given to civil rights and freedoms in both the Constitution of the Republic of Armenia (Article 4) and that of the Russian Federation (Article 2). This is contrary to the class 'hegemonies' and collective rights and interests articulated in the USSR Constitution. Both current constitutions follow the language of the internationally adopted instruments in the sphere of human and civil rights, though they sometimes use different articulation.
The principal difference between the Constitutions of Russian Federation and the Republic of Armenia - the existence of a separate Chapter on the federal structure o Russia in the former - can be understood by the unitary structure of the Republic o Armenia and federal structure of the Russian Federation. In the former Soviet republics problems regarding the choice of a system of governance surfaced during the period preceding the collapse of the of Soviet Union. This issue became more and more important with the increase in self-governance. If in the beginning the preference was for the "parliamentary" system, after the adoption of their respective Constitutions the newly independent states adopted the "presidential" administrative system. The constitutions discussed in this analysis have both ratified by election of

the highest legislative body (the bicameral Federal Assembly in Russia and the mono-chamber National Assembly in Armenia) and the President as the highest authority in the country, i.e., representing the former mandates. Both constitutions define the President's position and role.[45] They also address the order of election and resignation[46] and the jurisdictions and interrelations with the branches of power.[47]
The Constitutions of both Armenia and Russia provide for the separation of powers between the President and the parliament. The parliament, which is clearly vested legislative power, creates the legislative order in the country by enacting new laws, whereas the President executes the laws within the established framework, participating in the legislative activity only in the last phase by signing new legislation into law.
The Constitutions of both countries prescribe president-parliament inter-relations on the basis of similar principles. The differences result from distinctions in structure - i.e., the single-chamber and bicameral structures of the Armenian and Russian parliaments, respectively. In both cases these relations are anchored in the President's right to veto and the parliament's right to override the presidential veto; the President's authority to dissolve the parliament (in Russia only the lower chamber); and the parliaments' privilege to impeach the President.
In spite of several differences, there are similarities in the jurisdictions of both countries' presidents and parliaments vis-à-vis the appointment of the executive power and its head. According to clause 1, Article 83 of the Constitution, the President o the Russian Federation appoints the Prime minister with the consent of the lower chamber of the State Duma, while in the case of the Armenian Constitution, clause 4 of Article 55, the President solely appoints the Prime Minister. But Article 74 stipulates that within a period of twenty days from the formation of the new government and, similarly, within the same time frame from the formation of the National Assembly, the President must submit its agenda to the National Assembly for a vote of confidence. In the event of failing to secure the National Assembly's vote of confidence, the government resigns and the President appoints a new Prime Minister.
As for the election of the Prime Minister, both Constitutions, at least in theory, provide the same opportunities to the Parliament vis-à-vis the election of the Prime Minister. The Armenian Parliament consents or rejects the Prime Minister's appointment together with the full complement of representatives of the executive branch. Similarly, the bicameral parliament of the Russian Federation has the same privileges vested in the State Duma's professional arm. The non-professional counterpart of the Russian Parliament, the federal council, does not participate in the confirmation of the Prime Minister, in accordance with the principle of separation o jurisdictions. The differences in process lie in the fact that the State Duma of the Russian Federation must confirm the Prime Minister nominated by the Presiden whereas Armenia's National Assembly must express its " confidence" in the Prime Minister within period of twenty days. This difference is perhaps only psychological, but it is obvious that a non-confidence vote expressed within 100 days of appointment could not represent an assessment of the achievements or credentials of the Prime Minister. On the other hand, 20 days is sufficient time to create support for the Prime

[45] Article 80 of the Russian Constitution and Article 49 of the Armenian Constitution
[46] Articles 81-82, 92-93, respectively in the Russian Constitution and Articles 50-54, 57-60 in the Armenian Constitution
[47] Articles 83-92 respectively in the Russian Constitution and Articles 55-56, 61 in the Armenian Constitution

