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POLITICAL STUDIES, POLITICAL PHILOSOPHY

RUSSIAN-TURKISH RELATIONS IN THE CONTEXT OF ENERGY COOPERATION

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Abstract

Energy cooperation takes an important place in Russian-Turkish relations, and it is not merely for economic benefits. Its importance goes beyond it and serves as a restraint from direct clashes between the two countries in the context of their competition areas and clashes of interest putting the two countries economically interconnected. Besides, Turkey's geopolitical value in the context of the EU energy crisis also rises as an alternative energy route for the EU to bypass Russia. On the other hand, Russia and Turkey successfully cooperate around common energy route projects, as Russia in its turn is eager to export gas bypassing Ukraine. Taking into consideration the geopolitical processes Russia and Turkey will continue to cooperate in the field of energy which is their main cooperation area due to which they avoid serious tensions and overcome crises in their relations.

***Keywords**:* energy carriers, Russia, Turkey, EU energy crisis, Caspian basin, energy projects competition, energy hub.

Introduction

Due to their multilayered nature, Russian-Turkish relations have long been at the center of research. These relations are traditionally characterized as both cooperation and competitions, as in some directions the two countries see each other as foes while in other directions as cooperators. What is the reason for this two-sided nature of relations? How do they manage to

cooperate while in some regions find themselves opponents? This research is aimed at answering these questions by taking into account Russian-Turkish relations in the economic field and more specifically the energy field.

What constitutes the balance between Russian-Turkish cooperation and competition is the relations in the energy sector where the interests of the two countries mostly coincide. Turkish and Russian perceptions and policies toward energy transit pathways reflect the nature of Russian-Turkish relations in general. The energy cooperation between Russia and Turkey does not take place separately. It is closely connected, arises from, and has its influence on geopolitical processes. Especially the latest activeness in energy cooperation to transit Russian gas to Europe through Turkey is caused by the Russian-Ukrainian war that started in 2022, and tensions between the West and Russia. Meanwhile, in the context of the energy projects to transit Caspian energy resources through the South Caucasus to Turkey and then Europe, Russia, and Turkey compete to gain control over the routes. The cooperation/competition is connected with the fact that on one hand, the two countries seek to gain influence in the South Caucasus and Caspian energy resources, on the other hand, Turkey needs Russia as its main energy supplier and Russia needs Turkey as an alternative route to transit its gas to Europe. Russian-Turkish energy cooperation also very easily fits into Turkey's plans to become an energy hub, for which Turkey is willing to simultaneously participate in Russia's and EU's projects.

Russian-Turkish Competition and Cooperation in Energy Field

Russian-Turkish competition has been manifested in several energy projects. Baku-Tbilisi-Ceyhan Oil Pipeline (BTC) and Baku-Tbilisi-Erzurum Gas Pipeline (BTE), Nabucco, TAP, and TANAP and their Russian (actually sometimes Russian-Turkish) competitors: Baku-Novorossiysk, South Stream, Blue Stream,

Turkish Stream. Most of these programs include the South Caucasus as both a resource-bearing and a transit region. Accordingly, Azerbaijan can be considered one of the recognized resource-bearing states of the region, which has a significant amount of hydrocarbon resources - 7 billion barrels of oil and 1.3 trillion cubic meters of gas (International Energy Agency, 2020), and all three recognized states have or can have the second status.

As for the Caspian reserves, it should be noted that the volumes of these reserves are actually overestimated. Natural gas and oil are exported from coastal states: Russia, Azerbaijan, Kazakhstan, Turkmenistan, and Iran (Veres, 2022). Although the Caspian reserves are quite large, they are very small compared to the Russian and Persian Gulf reserves, where the oil reserves are 10-15 times greater than the Caspian oil reserves. And among the countries of the Caspian Basin, the richest country with gas reserves is Turkmenistan, which ranks 15th among the 20 countries with the largest natural gas reserves (International Energy Outlook, 2005, p. 40). In fact, the Caspian region has become the center of interest of international companies and states, not so much from the point of view of its size, but from the point of view of accessibility (Veres, 2022).

After the collapse of the USSR, Azerbaijan sought to achieve energy independence from Russia. Western companies, including the oil giant "British Petroleum", began to appear in the energy market of Azerbaijan. The next important step was constructing and operating BTC and BTE respectively in 2005 and 2007. It can be said that the Russian-Turkish competition over energy routes is mainly related to the delivery of Caspian energy resources to the international market through routes bypassing Russia with the active support of the West. Such a route is BTC, an alternative to the Baku-Novorossiysk oil pipeline, and BTE, the first gas pipeline bypassing Russia and reaching Europe (Arshakyan, 2019). BTC also competed with the Blue Stream gas pipeline on a geopolitical level, as it was the first step in the implementation of the East-West Energy Corridor. The project

was designed to diversify the energy resources of the EU by bringing the hydrocarbon reserves of the Caspian countries to Europe through the territory of Turkey (Ediger & Durmaz, 2017). The projects planned within the framework of the East-West energy corridor are of great geopolitical importance for the USA in terms of increasing its economic and political influence in the Caspian and South Caucasus regions. Along with it, these projects would also curb the dependence of the Caspian states and also Georgia on Russia.

The projects bypassing Russia are of great importance also for the EU. In order to meet its energy requirements, the EU seeks to implement the "Southern Gas Corridor", for which it has planned several projects. The main elements of that corridor are Nabucco, TAP/TANAP from the Caspian Basin, and currently Azerbaijan in particular. Among these plans, Nabucco, which planned to deliver the gas of Iraq, Azerbaijan, Turkmenistan, and Egypt to Austria through Turkey, was not realized. Nabucco is believed to have failed mainly for two reasons. Turkey, as a transit country, demanded 15 percent of the gas at low prices for domestic use or export, and the project's economic appeal to investors declined. From the beginning, Nabucco was only a geopolitical project, it did not take into account the existing realities and was doomed to failure, because apart from Azerbaijan's 16 billion cubic meters of gas, of which 6 billion cubic meters are intended for Turkey's internal use, it could not be expected to have gas flow from any other source in the foreseeable future (Torosyan, 2020). Instead, Turkey and Azerbaijan agreed to build TANAP, which would be the first gas pipeline from Azerbaijan and Central Asia bypassing Russia and supplying gas to Europe.

In fact, the volume of gas under this project (10 billion cubic meters per year, which can rise to 20 billion cubic meters (Wiley Online Library, 2020)) is not enough to meet Europe's energy requirements, but it also becomes one of the steps in the implementation of the "Southern Gas Corridor", which would maintain energy supply independence of the Caspian countries

from Russia. If Azerbaijan manages to supply 40-50 billion cubic meters of gas, then it will be possible to convince Kazakhstan and Turkmenistan to join the “Southern Gas Corridor”.

However, Russia, in turn, is taking steps to increase its weight in Azerbaijan's energy market and in general in the implementation of the “Southern Gas Corridor”, a project whose original goal was actually to push Russia out of energy projects. So, in 2010 as a result of the agreement reached between the Russian "Gazprom" and the Azerbaijani "SOCAR" companies, the volume of gas purchased by Russia from Azerbaijan reached 1 billion cubic meters, and in 2011 2 billion cubic meters. Thus, Russia reduces the volumes of Azerbaijani gas so that they are not enough for the implementation of the “Southern Gas Corridor project” (Davtyan, 2019).

Another important step toward the realization of the Southern Gas Corridor is the agreement between the EU and Azerbaijan on 18 July 2022, according to which Azerbaijan should deliver 20 billion cubic meters of gas to the EU annually by 2027 (European Commission, 2022). Thus, looking for alternatives and turning its eyes to the Caspian basin, Brussels and Baku agreed that Azerbaijan would export 12 billion cubic meters of gas to Europe, instead of the previously agreed 10 billion, and by 2027, as mentioned, it will increase that number to 20 billion (O’Byrne, 2022). Considering that in 2021 8 billion cubic meters of gas was exported from Azerbaijan to Europe, which is a little more than 2 percent of the total volume of gas imported to Europe during that period, and Russia's share in it was 45 percent, it can be said that this transaction cannot be of significant importance from the point of view of resolving the complicated situation in Europe (Torosyan, 2022). Besides, to supply even 12 billion cubic meters of gas, Azerbaijan is going to buy an additional 1 billion cubic meters from Russia. Due to the lack of Azerbaijani reserves, Russia, in its turn, sells gas to Azerbaijan. According to the contract signed between "Gazprom" and "SOCAR" in November 2022 "Gazprom" will deliver up to 1 billion cubic meters of gas

to Azerbaijan until March 2023 (TACC, 2022a). This is done on a seasonal gas swap basis: gas supply from Azerbaijan to Russia takes place in summer, and from Russia to Azerbaijan in winter (TACC, 2022b). Such moves by Russia politically mean that Russia is creating an opportunity for the "Southern Gas Corridor" to be formally launched as an Azerbaijani project. In practice, meanwhile, "Gazprom" gets some control over Azerbaijan's gas project. The agreements reached between "Gazprom" and "SOCAR" remove the issue of Russian-Azerbaijani competition in the European gas market. It becomes obvious that the "Southern Gas Corridor" will not work without the support of the Russian side. And this means that the interest of European countries and especially the USA may decrease. The West sponsors this Azerbaijani project as an alternative to the Russian gas monopoly. Now, that it is clear that Russia is becoming the raw material sponsor of the "Southern Gas Corridor", the geopolitical attractiveness of the project is greatly reduced (Atanesyan, 2017). In addition, Russia gains another leverage over Azerbaijan.

Thus the incomplete implementation of the "Southern Gas Corridor" does not allow the EU to get rid of its dependence on Russian gas. Due to the renewed Ukrainian crisis, the EU is once again facing serious energy security problems. The strained relations with Russia and the sanctions against it, force the EU to give up Russian gas, which provides most of its requirements, while at the same time having no realistic alternatives. Another problem is how well they succeed in not buying Russian gas because as a result of Russia's energy projects, the EU eventually buys Russian gas at a higher price. Considering Azerbaijan’s lack of reserves, it seems that the purpose of the corridor is not being realized. As a result, Turkey gets the opportunity to realize its plans to become an energy hub.

As for Turkey's plans regarding energy reserves, those states that do not have their own energy resources and are dependent on other countries should include this issue in their foreign policy

agenda, taking into account that energy issues can lead to cooperation or conflict between states. And although Turkey has no hydrocarbon reserves and the dependence on external resources is 74%, while the country's energy requirements are increasing by 4-5% per year, it is located between the regions with such reserves and Europe, which increases the importance of the country in energy projects (Blockmans, 2015).

The role of Turkey is especially increasing for Europe due to the EU gas crisis. The issue of transporting natural gas to Europe has become of central importance in the geopolitical competition unfolding in the Eurasian center. The one-time two-component economic problem of natural gas transport (harmonization of demand and supply) is supplemented by a third, transit component, and is transformed into a complex, multi-factor, and multi-vector geopolitical and geo-economic problem (Torosyan, 2020). Although Europe is often looking for alternatives to reduce dependence on Russian gas, such as its own production of shale gas, and liquefied natural gas, these are not realistic to meet the demands, and the main (cheap) supplier remains Russia (John Wiley & Sons Ltd., 2017). In 2021, EU gas consumption was 397 billion cubic meters (Statista, 2023), of which 150 billion cubic meters were received from Russia (Reuters, 2022). At the same time, Russia depends on Europe as the main consumer of its gas (Kim & Blank, 2015). In this context, Turkey's role is increasing bilaterally. Europe wants to diversify the sources of energy resources, and Russia wants to diversify the consumers of these resources.

Although Russia and Turkey are competing over a number of energy projects initiated by the West, they are successfully cooperating on Russia-Turkey direct gas transit routes. Thus, an example of such a successful project is the “Blue Stream”, discussions around which began in 1997, and finally, the gas pipeline was put into operation in 2003, operating until today. It exports gas from Russia to Turkey through the Black Sea with an annual capacity of 16 billion cubic meters (Hydrocarbons

Technology, 2023). As a result of the implementation of this project, Turkey's dependence on Russian gas increased enormously. In particular, as a result of the implementation of the "Blue Stream" project, Turkey became the second largest importer of Russian gas after Germany. As a result of the construction of that gas pipeline, the main political and economic goal pursued by Moscow was to keep not only Turkey but also the entire South-East Europe dependent on its energy resources. Through this project, Russia planned to become the main energy supplier for both Southeast Europe and the entire EU. In addition, one of the political goals of the “Blue Stream” project for Russia was to prevent the efforts of competing countries to use Turkish territory to transport gas from the Middle East and the Caspian region to Europe. Basically, the construction of the "Blue Stream" gas pipeline was in the strategic interests of both Russia and Turkey (Arshakyan, 2019). “Blue Stream” can also be perceived as a competing project of the East-West gas corridor. The planned projects within the framework of that corridor, which would transport Turkmen gas through the Caspian Sea to Azerbaijan and then through Turkey to Europe, posed a greater threat to Russia than BTC/BTE. As a result of the competition, both “Blue Stream” and BTC were built, and Russia succeeded here because The West was forced to "sacrifice" the idea of the East-West energy corridor. And Turkey only benefits as a result, because it becomes both a target and a transit country of these programs.

On the other hand, Turkey and Russia are deepening economic ties due to the sanctions against Russia, which Turkey has not joined. Although Turkey condemns the war started against Ukraine, it first expressed its opposition to the NATO membership of Finland and Sweden, and then continues cooperation with Russia, especially regarding the "Turkish Stream". This, of course, puts additional tension in Turkey-EU relations, but the EU has no alternatives to receive gas (The New

York Times), and both Turkey and Russia benefit from this project.

Russia started to export gas to Turkey through the bottom of the Black Sea through the "Turkish Stream" put into operation in 2019, and then a part of the gas is exported to Europe. Turkey's growing energy demands and Russia's willingness and desire to diversify gas export routes contributed to the implementation of that deal. Before "Turkish Stream", however, the parties were working on another project, "South Stream". It was supposed to export the gas through the Black Sea to Bulgaria and then to Europe, bypassing Ukraine. Although it also bypassed Turkey, it passed through the part of the Black Sea that is under Turkish control. This project did not materialize due to the tensions around Ukraine and, to a large extent, the efforts of the USA and the EU (Kubicek, 2020).

In 2014 during his visit to Turkey, V. Putin announced that instead of “South Stream”, another gas pipeline would be built to export gas to Turkey, which was named “Turkish Stream”. It replaced the "South Stream" and acted as a rival project to TANAP. In the framework of this, Russia also made a 6% gas price discount for Turkey, which Turkey was so eager for, and the volume of the “Blue Stream” was increased by 3 billion cubic meters (Ediger & Durmaz, 2017). The planned gas pipeline was estimated at 40 billion dollars (Ediger & Durmaz, 2017) and should have had 60 billion cubic meters of gas capacity with four parallel gas lines (Svarin, 2015). The cancellation of “South Stream” and the launch of “Turkish Stream” by Russia can also be perceived as a punitive move against the EU using Turkey, which actually successfully benefits from both Russian programs and European programs for the export of Caspian resources (Blockmans, 2015).

The “Turkish Stream” project is more than beneficial to both sides. Turkey becomes both a transit country and gets an opportunity to meet its internal energy needs, while Russia, bypassing Ukraine, exports gas to Europe. At the same time, it

brings Russia and Turkey closer, establishing strong economic ties. Although Turkey is becoming more dependent on Russia, as an energy transit zone, it is increasing its geopolitical importance.

Energy cooperation in Russian-Turkish relations is not limited only to the construction of gas pipelines. The two countries also cooperate on the creation of nuclear energy. Among its results are the agreements on cooperation on the construction and operation of the "Akuyu" nuclear power plant and the construction of the Samsun-Ceyhan oil pipeline. The first of them is a Russian plan, and the second is a Turkish plan (Ediger & Durmaz, 2017). According to the 2010 signed agreement, Russia will own 50% of the shares, and there are a number of beneficial factors for Turkey (Hirst & Isci, 2020). It is planned that it will be operated in 2023 (Kubicek, 2020).

Conclusion

As can be seen, although Russia and Turkey are competitors in the context of the transportation of energy resources from the Caspian Basin, Turkey, in the absence of its own energy resources, is ready and/or forced to cooperate with Russia in order to meet its internal energy requirements and also in the projects to deliver Russian gas to Europe through its territory. Bright examples of this are the projects planned around the Black Sea: "South Stream", "Blue Stream" and "Turkish Stream" promoted by Russia.

At the same time, Turkey also plays an important role in Western plans to deliver Caspian resources to Europe, particularly in the creation of the "Southern Gas Corridor". The projects included in that program are directly connected to the South Caucasus (perhaps only Armenia is left out of the energy programs), and the involvement in them allows Turkey to ensure a significant presence in the South Caucasus. At the same time, the energy resources planned to be exported through the "Southern Gas Corridor" do not satisfy either Europe or Turkey. Here, Russia's inevitable influence on the transit of hydrocarbon

resources and its undoubted importance for Europe as the largest source of gas supply becomes evident. Russia manages to establish control over the transportation of Caspian resources and sell its own gas, involving Turkey in the projects. Perhaps the only successful operating projects bypassing Russia that the West has succeeded in are BTE and BTC with very limited volumes. And in other fields of competition, first Russia and then Turkey "win".

However, Turkey's high energy dependence on Russia resulting from Russian energy projects is a problem, and this was especially pronounced when Russia applied sanctions against Turkey after the shot down of the Su-24 by Turkey in 2015. However, on the other hand, such energy interdependence motivates the two states to avoid direct conflicts, from the point of view of realism, of course, not excluding the neglect of such interdependence if necessary.

On the other hand, the geopolitical importance of Turkey is highly important for Europe, one of whose priority problems is the elimination of energy dependence on Russia. The competition between Russia and Turkey (as the focal point of the West's gas export plans) is expressed in the context of the control over transport routes of the Caspian energy resources and thus maintaining significant influence in the region. Such Western programs as "Nabucco", TAP/TANAP would enable Europe and Turkey to reduce their energy dependence on Russia, and Turkey, separately, to act as an energy corridor. However, the implementation of "Nabucco" is still not visible under the current conditions, both due to the insufficient resources of Azerbaijan and the cost of transporting gas from the Caspian countries, in particular, from Turkmenistan, through the bottom of the Caspian Sea and then along the already known route. At the same time, the proposal of the "Turkish Stream" made by Russia becomes more real for Turkey from the perspective of the same energy corridor, but it makes it more dependent on Russia's energy resources.

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MILITARY - TECHNICAL COOPERATION BETWEEN THE REPUBLIC OF ARMENIA AND THE REPUBLIC OF INDIA

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Abstract

Diplomatic relations between the Republic of Armenia and the Republic of India were established on August 31, 1992. *Last year political-economic relations between the Republic of Armenia and the Republic of India grew fast, which also contributed to the development of military-technical cooperation between the two states.*

Especially, military-technical cooperation grew in 2022. This is determined by the fact, that after the invasion of the Russian armed forces of Ukraine, the Russian Federation cannot realize military contracts of supplying armament to Armenia. As a result, Armenia is trying to find other suppliers for recovering its heavy losses of military equipment, during the 44-day war. At the same time, India has been making focused efforts to increase defense exports in the scope of the 'Make in India' program.

In fact, Armenia becomes the main importer of Indian-made weapons. The military-technical cooperation between the two states creates a possibility for Armenia to get access to new military technologies, including western advanced technologies, which are used to develop the military-industrial complex of India.

Keywords: military-technical cooperation, defense sector, arms trade, India, Armenia.