Minister in a non-professional parliament. It seems that the laws of the Russian Federation (a) do not violate the principles of separation of powers; and (b) avoid ambiguous situations with regard to the confirmation of the Prime Minister.
Both the President of the Russian Federation as well as the President of the Armenian Republic are, according to their respective constitutions, responsible for foreign policy and for the appointment of the diplomatic corps. However in the case of the Armenian Constitution, Clause 8, Article 55, the President makes these appointment solely. Clause 12, Article 83 of the Russian Federation's Constitution provides that the President consult corresponding committees or commissions of the two chambers of Parliament in the process of making the appointments of the diplomatic corps.
As for the interrelations of the President and the judicial power, there are marked differences between the Constitutions of the Russian Federation and the Armenian Republic. According to Clause 6, Article 83 of the Russian Constitution, the President simply presents a slate of 19 candidates for the Constitutional Court and the actual appointment is made by the upper chamber of the Parliament, the Federal Council.
However, in the Constitution of the Republic of Armenia the President has more power in the formation of the Constitutional Court. As defined by Clause 10, Article 55 and Article 99 of the Constitution of the Republic of Armenia, the President appoints 4 out of 9 members as well as the president of the Constitutional Court; the remaining 5 members are appointed by the National Assembly. Further, the Presiden of the Republic of Armenia is authorized to terminate the standing of a member appointed by him, order his arrest or subject him to administrative or criminal liability.[48] In line with Clause 6, Article 83, sub-parts 7 and 8 and Clause 1, Article 102 of the Constitution of the Russian Federation, the General Prosecutor is appointed by the upper chamber of the Parliament based on the President's slate. The separati of the General Prosecutor is carried out following the same process. In the Constitution of the Republic of Armenia, however, it is the President who appoints and dismisses the Chief Prosecutor at the recommendation of the Prime Minister.[49] In the Russian Federation, the upper chamber, upon the President's recommendation, also appoints the members of the Supreme Court and the highest magistrate's court. The President also appoints other Federal court judges. Conversely, according to Clause 11, Article 55 and Articles 94 and 95 of the Constitution of the Republic of Armenia, a Council of Justice is established which assumes certain responsibilities with respect to the organization of the judicial branch. The President of the Republic, who also heads the Council, appoints the members of the Council. The Council of Justice presents to the President of the Republic for his consent the slate of appointees representing almost the entire judicial personnel (except for the Constitutional Court).
As for the Constitutional Court, in both the Russian Federation and the Republic of Armenia, it falls under the Judicial system, as opposed to a few other newly independent republics (Moldova, Lithuania) where the Constitutional Court is a separate institution, independent of other branches of power. But in contradicti with Russia, the law limits the number of people who can apply to the Constitutional Court. In Russia that circle includes the President, the government, at least 1/5 of the membership of each of the chambers of Parliament, the judicial powers (the Supreme Court and the highest magistrate's courts), the legislative and executive bodies. In Armenia, however, that number is limited to the President, the government (only as

[48] Clause 10, Article 55
[49] Clause 6, Article 83, sub-parts 7 and 8, Clause 1, Article 102

provided by Article 59 of the Constitution), 1/3 of the number of representatives in the National Assembly, and by discussions surrounding election results.
Summing up the comparative analysis of the interrelations between the President and the other branches of government in these two countries, it can be concluded tha these interrelations contain differences between the Constitution of the Republic of Armenia and that of the Russian Federation. Whereas these interrelationships are based on similar principles, the differences result from distinctions in their parliamentary structures. The Armenian Constitution provides more authority to the President in the realm of relationships with the judicial branch, particularly with regard to his control over the Council of Justice. Whereas, in Russian Federation's Judicial system, the upper chamber's ultimate authority in making appointments is clearly defined, in the Armenian system the National Assembly has no jurisdiction over appointments to the judicial branch except for the right to appoint a few members of the Constitutional Court. Instead, the executive power as represented b the Prime Minister and the Minister of Justice actively participate in the formation o the judicial power, which in effect falls within the privileges of the President of the Republic.
The paper entitled "On Some of the Concepts of the Post-soviet Law-making Activity" is an attempt to highlight the similarities and peculiarities of the newl independent countries' post-soviet legislative activities. In that analytical study, the Constitution of the Republic of Armenia and that of the Russian Federation have served as basis for comparison. However, the scope of the analysis is limited to the framing of fundamental law, structure, the founding of powers, and the interrelationships among different branches of power. The comparison has enabled the partial assessment of the true picture and legislative priorities of the Republic of Armenia and Russian Federation.

Comparative Analysis of the Constitutional Rules of Armenia, Georgia and Azerbaijan

On the adoption and amendment of the Constitutions The Constitutions of these three Transcaucasian republics were adopted at about the same time: on July 5 1995 in the Republic of Armenia; on August 24 1995 in the Republic of Georgia; and on November 12 1995 in the Republic of Azerbaijan.
The laws of Armenia and Azerbaijan are adopted by referendum. In Armenia the entire population of Armenia participated in the referendum; in the case o Azerbaijan, participation was limited to the population of the territory on which the sovereignty of Azerbaijan extends de facto. The Georgian Constitution, on the other hand, was adopted by its Parliament under the auspices of its four year-old referendum (April 9, 1991). Accordingly, the head of state ratified the Constitution, and the members of the parliament approved the text itself, which has taken effec only after the elections of the new parliament and President.
Obviously, the Constitutions of Armenia and Azerbaijan require a referendum for the approval of a constitutional amendment, while the Georgian Constitution can be amended if such a proposal is made by the President of Georgia, and approved by the majority of the parliament or by 200,000 or more voters. The bill amending the constitution is discussed in the Parliament and requires a two-thirds majority to pass.
There are other differences concerning the foundation of the three countries' Constitutions. In the Republic of Armenia, the Declaration on Independence adopted in 1990 serves as the foundation of the constitution and is an integral part thereof. The

same goes with Azerbaijan where the 1991 Constitutional Act on State Independence serves as the foundation of the Constitution. The difference is that the Armenian Declaration on Independence serves as the foundation for a new and independent state, but the Act of Azerbaijan declares the revival of the 1918 statehood. This makes the Republic of Armenia the legal heir of all the previous republics that have existed since 1918, whereas Azerbaijan affirms successorship to the 1918 statehood, thus rejecting the entire Soviet era. As for the Constitution of Georgia, the onl reference included is the Constitution of Independent Georgia, adopted in 1921, which implies the same principle as that of Azerbaijan, i.e., that of recognizing the roots.