Introduction

For centuries Armenia and India have had old historical and cultural relationships. Particularly, an Armenian strong community was formed in India. Achal Kumar Malhotra, a former Indian ambassador to Armenia, speaking about the Armenian diaspora in India, emphasizes its role in the history of India. "Even hundreds of Armenians lived in India during the medieval and British periods. They built at least five to six churches in India and the churches constructed by them in Chennai and Kolkata are still intact. At a time when India was heading towards Independence, they misread the situation and miscalculated India's future" said Malhotra (Rao, 2018).

Diplomatic relations between the Republic of Armenia and the Republic of India were established on August 31, 1992 (Official website of the MFA of the RA, 2023). During last year political-economic relations between the Republic of Armenia and the Republic of India grew fast, which is also contributing to the development of military-technical cooperation between the two states.

The potential of military-technical cooperation between the two states

The first steps in the defense sphere between the two states were done at the beginning of the 2000s. Particularly, the "Memorandum of Understanding on Cooperation in the defense sphere between the Ministry of Defense of the Republic of Armenia and the Ministry of Defense of the Republic of India" was signed on 23 May 2003 (Official website of the MFA RA, 2023). Relations between the two states in this sphere were activated after military aggression against the Nagorno-Karabakh Republic by Azerbaijani armed forces in April 2016. On 13 December 2016, the Secretary of the National Security Council Yuri Khachaturov received the Extraordinary and Plenipotentiary Ambassador of India to the Republic of Armenia Yogeshwar Sangwan. They concurred that Armenia and India have wide

opportunities and unused huge potential for the development of cooperation in a number of prospective areas, including the security sector (Official website of the OSCRA, 2016).

During May 16-20, 2017, the delegation of the Ministry of Defense of the Republic of Armenia was in India. As a result, agreements have been reached to cooperate in military, education, and military-technical areas between the Head of the Department of Defense Policy of the Ministry of Defense of the Republic of Armenia Levon Ayvazyan, and Secretary of Planning and International Cooperation of the Ministry of Defense of the Republic of India Shambhu Kumaran, on May 20, 2017 in New Delhi. (Saroyan, 2017). These agreements were strengthened, when Shambhu Kumaran arrived in Yerevan and met with Vigen Sarkisyan, Minister of Defence of the Republic of Armenia, on March 28, 2018 (Official website of the MOD RA, 2018).

Since 2018 Armenia has shown an interest in the Pinaka multi-barrel rocket launchers. It was developed by Armament Research and Development Establishment (ARDE), which is a laboratory under the Defence Research and Development Organization (DRDO). Extensive firing trials of rocket launchers were carried out for the delegation of the Ministry of Defence of the Republic of Armenia at Pokhran in Rajasthan in July 2018 ("The Times of India", 2018).

On September 25, 2019, Prime Minister of the Republic of Armenia Nikol Pashinyan and Prime Minister of the Republic of India Narendra Modi held a bilateral meeting on the sidelines of the 74th United Nations General Assembly in New York: During the meeting, the leaders of the two states discussed the deepening relationship in different areas. Modi thanked Pashinyan for Armenia's consistent support for India's candidature for the permanent membership of an expanded UN Security Council ("The Times of India", 2019).

At the same time, the Armenian side was interested in the Swathi counter-battery radars, which were developed by the

Defence Research and Development Organization (DRDO) and manufactured by Bharat Electronics Limited (BEL). As a result, India has bagged a deal worth $40 million to supply four radars to Armenia and this agreement became a big achievement for the 'Make in India' program in the defense sector ("The Times of India", 2020).Interesting fact. Russian and Polish firms participated in an announced tender too and, each of them offered its products; Russian - Zoopark-1, Polish - RZRA-201 Liwiec (Nersisyan, 2020), but the Armenian side decided to choose an Indian system. However, the Indian radars were supplied to Armenia in early 2021 (CAWAT, 2022,4) and therefore these systems were not used during the 44-day war of 2020 in Nagorno-Karabagh. Thus, these circumstances helped artillerists of the Azerbaijani armed forces to get an advantage over artillerists of the Armenian armed forces in the counter-battery fight.

Military-technical cooperation between the two States especially grows during 2022. Because after the invasion of the Russian armed forces of Ukraine, Russian Federation cannot realize military contracts of supplying armament to Armenia. As a result, Armenia is trying to find other suppliers for recovering its heavy losses of military equipment, during the 44-day war. In its turn, India has been making focused efforts to increase defense exports, with a target of Rs 35,000 crore ($4,4 billion) worth of equipment to be sold abroad by 2025. in 2021, annual defense exports were close to Rs 13,000 crore ($1,62 billion) (Pubby, 2022a. See also "BMPD", 2022a). Besides India in this way tries to counterbalance its enemy state Pakistan, which is part of the Turkey-Azerbaijan-Pakistan geostrategic pivot and one of the key suppliers of arms to Azerbaijan.

On October 13, 2021, the Prime Minister of the Republic of Armenia Nikol Pashinyan received the Foreign Minister of the Republic of India Subrahmanyam Jaishankar, and his delegation. In his welcoming speech, Prime Minister Pashinyan noted. "I hope your visit will be historic not only in terms of statistics but

also in terms of content". Nikol Pashinyan and Subrahmanyam Jaishankar considered developing ties in the spheres of infrastructure, tourism, pharmaceuticals, information technologies, diamond making, and other spheres (Official website of The Prime Minister RA, 2021). On April 25, 2022, the Foreign Minister of the Republic of Armenia Ararat Mirzoyan, who was in New Delhi for participating in the "Raisina Dialogue" conference,* met with the Foreign Minister of India Subrahmanyam Jaishankar. Ministers commended the high level of political dialogue between the two countries and discussed prospects for further development of relations in the fields of information technologies, aviation, education, culture, tourism, and other spheres. A. Mirzoyan stressed that strengthening relations with India is one of the priorities of Armenia's foreign policy (Official website of the MFA RA, 2022).

From October 18 to 22, 2022, a high-level delegation of the Ministry of Defense of the Republic of Armenia, participated in DefExpo 2022, which is Asia's largest event in the defense sector and held in Gandhinagar, Gujarat. Defense Minister of the Republic of Armenia Suren Papikyan met with Defence Minister of the Republic of India Rajnath Singh. S. Papikyan focused on the possibilities of expanding bilateral military and military-technical cooperation between the two countries (Sharma. 2022). From March 2 to 4, 2023, the delegation led by the Chief of the General Staff of the Armed Forces of the Republic of Armenia, First Deputy Minister of Defence, Major-General Edward Asryan

*The Raisina Dialogue is India's premier conference on geopolitics and geo-economics committed to addressing the most challenging issues facing the global community. The conference is hosted by the Observer Research Foundation in partnership with the Ministry of External Affairs, Government of India. This effort is supported by a number of institutions, organizations and individuals, who are committed to the mission of the conference. See detailed https://www.orfonline.org/raisina-dialogue/.

was in India on a working visit. The delegation participated in the "Raisina Dialogue", the annual international conference dedicated to issues facing the global community. In the course of the meeting, a number of issues related to bilateral cooperation and regional security were discussed with the Chief of Defence Staff (CDS), General Anil Chauhan, as well as possibilities of strengthening cooperation between Armenia and India in the sphere of defense.

Within the framework of the working visit, Major General E.Asryan also attended the discussions on Armenian-Indian defense cooperation and regional security held by the office of the National Security Council of India where he presented the security challenges facing Armenia (Official website of the MOD RA.6.03.2023. https://www.mil.am/en/news/11352).

According to "the Economic Times" newspaper, India has reportedly signed a $250 million deal to export arms and ammunition to Armenia in 2022. This package includes, developed Pinaka multi-barrel rocket launchers and anti-tank rockets. Particularly Armenia, which has placed orders for four Pinaka batteries (two to be delivered first and an equal additional order later), will also get a range of new extended-range rockets as well as guided rockets (Pubby, 2022b). So, Armenia became the first importer country of this rocket system in the world. In addition to Pinaka, India is also reportedly exporting NAG anti-tank guided missiles (also called Prospina) to Armenia. The NAG ATGM is an Indian third-generation, fire-and-forget, guided missile with an operation range of 500 meters to 20 km. (Tashjian, 2022).

Autumn of 2022, Indian the Kalyani Strategic Systems Limited (KSSL) company, which is part of the Bharat Forge company, announced that it had been awarded an export order from an unspecified country for a 155-millimeter (mm) artillery gun platform to be executed over a three-year timeframe. The total value of the order is over Rs 1,200 crore ($155.5 million). (Snehesh, 2022a). See also: Pubby, 2022c). However,

sources from the Ministry of Defence of the Republic of India have confirmed that the buyer country is Armenia and the order consists of 155 mm, 39 caliber howitzers that are mounted on trucks for mobility. The Armenian order will involve the purchase of four-to-five regiments of 155 mm mounted gun systems (MGS). Each regiment consists of 18-20 guns (Shukla, 2022). Particularly, it's about the Multi-terrain Artillery Gun (MArG). It is also called the 155 – BR, which the Bharat Forge group claims is the world's first truck-mounted 155/39 howitzer (Business World, 2023. See also: BMPD, 2022b). According to the Centre for Analysis of Strategies and Technologies, Armenia ordered 72MArG guns, which will be supplied till 2027 (CAWAT, 2023, 17).

According to "The Print", Armenia is also interested in loitering munitions, produced in India by private companies like Tata Advanced Systems Limited (TASL) and Solar Industries as well as Indian-made Akash air defence systems (Snehesh, 2022b). Besides Armenia can buy Indian-made MR-SAM medium-range anti-aircraft missile systems and wants to replace medium-range anti-aircraft missile systems in its arsenal, like the Soviet-made S-125 "Pechora" ("Indian Defence Research Wing", 2023.).

On 18 May 2023, the Government of the Republic of Armenia adopted a decision to create of a position of military attaché attached to the Embassy of the Republic of Armenia in the Republic of India (Decision, 2023). In Justification of Decision, noted, that the Armenian military attaché (residence in New Dheli) will be tasked with coordinating existing Indian-Armenian defense programs and proposing new initiatives (Justification, 2023).