On the Foundation of State Power and Structure In all three republics, the people are recognized as the sole and ultimate authority. However, the Republic of Armenia identifies the founders as Armenians similar to Azerbaijan's identification o Azerbaijanis as its founders. In Georgia, the Constitutional reference to the founders is to the citizens of the Gerogia. This provision can be subject to differen interpretations given the fact that Georgia has failed to define "citizenship."
All three countries proclaim themselves as unitary states by constitution. If this seems natural for Armenia, due to the fact that it comprises a single state, it is not the sam for Azerbaijan. By Constitution, Azerbaijan recognizes Nakhijevan as "a state within the Republic of Azerbaijan." In the case of the Republic of Georgia, the status o Abkhazia, Osetia, Ajaria and other such autonomies are not recognized under a unitary state. Sub-part III of Article 2 of the Georgian Constitution simply makes reference to "the reviving of Georgia's territorial jurisdiction." The Georgian-Abkhaz, the Georgia-Osetia negotiations and a number of publications in the Georgian press suggest that Georgia may, in the final analysis, resign from having a unitary structure and convert to a federal system. This is relatively easier in Georgia given the provision for constitutional amendments, whereas in the case of Azerbaijan, even if a political solution were to be found (concerning the issue of Karabakh), it would be more difficult to resolve it legislatively.

The President of the Republic: Election and Impeachment

In these three Transcaucasian states power is distributed over the legislative, executive and judicial branches in a manner consistent with the systems of democratic societies. In all three, a system of presidential government is adopted by the Constitution. But there are still some differences among the three worth exploring. In all three republics the people elect the President. By the Georgian Constitution presidential elections are conducted if at least half of the number in the voters' register participate. The President is elected if he receives more than half of the votes cast, that is if he gets at least 25 percent +1 votes. The Constitutions of Azerbaijan and Armenia do not place such limitation. The President of the Republic of Azerbaijan is elected by a two-thirds majority of votes cast and the President of the Republic of Armenia is elected by a simple majority of votes cast.
There exists a process for impeaching the President in all three countries. In all three, impeachment must be approved by the absolute majority of the highest body of the country's legislative authority, the Parliament (in Georgia and Armenia a 2/3 majority is required, in Azerbaijan 95/125 votes is required). In Armenia impeachment is pursued for reason of "high treason or other serious crimes by the President," and must be initiated by more than half of the members of Parliament and ratified by the

onstitutional Court. In Georgia, in addition to the above-mentioned reasons for impeachment, it is also mentioned that one-third of the delegates must agree to begin the process of impeachment. Responsibility for the verification of the crime falls on the Constitutional Court in the event of a constitutional crime and on the Supreme Court if the allegation is treason or other crimes. The President of Azerbaijan is removed from office "for serious crime" by initiative of the Constitutional Court, and subject to the judgment of the Supreme Court. The Mili Mejlis (Parliament) can fai to discuss the issue at all, as a result of which the charge is considered null within two months. Based on this fact, one may deduce that the President's removal from office, which is a rather difficult process in itself, becomes more obscure in the Republic of Azerbaijan. (Given the requirements of judgment by two courts by a two-thirds o votes or better, absence of parliamentary authority to take initiative for impeachment, two-month limited term to discuss the problem). The process is relatively easier in Georgia where the agreement of one-third of the members of Parliament is sufficien for taking the initiative, the investigation carried out by one body, separated according to the nature of the charge. If we review these provisions along those of presidentia elections, we find that the most democratic process is that of Georgia among these three Transcaucasian states.

The President and the Executive Branch

According to Article 69 of the Constitution of the Republic of Georgia, the President is head of the Republic and "prescribes... the activities of state authorities in accordance with the Constitution." In other words, the President plays the role o arbiter vis-à-vis the different branches of government. At the same time, he is head of the executive branch.

The President of the Republic of Azerbaijan, per Article 6 of the Constitution, is also head of state, "represents the state within the country" and is the guarantor of the autonomy of the judicial power (Article 8). Notwithstanding the relative ambiguity of this definition, it is assumed that representing the country "at home" means that the President of the Republic of Azerbaijan also plays a role in the interrelationships among the branches. As in Georgia, the President of Azerbaijan also administers the executive branch.