Conclusion

Thus, recent years, the fast growth of political-economic relations between the Republic of Armenia and the Republic of India contributed to the development of their relations in the defense sector, including military-technical cooperation.

Especially, military-technical cooperation grew during 2022. This was determined by the fact, that after the invasion of the Russian armed forces of Ukraine, Russian Federation cannot realize military contracts of supplying armament to Armenia. As a result, Armenia is trying to find other suppliers for recovering its heavy losses of military equipment during the 44-day war. At the same time, India has been making focused efforts to increase defense exports in the scope of the 'Make in India' program.

In fact, Armenia becomes the main importer of Indian-made weapons. The military-technical cooperation between the two states creates a possibility for Armenia to get access to new military technologies, including western advanced technologies, which are used to develop the military-industrial complex of India.

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IDEAS OF NATIONAL SELF-DETERMINATION AND SOVEREIGNITY IN THE POLITICAL-PHILOSOPHICAL CONCEPTS OF MAGHAKIA ORMANYAN AND LEVON SHANT

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Abstract

XIX-XX century's geopolitical realities, constitutional and national-liberation movements, and the change in Ottoman state-legal order became the historic-political basis of the political-philosophical constructs of the thinkers of that time. Due to the military and diplomatic policies of the superpowers Full or partial liberation of the people under the rule of the Ottoman Empire was conceived by the Armenian nation as a historic injustice against the Armenians and a violation of the principle of the legal equality of the nations. In the context of these realities, prominent political scientist-philosophers of that century Maghakia Ormanyan (1841-1918) and Levon Shant (1869-1951) argue for the fundamental ideas of civilizational identity, protection of historical rights, political self-determination, freedom of self-government of the Armenian nation, substantiate independence and national-state sovereignty as highest values.

***Keywords**:* M. Ormanyan, L. Shant, sovereignty, right to self-determination, nation, legal subject, civilization, independence.

In the middle of the 19th century, the goal of the constitutional movement in Western Armenia was the national self-determination of the Armenians. According to Armenian figures, the natural basis of the legitimacy of the nation's political self-government is the existence of the Armenian nation and

nationalism: ***if there is no nation, there is not and cannot be a state, but not vice versa***. The foundation and key to the solution of national practical-legal-political issues are the philosophical argumentations of the Armenians as a functioning nation.

Maghakia Ormanyan values the national factor as the basis for the historical dynamics, the development of the nation, and the signification of statehood. According to his belief, "the first step, result and target of **associations** is nationality, with which people will realize their associate nature within legal, possible and beneficial limits" (1880, p. 20). L. Shant's opinion is concordant with this conclusion: "The nation is the only natural and basic social body because all other social organizations, institutions, factions are its fractions, born of it, incapable and meaningless of living without it" (1979, p. 69). Thus, a complete society is formed in the cohabitation that has already formed as a nation in its social and political nature.

Ormanyan confirms that the concept of "***nation***" should not be understood only as "people", because it contains a ***political*** meaning. It should be noted that the nation differs from other ethnic groups in the characteristics of political self-organization and self-governance. The basis of national identity is the soul of the nation, by which the Armenian differs from other nations and peoples, confirming its uniqueness, the National Self.

Shant defines the concept of "***people***" as follows: the people of a certain tribal origin, living in a certain geographic environment, having a historical past and present, having a certain mentality, customs, traditions, religion, and state structure, inheriting an original culture "…is a completely different and unique entity compared to other similar entities" (1979, p. 42).

Thus, with the combination of natural and cultural-civilized immanent abilities, the individuality of the people is revealed, which Shant interprets with the concepts of "***nationality***" and "***national***": "We will call the individuality of peoples nationality", because "what separates and differentiates a people from other peoples is its nationality, and what unites the parts and

individuals of a people is its national traits" (1979, p. 43). Therefore, ***nationality is the fundamental principle that identifies and self-determines peoples***, which conditions and combines other factors.

According to the thinker, "humanity" is not a sum of similar individuals, but "a living forest, with countless colors, endless forms" (Shant, 2008a, p. 88). When the sense of a "communal self" is transformed into a national consciousness, it results in the ***appreciation of national identity as the independence of the nation's individuality***. Therefore, the nation is also "... not a simple collection of individuals of the same tribe, but a unique and complete body of a more complex and higher type, made up of the connection of these individuals... with its own special composition, new phenomena, new powers, new consequences" (Shant, 1979, p. 49).

Shant rejects the views according to which the national and the nations disappear in the civilizational dynamics. On the contrary, "Civilization... is the most basic condition for the development of nations, the strengthening of national traits... and the appreciation of one's own uniqueness" (1979, p. 64). Therefore, peoples are valued in human civilization to the extent of the specification of their national originality, ethnic-cultural viability, and national will to self-organize and self-determine as an independent individuality.

According to Ormanyan, ***the nation is the substance foundation of statehood, the essence, and purpose of national existence***. Similar observations of some European thinkers are noteworthy. German philosopher K. Hübner confirms: "The nation is not a derivative of the state structure, but the structure of the state itself is derived from its nation, which must follow its specific cultural goal under changing historical conditions. The structures change, but the nations remain" (2001, pp. 27-28). It is obvious that both Ormanyan and Hübner value the nation as the natural-substantial basis of the existence of the state. J. G. Fichte and A. Muller emphasize the supratemporal nature of nations.

According to Fichte, “The state is not an end in itself, but a means... The state is a creation of reasoning, but it is endowed with vitality due to the nation” (Hübner, p. 144).

From the point of view of political philosophy, the identity of the state is embodied both by the right to independence of the highest authority and by the right to independent political development of the nationality as a legal subject. ***The nation is the source and holder of state sovereignty***. Shant substantiates that the subject of civilization and statehood are definitely nations, because “All organs of a nation are organs of civilization and the nation in itself is an organism producing civilization” (1979, p. 69). Each people forms a certain political system. In fact, Shant refers to ***the natural state of the indigenous nation***, which performs the political function of unifying the nation. However, the situation is different in the case of occupation, when a new type of state is formed - an ***artificial*** state. According to him, when a ruling state allows its subjects to preserve some elements of their national civilization, it always fears that it will lead to sovereignty. We can conclude that ***the national civilizational value system is the basis for restoring the state sovereignty of the subject nation***.

According to Ormanyan, the national liberation movement and the creation of autonomous political structures are manifestations of Armenian political competence. In different periods of history, wars of aggression have prevented the restoration of statehood, however, "The Mamikonians, Bagratuni, Artsruni, Rubineans, Orbalians, Davit, and Mkhitar Siunia... the brave sons of Ulnia, established and defended strong empires, authorities, kingdoms, and autonomy in private provinces or in safe mountains" (Ormanyan, 1879, p. 22). It should be noted that although these establishments and state-legal institutes did not turn into a Pan-Armenian state by the natural course of political reforms, they were of exceptional importance, proving ***the inalienability of Armenian national sovereignty and the nation's ability to create a state and conduct state policy based on it.***

Ormanyan appreciates the officiating of Armenians in the Russian, Ottoman, and Persian governmental institutions, and legislative and judicial bodies, thanks to which they protected national rights as much as possible, mitigating the anti-Armenian tendencies of the dictatorial policy. In addition, Armenian figures contributed to the modernization of the government system of those states, trying to introduce constitutional principles, the goal of which was the overthrow of the dictatorial order and the formation of a legal state. That was the first stage of the political strategy according to national ideology, which was to be followed by national self-determination in the Motherland itself. Ormanyan's rhetorical question is remarkable. "...why not say that today's Armenian already shows the talent that is the supreme genius of our time, ***political science***?" (1879)

Criticizing the XIX-XX centuries' international political and diplomatic processes, Ormanyan confirms. "Until it is clearly shown or seen that the European powers have a benefit in forming an Armenia or improving an Armenia, it is not possible to believe the words, nor to trust the promises" (1929, p. 475). The main condition for the legalization of ***the political identity*** of the nation is the international recognition and validation of the historical existence and rights of the national entities. From this perspective, he poses important questions: "How should a political individuality determine its borders, its union, its existence? What will be the conditions of the union, how far will the demands of independent administration or free reign be extended?" (Ormanyan, 1929, p. 475)

It should be noted that the direct consequence of political and diplomatic developments at the end of the 19th century was the struggle for the recognition of the right to self-determination of the nations declared "small". Ormanyan calls it the right to determine one's own existence or the definition of political individuality. Moreover, he emphasizes ***the mandatory exercise of the right to self-determination in the Motherland of the self-determining subject***. This point of view is argued by his

following questions: where is the "good place of the Armenians" endowed with national rights, and where should Armenians self-determine as a political individuality? And, if the Western Armenians or several Armenian-inhabited provinces are meant, how should the self-determination of Russian, Persian, and Armenians scattered throughout the world be resolved? “Should they be included in the territories they live in, or considered absent citizens of the Armenian state?” He demands that when solving the problem of national self-determination, "...in a certain border, the main and traditional place should be taken into account" (Ormanyan, 1929, p. 369), and not to divide Armenians by arbitrary administrative divisions, violating the integrity of the natural existence of the nation.

Thus, Ormanyan rejects the principle of administrative self-governance, on the basis of which the mechanical divisions of the national-historical territories themselves are carried out, and the nations appear under the rule of foreign states, being deprived of their national rights. He puts forward important preconditions, which should become the inviolable basis of diplomatic negotiations on the issue of ***national self-determination***. According to him:

- nation creation and its maintenance are determined by the tribal origin and historical homeland.
- natural individuals of a self-determining nationality are compatriots with a common origin and relationship, in this case, the use of language is not essential, and the religious difference is not a negative condition.
- a nation cannot be expelled from its homeland by any international law, that is, international law must not contradict the natural-historical law of nations.
- the conditions for the restoration of the historical and political rights of the nation are “historical existence, political life and having a civilized country” (Ormanyan, 1929, p. 369), as well as the entire cultural-civilizational value system.