The President of the Republic of Armenia does not have the function of head of the executive branch. Instead, his role is one of arbiter vis-à-vis the branches of power. Article 49 of the Armenian Constitution, which is the only article that articulates the President's power, states that "the President of the Republic of Armenia ensures that the Constitution is upheld and secures the regular activities of the legislative, executive and judicial authorities."

The Constitution of the Republic of Georgia does not provide for a Prime Minister (the management of the government office is implemented by the State Minister who has no other jurisdiction). The list of government officials as proposed by the President is presented to the Parliament for its consent, which requires a majority vote of those present provided that number is no less than 1/3 of the total number of representatives. In case of failure by Parliament to confirm, the President has the right to propose the same candidate for Minister, one more time. If this is not approved in the second round, the President must change the proposed candidate. The Ministers' removal from office falls within the purview of the President, but in certain cases (in the event of a breach of the Constitution or other crime) the Georgian Parliament has the jurisdiction to remove a minister from office by impeachment in

line with Articles 63 and 64. Although the Constitution of Azerbaijan makes reference to the position of Prime Minister, the authorities vested in the latter are limited. In accordance with Article 130 of the Constitution of Azerbaijan, the Prime Minister's principal role is to preside over Cabinet sessions. The President of Azerbaijan appoints both the Prime Minister and the Ministers. The President coordinates the appointment of the Prime Minister with the Milli Mejlis (parliament). The same article contains such other stipulations that the parliament's consent seems to be a symbolic gesture. The candidacy of the Prime Minister, as nominated by the President of Azerbaijan, should be discussed within a week from nomination, otherwise it is regarded as "confirmed". And in the event that the parliament fails to confirm the candidates proposed by the President for three consecutive times, then "the President of Azerbaijan can appoint the Prime Minister of the Republic of Azerbaijan without the consent of the Milli Mejlis." It is difficult to assess the effects of this contradiction, outside of the fact that it renders the Parliament's participation in the appointment of the Prime Minister meaningless.

According to the Constitution of the Republic of Armenia (Article 85) the executive power is vested in the government of the Republic. The President, or by his delegation, the Prime Minister, calls and conducts meetings of the government. The Prime Minister, in line with Article 87, also manages the routine activities of the government. The Prime Minister is appointed and dismissed by the President of the Republic. As soon as the government is formed, it submits a proposed program to the National Assembly seeking its vote of confidence. If within 24 hours from the request for a vote of confidence the parliament fails to consider the matter by consent of 1/3 of the delegates, the vote of confidence can be considered automaticall granted. Otherwise, the matter comes up to a vote and requires the consent of at leas half the number of representatives for a vote of non-confidence. The Parliament can then demand the resignation of the government by consent of more than half of the delegates at its convenience (except in the event of marital law). Therefore, the legislative power in Armenia has more avenues to counterbalance the executive power than what is provided by the Constitution of Azerbaijan. Georgia's parliament, on the other hand, has even more jurisdiction given that the ministers have to be individually confirmed by the parliament.

The President and the Legislative Power

The first and most important conclusion drawn from this comparison is that in the republics of Georgia and Azerbaijan, in spite of the existing presidential system, the constitutional provisions of checks and balances govern the interrelations between the President (or executive branch) and the parliament (or legislative branch). This produces a more powerful legislative branch than the executive branch. In both countries, this stems from the authority of the parliament to impeach the President and the absence of an equivalent authority vested in the President to dissolve the parliament.

Whereas the Constitution of the Republic of Armenia fails to grant the President the authority to represent the executive power, it vests in the President much broader authorities with respect to his relations with the legislative branch. In line with Clause 3, Article 55 of the Constitution of Armenia, the President can dissolve the National Assembly at any time (except during the last six months of his term) upon consulting the President of the National Assembly and the Prime Minister. Of course, this is a far easier process than the impeachment of the President by the Parliament.

Of importance in the interrelationship between the President and the Parliament is the provision to pass or reject new laws. In accordance with the Constitution of the Republic of Armenia, the National Assembly forwards an adopted law to the President as proposed by those having authority in legislative initiative. Within a period of 20 days, the President either returns the law along with his objections or signs it into law. The Parliament can reject to consider the President's objections b the same amount of votes as were cast for its enactment. Subsequent to these consecutive legislative approvals, the President must sign the act into law. Conversely, the Parliament of Georgia needs a larger proportion of votes to override the President's objections, i.e. three-fifths of the number of representatives. Similarly, when the legislation is passed twice it becomes law and even if the President refuses to sign it, the law can be published with the signature of the President of the Parliament.

It is similarly provided by the Constitution of Azerbaijan that to overcome the objections of the President in a second debate of the parliament a larger proportion of votes is required. If the law was passed by no less than 83 votes (63 for bills o routine nature), then 95 votes are required to override it (83 for bills of routine nature). This makes the laws of the Armenian Republic more conducive to the adoption of new laws as compared to the two other Transcaucasian Republics.