- compatriots who emigrated from the homeland should not be considered anti-national elements alienated from the national identity.
- foreign subject-nationals born in the historical homeland who have continuously lived in the same country for five years are granted civil rights if they renounce the citizenship of the former state.
- occupied homelands, which are illegally owned by foreign powers, must be returned to the rightful owner, the nation, by an international legal decision.
- it is necessary to compile the census of nationalities (natural personalities) and the cartography of self-determining entities (political individualities).
- the alliance of nations is acceptable for the establishment of diplomatic relations, unification of common interests, cooperation on means necessary for political reforms, and other purposes.
- subjects who violate the right to political immunity of self-determining nationalities or independent countries should be tried in the International Supreme Court composed of representatives of superpowers and neighboring states of the region, where any action prohibited by law will be condemned.
- it is necessary to resolve inter-ethnic and inter-state controversial issues through political and legal processes, concluding them with mutually beneficial agreements and excluding military clashes. Otherwise, the natural right of self-defense will be exercised.

If the solution to political problems depends on the will of the superpowers of the world, then the right to choose the solutions to domestic problems, in particular, conditions and means of the survival and development of the nation, belongs to the nation. In the present situation, Ormanyan views the legal-political path of solving national problems as more realistic, excluding the effectiveness of revolutionary movements. He considers real

national-constitutional autonomy with parliamentary governance. According to the thinker, ***full national sovereignty is the foundation of state sovereignty***, and ***the national sovereign government is the guarantor of national unity***. From this starting point, the paradigm of national-state centralism is also substantiated.

According to Ormanyan, the rights of power and self-government are predetermined equally for all nations and not for any "chosen" people. So, if power is granted by divine laws, then governance is accomplished by national rights. This idea is consistent with the perspective of Movses Khorenatsi put forward in the 5th century. "...the Armenian people are endowed with national and state sovereignty from the beginning, which corresponds to the natural law, therefore it is their natural (inalienable) right." (Mirumyan, 2006, p. 216).

Ormanyan values sovereignty not only as an attribute of the state but also as a natural right of the nation. The main condition of self-government of national coexistence is the sovereignty of the nation, which politically embodies the state, and spiritually, the church. Arguing that ***sovereignty is the natural basis of the political independence of nations***, he states: "...all authority should belong to the nation, whose protection and maintenance it provides because if a nation does not have its own authority, but is governed by the authority of another nation, it is considered under the rule of another" (Ormanyan, 1985, p. 20).

The issue of sovereignty in Shant's concept is argued in national, state, and civilizational dimensions. Emphasizing the idea of national self-determination, he affirms: “The people themselves must be the owner, supervisor, and controller of their country, their government, their civilization, and their economy: the basis of any social phenomenon is the people, and whatever is done must be done by the will of the people and for the people” (1979, p. 90). He considers the idea of the supremacy of the people to be the main lever of the political processes of the New Time.

The result of the realization of the idea of the sovereignty of the people is parliamentary governance, the representative system, the republics, etc. According to Shant: “One of the inevitable conclusions of that idea is ***the demand for independence*** of the subjugated and dominated nations, and the implementation of that demand is the series of liberation wars of the last century and a half” (1979, p. 91). He values the prudent policies of those countries (especially England) that assume the principles of independence and sovereignty, transforming the imperial government into a federal system of governance, while he refers to the Soviet state as a “false federation”.

Shant predicts with political optimism that human civilization can condemn any domination, as it rejected human slavery in the past. According to him “***every nation - its own state***” is equivalent to the ***principle of justice.*** It has been the natural aspiration of all peoples for centuries, and now it has become a political demand for the self-determination of the nations.

According to Shant, ***the ideal is the civilization model***, according to which “every nation has only one state, and every state serves only one nation when humanity must recognize only the nation-state” (1979, pp. 96-97). Certainly, this model differs from the European understandings of a nation-state, in which the national factor is ignored, and the origin of nations is viewed as the result of socio-economic developments of recent times. Conditioning the existence of statehood with national integrity and unity, he affirms. "Each nation is its own master and must choose both the method of its internal government and its external state" (Shant, 2008b, p. 171). Thus, he also confirms Ormanyan's idea that the ***nation is the essential basis of statehood***.

Shant discusses the issue of inter-ethnic, inter-state, and inter-civilizational relations. According to him, the (XIX-XX centuries) people's modern politics is based on the national idea. If in the previous centuries, the rights of the royal house were important, now the development of civilization is linked with the

realization of the idea of ***the sovereignty of the nation***. According to his conviction, tyranny, the enslavement of peoples, and denationalization "...are seen...as an obstacle to the development of civilization and as an immoral phenomenon". The issue of "...separation of forcibly united nations and the demand to unite the forcibly divided parts of the same nation, by which history and reality gradually take the national path" (Shant, 2008b, 171) is followed.

Shant justifies the necessity of a confederation of small independent states in order to fully protect national interests. According to him, the modern civilizational movement is manifested by two trends: on the one hand, ***the breakup of large states and the formation of free and independent nations***, on the other hand, ***the establishment of international relations of newly independent states.***

The political interaction of nations has led to the idea of an international organization to limit the belligerence of powerful states and regulate international relations. Such a role was assumed by The Hague Conference and the League of Nations, although their activities were incomplete. International politics should be aimed rather at the cooperation of nations than their annihilation. According to Shant, the basis of international solidarity is not the states, but "the Nations, which have been and are the natural basis of human groups and union. So are the nations, which will gradually become the main units of universal connection and alliance" (1979, p. 118).

Shant finds improbable the assumption that there can be an "ideal union" in the world, i.e. one nation, one state, one civilization. Therefore, the idea of a united, undifferentiated, like-minded humanity, according to him "is more of a religious need than a political and civil one". In this context, he criticizes anarchism, positivism, and Marxism: "… Socialism by its very nature is not a friend to small nations, small existence, and small independence, it is the supporter of "big" races and "big" peoples…" (Shant, 2008c, p. 145). The political scientist has a

remarkable view on the historical-political perspective of nations, according to which: "The development of humanity and civilization leads us towards greater decentralization, towards small nations, of course with a common alliance" (Shant, 1979, p. 124). Nature does not tolerate uniformity, because natural creativity tends to create new colors, new forms, and nations.

The issue of ***the Armenian civilizational identity*** has a special place in Shant's concept. Regarding Armenia as a country located at the crossroads of the East and the West, he expounds on the criteria for the identification of the Armenian nation. According to him, ***nationality is the primary and main characteristic of Armenians in comparison to other nations***. Another significant factor is ***the adoption and nationalization of Christianity***, which fundamentally changed the Armenian political and civilizational position, making them more closely associated with the West. Armenians used to be associated with the Western, especially with ancient civilization, but, in Shant's opinion "…half of their blood being Urartian… they were connected to the East with their behavior and manners, understandings, spirit, and disposition: they were the people of the East" (1979, p. 180). After all, ***national culture is synthetic***, which has had a significant impact on civilizational development.

Shant criticizes the religious intolerance specific to Eastern politics, describing it as a struggle against national identity and independence. Thus, "…nation, religion, and independence are always closely connected, and adhering to one's religion becomes a weapon, a means to protect one's national identity, to preserve one's state freedom" (1979, p. 181). The thinker values the religious revolution carried out by Trdat III, considering it a prudent policy for the sake of strengthening independence and statehood. Due to their ***religious identity***, Armenians were saved from assimilation with foreign tribes, which would happen through conversion and intermarriage. He also emphasizes the role of the Armenian religion as a defender of spiritual and political independence in the fight against Christian states.

aspirations to deprive the Armenian Church of its sovereignty are well known. It should be noted that the role of the religious factor was significant also because ***the Armenian Church united and served only one nation***, not accepting foreigners and people of different beliefs in its structures.

According to Shant, one of the civilizational potentials of the Armenians is the existence of ***external and internal statehood in the Armenian world***. External independence has always been shaky due to the independent, semi-independent, or full subordination status of Armenians. Instead, they have always had a "…strong and solid internal statehood. The basis of that internal statehood is the ministerial right and government houses. The ministerial aristocracy maintained the political foundations of national independence until the XIX century, with some manifestations of sovereignty. The clergy played an important role in national life; according to Shant, they are a new kind of government and an intellectual aristocracy with a high religious and philosophical value system. Religious nobility "… was the second important factor leading the destiny and policy of our people, along with our secular nobility until the Turanian centuries" (Shant, 1979, p. 186). Both secular and religious figures sought to restore Armenian independence dreaming of a free civilization.

Thus, the main subjects of the civilizational movement in Armenia in the 19th century were the nobility, the clergy, and the intellectuals, who managed national institutions and exercised national rights in accordance with historical conditions. They tried to transform the national civilization with democratic-constitutional principles.

Shant distinguishes between two levels of application of the democratic principle: ***internal*** and ***external***. In ***domestic*** life he emphasizes the sovereignty of the people, parliamentary governance, electoral system based on the principle of representation, civil liberties, etc.: "It is the people who own the country, and the people must be the supreme ruler of economic

and political life. Every law, order, and initiative must be carried out for the welfare and development of the people" (Shant, 1979, p. 189).

The political scientist considers the ***external*** manifestation of the democratic principle to be ***the issue of national independence***. Each nation must manage its own political destiny. Therefore, the liberation struggle of nations is natural. This idea is argued in Shant's concept as an "***absolute requirement of civilization***", which is very close to the Armenian people. By the way, the tendency of the Armenian nation to European (Western) values was equal to the protection of the idea of national independence. Submission is a threat not only to national but also to civilizational identity. Therefore, "The idea of having an Armenian civilization without a full national existence, without state independence, is a stupid self-deception..." (Shant, 1979, p. 201). A people's agony begins when it ceases to strive for independence. The quest for independence is the powerful psychological bond that makes national unity and integrity possible.

Thus, the civilizational viability of a nation is manifested in the existence of independent statehood. Statehood is not the basis of a nation's existence, but it is the culmination of national identity and civilization on the level of political culture. Shant believed that the new civilization should bring to "the belief in the equality of nations, self-determination of nations and independence of nations. And the temple of our new creed is our native land, our homeland, and we must strive and we do strive for its full and free rule" (1979, p. 215).

The full sovereignty of Armenia and Armenians requires the concentration of national spiritual-and-mental, political, economic, and willpower, the strengthening of the national consciousness with the belief in the unshakable idea of independence.

Conclusion

The ideas of self-determination and sovereignty of nations are central in the political-philosophical concepts of Malhakia Ormanyan, and Levon Shant, the outstanding thinkers of the 19th-20th centuries. They value the national factor as the basis of the historical, civilizational dynamics, independence of the nation, development, and the meaning of statehood. Affirming that nationality is the fundamental principle that identifies and self-determines peoples and is the source of state sovereignty, thinkers reject the theories according to which nations and nation-states disappear as a result of civilizational developments. International recognition and validation of the historical existence and rights of national legal subjects are considered as the main condition for the legalization of the political identity of states or nations. Emphasizing the exercise of the right to self-determination only in the Motherland of a self-determining national entity, political scientists argue that the development of civilization is conditioned by the realization of the idea of national sovereignty. Their principles were urgent in their era and are relevant in the current historical period of national problems and the clash of interests of superpowers. The arguments of Ormanyan and Shant about the ideas and principles of political philosophy can serve as a basis for the research of modern state and national-civilizational developments.

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CYBER-SECURITY AS THE MOST IMPORTANT COMPONENT OF NATIONAL SECURITY

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Abstract

Information and communication technologies (ICT) are developing rapidly in the world. Not yet adapted to the first wave, there is a need to follow and master the next ones in order to keep up with the demands of the time. Their influence in our time is very significant in all major spheres of activity of citizens, organizations, and the state. The opportunities offered by the Internet and cyberspace create broad prospects for the development of the political, economic, defense, and other spheres of the state. However, at the same time, the dangers and threats in the above-mentioned and all other areas are increasing dramatically.

Keywords: cybercrime, information technologies, information security, cyberterrorism, cyber threats, cyberspace, cyber-security strategy.

The cross-border nature of cyberspace, its dependence on complex information technologies, active use of virtual space platforms and services by various groups of citizens cause new risks in terms of violating the interests of the individual, organization, and state (Danenyan, 2020, 261-269).

In the 21st century, for the first time, humanity faced a new, previously unknown type of crime: cybercrime. "Cybercrime is based on the hacking of web pages, malicious software, and the distribution of illegal information by people or groups who carry

out criminal activities in the virtual space using information technologies" (Timofeev, Komolov, 2021).

The growth of cybercrime in the world proves that cyber threats on the Internet are growing more and more and pose serious threats to the national security of states (Atoyan, 2014, 154). The development of cyber-attacks follows the rapid pace of information technology development, resulting in the refinement of similar attacks and changes in methods and means of execution. That the mentioned threats are not at all exaggerated, the clearest evidence of this is the increasing number and quality of hacking attacks on various Internet resources, local networks, data warehouses, and government organizations. According to UN experts, the economic damage from cybercrime has reached 3 trillion dollars by the beginning of 2021 (UN, 2021).

There are hacker groups operating in about 130 countries that develop millions of new malicious programs every month and carry out several hundred million cyberattacks every year (Allianz Global Corporate & Specialty). Their purpose is to cause financial and economic damage to "conditional opponents", competing business organizations, or to get personal profit. The Council of Europe Convention on Cybercrime (this convention entered into force in the Republic of Armenia in 2007) divides it into five groups.

The first group includes "computer crimes" directed against the confidentiality, integrity, and availability of computer data and systems. Among them are illegal access, illegal acquisition of information, data tampering, system tampering, etc.

The second group includes illegal acts using computer means, among which are frauds using computer technologies, frauds for economic gain, etc.

The third group consists of crimes related to content orientation, primarily the promotion of child pornography.

The fourth is copyright and other rights violations.

The fifth group includes the following crimes: dissemination of racist and similar information that incites violent actions,

incites hatred, and discrimination against any person or group of persons based on their national, racial, or religious affiliation (The Council of Europe Convention on Cybercrime, 2001).

Cybercriminals take advantage of countries' legislative loopholes and inadequate security measures. The poor state of computer literacy and so-called "computer hygiene" also creates fertile ground. Lack of cooperation between developed and developing countries is also a favorable condition for cybercriminals (UN, 2021).

Given that most of the daily activities of citizens, countries, and states in the modern world are managed through networks and programs, this significantly increases their vulnerability to cyber-attacks.

For example, currently, electronic document circulation, state population register, social security sector, real estate registration, tax reporting, and a number of other systems are widely implemented in RA, the failure of which may lead to a temporary blocking of the implementation of the most important functions of the state, which in turn will lead to other related areas of paralysis. All this is also fraught with threats to the national security of countries, among which cybercrime is the largest in volume. It is one of the fastest-growing types of transnational crime.

From what has been said, it follows that the fight against various manifestations of virtual crimes is imperative at the national level, so it is necessary to have an educated, literate, and knowledgeable society in this regard. Developing and implementing appropriate educational programs to develop media literacy in the field, teaching them from junior school age, as well as conducting public awareness events can contribute to solving this problem. Media literacy is, first of all, the ability to distinguish information sources, to perceive the large amount of information that is exported to the virtual space, and to distinguish the true from the false. Proponents of media literacy education are convinced that including media literacy in school

programs promotes children's civic engagement and helps them acquire critical and investigative skills.

Currently, there is a huge amount of information on the Internet, so it is very easy to be deceived and confuse fake with reliable information. Computer fraudsters and fraudsters take advantage of the fact that in this variety and abundance of information, as well as due to lack of time, users are often misguided and take actions without checking the information, which leads to negative results or irreparable consequences for them.

Media literacy training aims to raise awareness of the impact of mass media, social networks, and various sources and to form an active stance toward both the use of information sources and their creation.

Media literacy is one of the important components of the content of education today. Taking into account the importance of the issue, under the leadership of UNESCO, Media Literacy Week has been held in different countries of the world in recent years, with various educational programs and events. Fortunately, steps have been taken in this direction in the field of education of the Republic of Armenia.

In 2013, the "Media Literacy" manual for teachers, guaranteed by the Ministry of Education and Culture, was published. It is the first Armenian-language guide for teachers, which also contains digital games and audio-visual materials. It helps to understand and communicate to young people how the media sphere works, how to navigate modern information flows, and critically consume any Internet product. Starting in 2017, the Ministry of Education, Science, Culture and Sports of the Republic of Armenia, together with various organizations and supporters, organizes an educational week in the schools of Armenia every. In addition, various events and open classes, video and film viewings, and discussions are organized. Perhaps, over time, teaching media literacy as a separate subject in school curricula will become necessary. With these steps, children will be better

prepared to avoid various virtual traps and pitfalls as they enter adulthood.

With the growing trends of cybercrime in front of our eyes, there is no doubt that cybersecurity is becoming an important component of not only personal but also national security. In the case of Armenia, the special services of a number of unfriendly countries, especially Azerbaijan and Turkey, pose a serious threat. As a result, thousands of Armenians and Diaspora Armenians are continuously suffering from the actions of Azerbaijani-Turkish hackers. The history of cyber wars between Armenia and Azerbaijan begins in 2000 when the Internet was not practically developed in both countries, there were several dozens of websites, and the number of Internet users was not particularly large. At that time, a number of websites were hacked on both sides. 2006-2007 Azerbaijani hackers started to become active again, forming groups attacking Armenian websites, which were engaged in spreading insults to Armenians and propaganda materials of anti-Armenian nature. During that period, the attacks were mostly one-sided. The point is that the field of information security in Armenia was so neglected that state websites were also often hacked. Cases of leakage of information from state institutions were also recorded. The situation started to change in 2009 from the second half, when the control of the state sector of the Armenian network was placed on the National Security Service of Armenia. It is true that parallel to this, the number of attacks against the private sector of the Armenian network has increased. After that, until 2016 no attacks with serious consequences were reported. On January 19-20 of this year, the websites of RA embassies were subjected to a massive hacking attack, in response to which Armenian hackers hacked the blogs of 16,000 users of Azerbaijan (PanArmenian, 2016).

During the April four-day period of 2016 and the days close to it, Azerbaijani cyber-attacks intensified sharply, and in solidarity with them, Turkish hackers also became active. In response, Armenian hacking groups were active, in particular hacking the

website of the government of Azerbaijan and publishing the personal data of 25,000 soldiers of the armed forces of that country. Since the April war, Azerbaijani hackers have increasingly targeted Armenian Facebook users, hacking profiles, emails, and Facebook account logins, among others.

Azerbaijan's hacker teams have been dramatically active since the summer of 2020, even before the military clashes on the border of Tavush (July 12-16). During June and July, tens of thousands of people's personal data were leaked as a result of targeted attacks by Azerbaijani hacking teams.

On July 14 of the same year, Azerbaijani hackers launched a cyberattack on the official websites gov.am, e-gov.am and primeminister.am. In response, one of the Armenian hacking teams launched an attack and hacked WiFi devices of nearly two thousand households and offices in Azerbaijan, changing their DNS settings.

Already during the 44-day Artsakh war, Azerbaijani hackers managed to hack a number of state websites, as well as infiltrate the system of circulation of state documents, take over the e-mails of a number of high-ranking officials, etc. In addition, a number of media outlets were hacked, and almost the entire media and government sector was under continuous and powerful DDoS attacks (Sputnik Armenia, 2020).

Considering the importance of the problem, certain steps have been taken in the last decade and a half in RA.

The National Assembly of the Republic of Armenia in 2007 ratified the Council of Europe Convention "On Cybercrimes" and the additional protocol of the same convention "On the criminalization of acts of a racist and xenophobic nature committed through computer systems" (Arlis, 2001).

In 2009 the concept of information security of the Republic of Armenia was adopted (MFA of RA, 2009), in which the types of threats to the information security of the Republic of Armenia were formulated, among which cyber terrorism is also included,

and the priority measures to counter them and the priorities of their implementation were noted.