As to the parliament, it is mono-chamber in all three republics (according to Georgia, there is the intent to convert to a bi-cameral system after the confederation of the stat territories by electing the Senate from the local representatives). In Azerbaijan and Georgia, the parliament is formed on the basis of majoritarian principles. But here there is a flaw in Azerbaijan's Constitution in that, unlike Georgia's assertion of the proportion required for confirmation (150 proportional and 85 majoritarian), the constitution of Azerbaijan simply states the principle, without providing the required proportions or clarifying how it would be regulated.

The constitution of Armenia does not deal with the principle of formation, and simply makes reference to the total number of delegates.

The President and the Judicial Power

The Constitutions of all the three republics of Transcaucasia articulate in genera terms the principles for ensuring the autonomy and equity of the judicial power. But further analysis reveals that the degree of autonomy of the judicial power differs from one country to the other especially with regard to the appointment and dismissal o judges. By the Constitution of Azerbaijan the country's judicial power is vested in the Constitutional Court, Supreme Court and courts of general jurisdiction. The members of Constitutional Court (9 members) are appointed by the parliament upon submission of the slate of candidates by the President of the Republic. Members of the Supreme Court are appointed through the same process. One of the weaknesses of the Constitution of the Republic of Azerbaijan lies in the appointment of members of the courts and judges. The Constitution makes no reference to this type of appointment except by referring the matter to the provisions of Article 142. Conversely, the dismissal of judges is covered in article 159 of the Constitution, which provides that members of the Constitutional court and judges of the Supreme Court are dismissed by a majority of 83 votes of the Parliament and members of the courts of general jurisdiction by 63 votes. The Milli Mejlis also appoints the prosecutor of the Republic of Azerbaijan upon the submission of a candidate by the President o Azerbaijan.

According to the Constitution of Georgia (Clause 2, Article 90), the Parliament elects the Chairman and members of the Supreme Court for a 10-year term by a simple majority of the representatives and dismisses them following a separate law which is not reflected in the Constitution. As for the 9 members of the Constitutional Court, the President of the Republic appoints three of its members; the Parliament elects three others and the Supreme Court appoints the remaining three.
The order to elect, appoint and dismiss judges of the Court of general jurisdiction is defined by law, according to Clause 2, Article 86 of the Constitution. The prosecutor of the Republic of Georgia is elected by a simple majority of representatives of the parliament for a 5-year term upon the President's submission of a candidate.
In contrast with these two Transcaucasian republics, the Constitution of Armenia our analysis reveals a different picture of the judicial power in Armenia. In the latter system of judicial power, Articles 94 and 95 of the Constitution provide for the establishment of the Council of Justice, which is authorized to form the judicia power. The President of the Republic heads the Council of Justice and his two deputies in the Council, along with the prosecutor and the Minister of Justice are officials appointed by him (upon the recommendation of the Prime Minister). The remaining 14 members of the Council are also appointed by the President based on their professional qualifications (lawyer/legal scientist, judge, prosecutor). The Council of Justice forms and presents for confirmation the slate of judges for the general jurisdiction courts. Subsequently, the President of the Republic (according to Clause 11, Article 55) appoints working judges and procurators. The election of the Supreme Court is not provided by the Constitution. It is substituted by the Court o Appeals whose members are appointed by the above mentioned order covering the appointment of the courts of general jurisdiction. The President can solely appoint or dismiss the Prosecutor by recommendation of the Prime Minister. The parliament has certain jurisdictions in the appointment of the members and the chairman of the Constitutional Court: 4 members of the 9 are appointed by the President and the remaining 5 by the National Assembly. The appointment of the chairman of Nationa Assembly by the Constitutional Court must be completed within 30 days. Failure to do so within the allowed window leaves the appointment of the chairman of the Constitutional Court to the President of the Republic.
This analysis allows us to conclude that the Azerbaijani and Georgian Constitutions link the judicial power to the supreme legislative power (the parliament) rather than to the executive power and the President. The Constitution of Armenia, on the other hand, places the control of judicial power more with the President at the time o formation of the judicial branch and in the executive branch in certain other cases. In parliamentary elections, the democratic process ensures plurality and the judicia power is balanced by the legislative branch thus ensuring the autonomy of the judicial power. This is more effective than the system established by the Constitution of the Republic of Armenia, where the President clearly possesses superiority in this arena and various issues related to the Judicial branch are resolved solely by the President o the Republic.

Overview of the Interrelations of the Different Branches of Power in the Recognized Transcaucasian Republics

One of the general phenomena for all three recognized Transcaucasian republics is the superiority of the presidential administrative system. During the collapse of the USSR, the parliament of each of these republics (as well as that of other former Sovie

republics) played a paramount role. Presidential authority was relatively weak in the initial phase of the presidential system of government. This was balanced not only by the parliament but by the Office of the Prime Minister. This was certainly reversed with the adoption of the Constitution in each of these republics and a dominant presidential power emerged after 1995.