The national program for increasing the effectiveness of the fight against organized crime in the Republic of Armenia (2011) also aims to ensure cyber security (Arlis, 2011). Taking into account the growing trends of cybercrime, in 2012 the national strategy for combating terrorism in the Republic of Armenia was adopted (Arlis, 2012). Here, cyberterrorism is clearly defined as a "variety of terrorism".

In the following years, further steps were taken to bring the RA legislation related to this field into line with the requirements of international law and existing conventions, realizing that the emergence and use of the newest means of information intervention in the world continuously create new threats and will continue to create them in the future, therefore, there is a need to quickly respond to them theoretically, legal, constantly improve the legal bases.

The project of information security assurance and information policy concept was developed. It was approved by the National Security Council on 27.09.2017 in the session. 2017 At the end of the year (20.12.2017), the Government of the Republic of Armenia developed a draft Cyber Security Strategy and the schedule of measures arising from it (E-Draft, 2017). Many countries have such strategies, as their need arises from the need for safe and reliable operation of infrastructure in physical and virtual spaces. Taking into account the speed and unpredictability of current geopolitical developments, it is necessary to amend and adopt the above-mentioned bill, defining the priorities, principles, and measures to be implemented in the field of internal and external policy of the Republic of Armenia. The strategy should consider cyberspace as a clearly defined part of the information space. This approach is consistent with international standards, which define "cyber security" as a narrower concept than "information security".

Thus, these two concepts, despite many similarities, should not be equated, but should be considered separately, so cyberspace in the cyber security strategy should be defined as a specific field of activity in the information space.

Currently, the issue of creating a strategic research center for cyber security under the auspices of the state is also relevant, where mechanisms and models for combating cybercrime will be developed at the level of scientific and theoretical research, which will be used by both state departments and private companies. By the way, there is a relevant chapter (Chapter V) on this in the above draft Cyber Security Strategy.

The fight against cybercrime is a challenge both worldwide and in Armenia. This struggle cannot be effectively organized without the presence of a qualified and knowledgeable society. The best way to solve this problem is to develop and implement appropriate educational programs for the development of the sector, as well as to hold public awareness events.

Conclusion

In the 21st century – humanity first encountered a new type of crime – cybercrime. Cross – border nature of cyberspace, its dependence on complex information technologies, the active use of virtual platform and services by various groups of citizens creates new risks in terms of violating the interests of individuals, organizations and states. The growth of cybercrime in the world indicates that cyber threats on the Internet will increase and create even greater threats to the national security of states. Given the speed and unpredictability of current geopolitical even, it is necessary to have a cybersecurity strategy in the Republic of Armenia, which will define priorities, principles and measures implemented in the field of domestic and foreign policy. At present, the issue of creating a center for strategic research on cybersecurity under the auspices of the state is also relevant, where mechanisms and models for combating cybercrime will by developed at the level of scientific and theoretical research, which

will used by both government departments and private companies.

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THE PROSPECTS OF EU-ARMENIA COOPERATION: OPPORTUNITIES AND CHALLENGES

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Abstract

The article explores the features of EU integration in Armenia. After the collapse of the USSR, establishing relations with the states of the South Caucasus occupied an important place in the EU agenda. During the cooperation, the EU policy underwent changes within the framework of various projects, slowing down or deepening the cooperation with Armenia. By creating a slowly developing but at the same time stable cooperation with Armenia through the programs initiated, the EU ensured its visible presence in the country. Currently, there are internal and external factors that influence the integration process. Despite the existing challenges, the parties strive to strengthen and deepen cooperation.

In this context, a number of programs initiated by the EU, such as the Partnership and Cooperation Agreements, the European Neighborhood Policy, the Eastern Partnership, and the Comprehensive and Enhanced Partnership Agreements are studied. The challenges of EU integration are also analyzed, the study of which is necessary to highlight the prospects of their solution, which will lead to clarifying the prospects of integration.

In the end, it is justified, that currently, Armenia has no clear prospects for EU integration. Meanwhile being an EAEU member state and taking advantage of opportunities for deepening bilateral cooperation Armenia continues dialogue and cooperation with the EU as a member of the EaP.

Keywords: integration, cooperation, cooperation challenges, EU, Eastern Partnership, civilian mission.

Stages of EU-Armenia cooperation and development direction of relations

After establishing relations with the South Caucasus states, including Armenia, the cooperation between the parties was of an economic-technical nature, within the framework of which the EU provided humanitarian and technical support to those countries, and in 1999 Partnership and cooperation agreements (PCA) laid the legal basis for relations between the parties.

At the beginning of the cooperation, the EU supported the states to overcome the difficulties of the transition stage with the programs Technical Assistance to the Commonwealth of Independent States (TACIS), Europe-Caucasus-Asia International Transport Corridor (TRACECA), Interstate Oil and Gas Transportation to Europe (INOGATE) and PCA. Since the independence of Armenia (as well as the other two states of the South Caucasus), TACIS has contributed to the country's transition to a market economy, mainly by supporting the implementation of legislative reforms, the building of democratic institutions, particularly through continued support for legal reforms, as well as support for membership in the World Trade Organization (WTO) (Kudryashova, 2008; Twinning Project, 2007).

The nature of relations changed significantly with the signing of the PCA, the main objectives of which were to establish political dialogue, strengthen democracy and transition to a free market economy, and promote trade and investment as well as build functional links between the Union and the state (Dekanozishvili, 2004). A research of the PCAs shows, the EU adopted the same approach towards states, therefore the agreements did not differ much from each other and were not differentiated according to the respective countries. Although the states had different geographies, development perspectives and

different priorities, the goals of EU support within the mentioned programs were common for the region. According to D. Lynch, "For the EU the South Caucasus was never a region in itself. The initial approach, embodied in the PCAs that were reached with all former Soviet Republics, used the 'former Soviet Union' as the regional category of reference. Differentiation in EU thinking about the former Soviet Union has been slow in coming - and the South Caucasus has come last on the list" (2003, p. 179).

Already after including these states in the European Neighborhood Policy (ENP) program in 2004, the EU adopted a regional approach, combining it with a differentiation policy. In this way, the EU is committed to supporting the countries of the South Caucasus in building stable societies based on democratic values and, therefore, contributing to the peaceful development and prosperity of the region (Poviliūnas, 2006) and conflict resolution processes. However, in the case of the South Caucasus, this approach was not effective. Apart from the obvious differences and obstacles to regional cooperation (especially the Artsakh conflict), the regional dimension, which is clearly based on the geographical approach of the territory, does not reflect the distinct realities of each country in terms of political, economic and security (Simão & Freire, 2008).

Within this program, relations between Armenia and the EU developed at a slower pace. First of all, negotiating and following the implementation of the Action Plans of the European Union and opening the EU delegation in Yerevan, relations remained rather superficial. Although Armenia was included in the ENP, the presence and involvement of the EU did not grow as fast as, for example, in the case of EU-Georgia relations. This was due to the fact that Georgia was actively announcing its readiness to cooperate with the EU through diplomatic channels, while Armenia did not show such great activity. In general, it can be said that the EU was an attractive development model for Armenian society. Many hoped that in the long term, there might be a possibility of joining the EU (Popescu, 2011). However, the

program had limited success because it had a complex structure and included states with different interests and priorities.

As for the Eastern Partnership (EaP), among the goals of the program, the main one is to create the necessary conditions for accelerating political association and deepening economic integration between the EU and interested partner states, based on the "more for more" principle (Gevorgyan, 2016, p. 83). Within the newly adopted "more for more" policy of the EaP, priority is given to the following four directions:

- development of stronger, diversified and viable economies in the region,
- expanding efforts to strengthen fundamental institutions and good governance in the EaP region,
- improvement of transport links and infrastructures, increase of energy flexibility through strengthening of energy interconnections,
- increasing youth employment and innovation (EaP 20 Deliverables for 2020).

It should be noted that the EaP is meant to expand regional cooperation between the participating countries. Although the participating states strive to deepen bilateral relations with the EU, the authors of the program try to present the EaP countries as a region. However, each of the states has its own state interests and priorities in relations with the EU (Abrahamyan et al., 2016).

Thus, in order to cooperate with the new neighbors, the EU initiated various programs and provided humanitarian and technical assistance to the South Caucasian states, including Armenia, initially through the TACIS, TRACECA, and INOGATE programs. The political cooperation between Armenia and the Union began with the PCA then continued with the ENP program and the EaP project aimed at the effectiveness of ENP. These initiatives further strengthened the EU's expanded presence in Armenia. Bilateral relations developed within the framework of the EaP and with the application of the EU regional policy,

based on the EU-Armenia Comprehensive and Extended Partnership Agreement (CEPA).

The challenges of EU-Armenia cooperation

By creating a slowly developing but at the same time stable cooperation with Armenia through the programs initiated, the EU ensured its visible presence in the country. Within the framework of the EaP, the EU provided Armenia with an opportunity for closer cooperation. The latter implied the signing of the Association Agreement and the Deep and Comprehensive Free Trade Area (DCFTA) with Armenia.

After three years of successful negotiations, in September 2013, President S. Sargsyan announced that Armenia would not sign the EU-Armenia Association Agreement, as it is a member of the Eurasian Economic Union, but is ready to continue cooperation in a different format. Experts note that although Armenia has never officially announced its intentions to join the EU, as Georgia did, for example, the successes in some areas of integration are more impressive (Delcour & Wolczuk, 2015). However, there are external and internal factors that significantly affect the deepening of cooperation between Armenia and the Union. Each of the parties has its own problems, which, in turn, are an obstacle to the faster integration of Armenia into the EU. Accordingly, it is necessary to consider several main challenges.