In theory, there are more similarities between the constitutions of Georgia and Azerbaijan with regard to the state administrative system than between those two and Armenia. This results from the fact that in Azerbaijan and Georgia the President has a function of the head of the executive power, whereas in Armenia he does not. Based on these facts, in the first two countries the presidential power counterbalances the judicial and legislative branches, in some cases it only has a function of an arbiter and cannot, if you will, dissolve the Parliament or influence the formation of judicial power. Whereas the President of Armenia can do all that by virtue of the authorities vested in him. In the sphere of establishment of power, the parliaments of Azerbaijan and Georgia have far-reaching rights compared to the parliament of the Republic o Armenia. We can therefore deduce that the presidential system in Armenia, with lesser of a role in the sphere of executive power, has nevertheless more abilities in the establishment of a centralized power than that of the other two countries.

It should be mentioned that the Constitutions of Georgia and Azerbaijan, based on our analysis of certain articles of the constitution (structure, the formation of powers) are less developed than the Constitution of Armenia. It is possible that this lack of sophistication arises from objective reasons (Karabakh, Abkhazia and other problems). Nevertheless it represents a certain drawback. And if the Georgian Constitution provides more flexibility with regard to constitutional amendments, then in the case of Azerbaijan this issue is more problematic.

Conclusions on the Legal Political Situation and the Prospects of Development

The choice of an administrative system for the newly independent states did not creat major political debate in the post Soviet period, since the collapse of the Sovie totalitarian regime was thought to be the result of the supremacy of Western democratic values. Consequently, the establishment of democratic order in the newly founded states was viewed as a natural historic development. Regardless, the rapid spread of democratic models did not take place at once. Moreover, the ensuing gap in intrastate and interstate relations after the collapse of the Soviet structures was not replaced by democratic institutions even though nearly all the powers that emerged in the former Soviet territory claimed to have plans for the establishment of democratic societies.

First, a number of interethnic and civil wars broke out in various regions and, on the other hand, the introduction of a market economy gave way to a crimina environment, in spite of the creation of a new legislative order and a new rule of law. The so called "popular democracies" of the third world protected their legitimac through economic endeavors, emphasizing redistribution of wealth, egalitarian production and distribution, dedication to employment guarantees and social planning by renouncing or even abandoning multiparty electoral systems, political and legal rights and the role of parliamentary policy. Western democracies isolate the legal and political aspects of democracy emphasizing electoral and civil rights, and the freedom of political systems and the equality of political groups. When referring to the link between economy and democracy, Western theorists connect the workings o a free market society with a democratic political system.

In the case of Armenia, there are a number of similarities between the national strive for democracy and the process of independence. The new Armenian movement, which adopted national as well as democratic principles, came to power with slogans that acclaimed those principles, but subsequently pursued a free market economy at the expense of certain democratic principles attributing such actions to the transition period. The newly established system in Armenia accords the presidential establishment far-reaching discretionary authority vis-à-vis the legislative, executive and judicial powers. This inequality of power among the different authorities has resulted from the fact that the presidential apparatus has different levels of governance over the three powers. Apart from these three powers, a fourth, presidential power has sprung which is superior to the others.

The necessity to establish a strong presidential government is justified by the specia conditions and critical situation in Armenia. This political thesis is typical of not only the situation in Armenia but is also true of the reasoning of its ruling elite. Together with other examples of a democratic government's forthright interpretations, this political contention is considered one of the pivotal issues for debate on the effectiveness of democratic and authoritarian systems. The question is if the people possess the aptitude for self-government or does human nature not allow such choices of government confirming that only the elite is able to govern the "uncontrollable" masses. Nearly all of the newly independent former-soviet republics are opting for strong presidential government systems. A strong executive power is necessary to be the guarantor of stability in the transition period, as opposed to a slow and unproductive parliament degraded by partisan interests. This is the main argument o supporters of a presidential government. Further, the argument supports the claim that the President is considered the guarantor of human rights and freedoms, since he is the highest arbiter, and his activities promote expeditious decision making and building of the state. In reality it is not possible to consider the "liberal" constitution a prerequisite for the establishment of democracy in the former Soviet territories. The President can successfully centralize power through other means (a power based on nepotism, strong power ministries, partisanship, strong and pro-government media) especially considering that the contesting authorities are weak and disorganized, which is the case with Armenia as well as other CIS countries. Proponents of modern democracies have opted for an intermediate route, according to which over a l time span enlightened and civilized people are able to acquire the characteristics o rational self-government that operates through representative bodies controlled by the people. But this assertion does not reject the viewpoint that during a period o transition certain limitations of democracy also produce positive outcomes in economic development. There is no assertion either that authoritarian regimes provide the only system of government in a transition period. Some examples of past failures of parliamentary democracies (pre-fascist Germany, postwar France) attest to the fact that free elections do not always result in a stable internal condition and ensure economic prosperity. In fact they may even bring antidemocratic forces to power (Middle Asian republics, Algeria, Serbia, Bosnia, Croatia). For states that have newly adopted electoral processes there is no guarantee that this will result in civi consensus, since the prefatory phase of political culture in the post-electoral period would not produce internal or external stability thus excluding political and economic monopolies.

The fundamental question is whether the majority interest upheld by elections can provide a balanced social system and if the interests of different social groups would justify dissension among the people. If we view the question from the standpoint of a

newly independent Armenia, we may find added difficulties. The process o stratification has not yet clarified the division among social classes, though polarization is taking shape with the ruling well-to-do minority along with the social groups assembling around it on one side and groups of oppressed people on the other. The ruling elite, although elected to power, does not represent the interests of the lower class majority and is not committed to assuming the role of guarantor of social welfare. Similarly, the opposition has isolated itself from the lower class majority. But if we assume that there is a working electoral system in Armenia, then the curren situation simply represents a competition for power among the different groups. In any event, since there is an electoral system together with freedom of speech and press, we can discuss the process of democratization. Out of the complex democratic principles only the maintenance of external attributes has a foreign political meaning. One of the rulers' main arguments of the restriction of freedoms is the provision of stability in the country. International organizations qualified the July 5 elections as fair, but not free. The presidential elections did not essentially differ from the parliamentary elections and were likewise criticized by the opposition. But, with regard to the presidential elections, the assertions of infringements by internationa organizations were more based on principle. If during the parliamentary elections the internal political interest and implication were the exclusion of political conflict, in the case of the presidential elections there was political conflict. It is peculiar that the current ruling elite has also taken the same standpoint. One may conclude that the problems of democratization in Armenia are not a matter of priority and politica interests prevail. On July 5, presidential rule was adopted in Armenia and was maintained up until the presidential elections in 1996. But the promise of a stable government did not materialize and gave way to inter-power crisis. To correct the situation, the President made changes in the government by replacing the Prime Minister and other key appointments. The new authorities that came to power in Armenia identified, from the outset, their ideology of national self-determination and democratic rule. They practiced a multiparty system and promoted a process o decision making by voting.

Three factors have contributed to the party system. First, a shift in activity by politica organizations of the Diaspora to Armenia; the indoctrination of nationalistic ideas and reassessment of values; and the recognition that democracy and rule of law form an integral part of the ideologies of the new rulers and of the Armenian politica organizations in general.The political debate on the theoretical aspects of the above-mentioned value systems center around the failure to adopt or apply incorrectly by one party or another.

The creation of balance among legislative, executive and judicial powers guarantees political participation, discretion of action, compliance with the rule of law, and security. The State leadership should provide social integration and create new opportunities for the people. When there is corruption and the rulers have monopoly over economic opportunities, regular people are unable to take part in formulation of government policy. This reflects the prevailing situation in Armenia.

Bibliography of the Implementation of the Grant Program

The theme and framework of the issues mentioned The principal paper is entitled "The Loanability of the Political Reforms in Armenia" and consists of 70 pages. The separation of powers in Armenia is mainly represented by constitutional analysis. It also includes a review of inter-political developments and state structures. This

approach sheds some light on legal issues and also places the issue of separation o powers in perspective.
The Preface represents the stages of the establishment of the Armenian State and the ideology of the new post-soviet rulers in the creation of statehood. The second chapter is completely dedicated to the new system of the separation of powers and analysis of the new Armenian Constitution adopted on July 5. The interrelations among executive, legislative and judicial powers, as well as the legal-constitutional separation, interrelations among the President, Prime Minister, and Parliament are analyzed in the subchapters. The old judicial system is presented in its totality as well as directions for reform under the new conceptual framework. The issue of balancing of the three powers is also presented both from the legal aspect provided b Constitution as well as from the standpoint of use of power. Structural changes in government are presented in the section entitled "Executive power" and different standpoints of organizations and experts are provided in the section on "Legislative power." The last chapter deals with the assessment of the activities of and relations with parties and the opposition. As for the time span covered, this section covers recent judicial reforms in Armenia. It touches upon some aspects of the old syste and the concepts articulated in the framework for judicial reform. This chapter will be amended as the reforms take place. A section in this chapter deals with the structure and the jurisdictions of the Constitutional court, as well as its functions within the President-parliament-Constitutional court arena. The paper presents an account o concrete activities of the constitutional court, such as the investigation and results of the appeal by the opposition presidential candidates following the elections. The degree of autonomy of the judicial power is summed up under a separate heading. The broad jurisdictions of the Council of Justice are also analyzed in this chapter.
The supremacy of international norms and human rights are presented in a separate chapter. Here the conformity of the Armenian Constitution and Criminal code to international standards is analyzed. Additionally, a number of violations of human rights in Armenia are cited. The section entitled "The Right of Free Expression and Plurality" is a continuation of this topic and addresses the laws on free press, the process for improving them, and examples of a number of violations in this arena. number of interpretations of these violations of human rights and free media are cited.
The next chapter is entitled "Decentralization and Centralization, Municipal government and Local self-government, The Administrative-territorial Restructuring". It analyzes the restructuring of the Republic of Armenia into provinces (Marz in Armenian) and the jurisdictions of Governors (Marzpet in Armenian) and heads of communities. The chapter also includes an analysis of the struggle of loca governments for obtaining additional jurisdictions.
A special chapter is dedicated to the presidential elections held on September 22, 1996, taking into consideration the paramount significance of these elections on state enhancements. The inter-political struggle and disputes mainly concern the arguable issue of the President's legitimacy. The conclusions and surveys of different groups of observers are reviewed.
The next three chapters are dedicated to the comparative analysis of the constitutiona orders of the US, France, the Russian Federation, Georgia, Azerbaijan and Armenia. The presidential models are described and their most fundamental basis of government is given. The similarities and differences among the constitutions, as well as the peculiarities in administrative practice are discussed in the sections on the executive, legislative and judicial branches. An attempt is made to find similarities between the Armenian constitutional system and the systems of presidential

governments of the three countries. Comparisons are made of the balance of power among the French, American, Russian, Georgian, Azerbaijani models and the Armenian one. Historical facts are given on the effect of different constitutional provisions and some aspects concerning the evolution of the separation of powers in the above mentioned countries.
In the last chapter, called "The Political situation in Armenia and the Prospect o Development" there is a theoretical analysis based on values and generally recognized practices typical of democracies, civil societies, rule of law, and elections. These poin out possible reasons for political unrest and crisis. The chapter attempts to portray the state of affairs in a future democratic Armenian State.

Sources Utilized and Fact-finding Methodology

The Constitution of Armenia and its laws, literature on law and constitutional rule, as well as the legislation of different countries serve as a basis of comparative study. Meetings with renowned attorneys of the National Assembly of Armenia, the Constitutional Court, the State University, and other scientific institutions have also served as a rich source of information and allowed exchanges of views. The meetings and debates with political figures and attorneys representing the opposition as well as pro-government parties were equally important for information gathering and exchange of views with respect to different state models for Armenia.
The program implementers' participation in seminars, workshops and assemblies of the Constitutional Court, the State University, different parties and NGOs adequately makes possible the debates and various interpretations on the Constitution and separation of powers. The analysts of the Armenian Center for National and International Studies have taken part in the seminars on legal issues held under the auspices of the European Council and the Ministry of Foreign Affairs of the Republic of Armenia.
The grantees have taken part in the process of state construction and legal politica processes in a series of seminars by the Friedrich Ebert Foundation. One of the NATO grantees was dispatched on a business trip to the Stanford Center o International Security and Arms Control (CISAC) in January-March to conduct research. In parallel, the program agreed upon by ACNIS and CISAC, in Stanford, has been possible by NATO grant.
Corresponding literature has been worked out in Stanford libraries referred in the paper, as well as meetings and debates have taken place with American lawyers. The US constitutional order and its comparative edges are studied in the Armenian Constitution.

Abstract

The new Constitution of the Republic of Armenia, adopted by referendu on July 5, 1995, laid the foundation for statehood of the Republic of Armenia. The adoption of the Constitution and the parliamentary elections confirmed the concept of the rule of law, but simultaneously granted the President with powerful leverages. The principles of separation of powers, the people's participation in the government and the democratic freedoms proclaimed in the Constitution were more left as legal standards politically difficult to implement. As soon as Armenia's fundamental law was established, it was used to establish a centripetal presidential system. The presidential powers were applied not for the control of separation of powers and balance, but for the centralization of power at the presidential and executive levels. The mass violations in the electoral processes of 1995-1996 made the role of the parliament non-productive discredited the presidential government system and the people lost trust in the process of elections for the creation of legitimate power. Although after the declaration of independence the executive and legislative powers were quickly formed the reforms did not touch the judicial sphere which remained intact from Soviet times, with minor exceptions.

The emergence of the institute of the Constitutional court is important in view of the July 5 system. It delineates an authority, which begins to act, to implement the highest decision of legitimacy. But the powers of the Constitutional court are not adequate to turn it into a powerful legal authority. The President of the Republic possesses more constitutionally vested powers to influence the judicial branch. The necessity to establish a corresponding judicial system within the framework o constitutional authorities for the protection of human rights and freedoms. The newly elected regime considers these reforms their top priority.

The adjournment of judicial reforms has created an imbalance in the republic and has enabled the executive branch to act indiscriminately. The lack of democratic processes has also played a role in citizens' corruptive behavior. This also presents a great obstacle in the enforcement of the rule of law.

After the President's resignation in February 1998 and the new presidential elections the situation in Armenia has improved. The new authorities elected by the people's active participation and free will inspire hope in government and democratic institutions. The representatives of all the branches of power consider the establishment of democratic order as important as the adoption of new laws and the establishment of commensurate mechanisms.

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