1. First of all, it is necessary to take into account all the key events that have had a great impact, and some still have, on the enlargement policy of the Union. Among them are the 2009 economic crisis in Greece, which had a negative impact on other Eurozone countries as well (EuroMemorandum, 2017), the irregular flow of refugees, in turn, caused new dissent (European Commission, 2016). Brexit is also a serious problem for the EU, as it started the process of leaving the Union for the first time in the history of the EU (European Commission). Together with these three challenges, national movements in EU member states, as well as secessionist movements in the territorial units of a

number of states, led to increased mistrust of EU integration (Bireri, 2014). Finally, the ongoing Russian-Ukrainian war is a serious challenge not only for the security of the Union but also for the whole of Europe. These factors greatly affect the internal stability of the EU therefore they are also an obstacle for the integration process.

2. The next major challenge is the presence of unfavorable geopolitical circumstances (in particular, the role of Russia). One of the obstacles to the integration of the EaP countries into the EU is getting rid of the diplomatic and propaganda pressures of Russia. Until 2022 After Russia's February 24 invasion of Ukraine, one group of EU member states saw Russia as a threat, while the other group considered Russia as a possible partner. But currently, there seems to be a unified position on this issue. As a result, Russia-EU relations have gone from a relatively uncertain state to a highly strained state. Russia is not in favor of close relations between the EaP and EU member states. Russia could not accept the "Western" choice of the EaP countries, evidenced by the Russian-Georgian and Russian-Ukrainian disagreements that led to military conflicts. Russia's role continues to be one of the main factors of the EU's hesitancy in terms of eastern expansion (Beraia, 2017). In the case of Armenia, the picture is slightly different, as the country is a member of the Russian-led Eurasian Economic Union and the Collective Security Treaty Organization (CSTO). The country is also included in the Joint CIS Air Defense System. The 102nd military base of the Russian Armed Forces and the Border Guard Directorate of Russia's Federal Security Service (FSB) are located on the territory of Armenia, which together with the Armenian border guards carries out the protection of the state border with Iran and Turkey. Although Armenia and the EU continue to cooperate in areas that are compatible with Armenia's commitments arising from EAEU (Paul, 2015), it is difficult to say that there are prospects for deepening relations toward integration.

3. The Nagorno-Karabakh conflict is the next major obstacle, the settlement of which is a key issue not only for political stability and economic prosperity in the country but also in the region. The Nagorno Karabakh problem arose in 1917. During the formation of three republics in Transcaucasia as a result of the collapse of the Russian Empire: Armenia, Azerbaijan and Georgia. The active period of the conflict began in 1988, and large-scale military operations took place in 1991-1994, and in 1994 a truce was signed between the parties. On December 10, 1991, the population of Nagorno-Karabakh confirmed the declaration of the independent Nagorno-Karabakh Republic in a referendum, which fully complies with the norms of international law (MFA of Armenia). Since 1992, the main forum for the settlement of the conflict is the OSCE Minsk Group, which is co-chaired by Russia, France and the United States. Since 1994, the conflict has continued to be the biggest obstacle to security and stability in the South Caucasus (Perchoc, 2016). The parties have different ideas about the settlement of the conflict, which is one of the reasons why the negotiation process has not been successful for decades. The Nagorno-Karabakh conflict, being a self-determination conflict, is considered by Azerbaijan as a territorial dispute between Armenia and Azerbaijan. The Azerbaijani side is making every effort to present to the world that the conflict is between it and Armenia, and the latter is "an occupier and aggressor". In the conflict, Armenia is a guarantor of security, a negotiating party, and justly insists on the legal demand of Artsakh Armenians, that is, the recognition of Nagorno Karabakh based on the fundamental principle of self-determination of nations. As a result, Azerbaijan, again violating the ceasefire, started military operations, which turned into a large-scale April 2016 (MFA of Artsakh, 2016) and the Second Artsakh War 2020 (MFA of Armenia, 2020). After the last war, the tension on the front line continues to be high, the clear proof of which is the regular violations of the cease-fire by the Azerbaijani side, as a result of which the country is facing serious

security problems, which characterizes the country as an unstable area and has a great impact on the socio-economic development of the country and the formation of established democratic institutions.

From the analysis of the following challenges, it can be assumed that Armenia still does not have great prospects for EU integration, although there are opportunities for deepening bilateral cooperation. Since gaining independence, having cooperated with the EU in the framework of various projects and reaching the stage of signing the Association Agreement, Armenia made a U-turn and joined the EAEU. It is true that Armenia announced its intention to deepen relations with Russia, but Eurasian integration was not among the priorities of Armenia's foreign policy. That is why a great wave of protest arose among the Armenian society. As a result, shortly after EAEU membership, Armenia signed the CEPA with the EU, according to which Armenia and the EU jointly developed the priority directions of partnership relations.

The opportunities for EU-Armenia cooperation

Armenia is a unique state among the member states of the EaP. Firstly, Armenia is the only EAEU member country that does not have borders with other members, which is an example of non-territorial integration; secondly, it is both a member of the EAEU led by Russia and a signatory to the CEPA with the EU (Lagutina, 2018). The following means that, although the country is a member of the Eurasian integration organizations, it does not stop looking for ways to deepen cooperation with the EU.

In this context, it is necessary to address the opportunities for strengthening and expanding cooperation. One of them is dedicated to the expansion of security cooperation: perhaps, especially in recent years, security is the most important issue for Armenia.

On October 20, 2022, upon the request of Armenia, the EU deployed an observation mission along the Armenia-Azerbaijan

international border on the Armenian side, which opened a new page of cooperation. The mission which consisted of 40 civilian monitoring experts recruited from the EU Monitoring Mission (EUMM) in Georgia, lasted two months. The Council's decision to deploy a mission in Armenia followed on October 6, 2022, at the quadrilateral meeting between Armenia, Azerbaijan, France and the EU, during which a statement was adopted, according to which Armenia and Azerbaijan confirmed their loyalty to the UN Charter and the 1991 CIS Alma-Ata declaration, according to which both states recognize each other's territorial integrity and sovereignty. The following will be the basis for the work of the border demarcation commissions (Council of the EU, 2020a). Therefore, the goal of the mission is to restore peace and security in the region, build trust and contribute to the border commissions through its reports. It is true that the mission initially had a temporary nature and after two months it stopped its activity, however, based on the acute security situation, it was clear that the observation mission should have a continuation.

Then, on February 20, 2023, the EU, within the framework of its Common Security and Defence Policy (CSDP), started its civilian mission in Armenia (EUMA), this time for an initial period of two years. It was officially established by the decision of the Council on January 23, 2023. The purpose of the civilian mission is to contribute to de-escalation and stability in the border areas of Armenia, and the protection of human rights, as well as to support the process of delimitation and demarcation and strengthening of trust between Armenia and Azerbaijan. It will observe and report, which will strengthen the EU's position on the situation. The mission's exclusively civilian staff consists of a total of 100 people, including 50 unarmed observers. The headquarters is located in Yeghegnadzor, and the field offices are located in Kapan, Goris, Jermuk, Martuni and Ijevan (Council of the EU, 2023; EU Mission in Armenia, 2023).

It should be noted that both Azerbaijan and Russia reacted negatively to the EU civilian mission in Armenia. Russia actually

opposed the mission and Azerbaijan finally accepted the mission, though reluctantly (Negi & Pietz, 2023). However, the mission is important for Armenia: firstly, border clashes on the part of Azerbaijan have decreased relatively secondly, EU member states have clarified their positions regarding Azerbaijan's attacks against Armenia and security issues. However, it is necessary to take into account that this mission is civilian and it cannot provide any military support to Armenia. Nevertheless, it is expected to be a deterrent in case of possible Azeri attacks.

Among the opportunities to expand EU-Armenia cooperation, it is important to mention the Comprehensive and Enhanced Partnership Agreement, which is unique in its content. The legal basis in EU-Armenia bilateral relations is the CEPA signed within the framework of the 5th Eastern Partnership Summit held in Brussels on November 24, 2017 (Comprehensive and Enhanced Partnership Agreement, 2017). Within the framework of the agreement, the Union and Armenia have committed to work together for the welfare of the citizens and contribute especially to the strengthening of democracy, political, economic and institutional stability. The parties also committed to promote, maintain and strengthen peace and stability at both the regional and international levels, expand cooperation in the areas of freedom, security, and justice, with the aim of strengthening the rule of law, respect for human rights and fundamental freedoms (Delegation of the European Union to Armenia, 2021).

On June 1, 2019, Armenia adopted the road map for the implementation of the CEPA, which was revised in 2021. It entered into full force on March 1, 2021, after being ratified by the Republic of Armenia, all EU member states and the European Parliament. This was an important, positive step forward in EU-Armenia relations. Thus, it reaffirmed that the EU and Armenia are committed to democratic principles and the rule of law, as well as to the broader reform agenda. In the last two years, Armenia has made progress with justice reforms and comprehensive constitutional reforms. However, the

implementation of Armenia's ambitious reform program requires considerable administrative and institutional capacity (Council of the European Union, 2022b).

Thus, Armenia and the EU should continue and deepen the political and economic dialogue in those areas that are compatible with the obligations of Armenia within the EAEU framework. The EU should expand its presence in Armenia, and support Armenian institutions, political actors and civil society in implementing democratic reforms. Such an expanded presence will most likely strengthen the Armenian Government's commitment to fulfill its obligations under the CEPA (Grigoryan, 2019), which creates significant opportunities for the development of Armenia's legal and political systems. The implementation of the agreement will also allow to achieve democratic and stable development of the country thanks to EU rehabilitation measures, as well as to create a deeper, dynamic and ambitious framework of bilateral cooperation (Terzyan, 2019). It is also necessary to initiate measures in order to counter all internal and external factors that will hinder the effective implementation of the CEPA.

Although the EU cooperates with civil society, it should consider involving civil society more regularly in EU-Armenia political cooperation. Civil society should continue to be a resource for local political and thematic expertise for the EU. This is especially relevant given the ongoing democratic reforms and the need for oversight of the executive branch. The EU should also explore ways to strengthen the independence of the judiciary, such as consultation on different appointment mechanisms or a vetting system for judges (Grigoryan, 2019). In addition, it is also necessary to raise the level of general awareness in the country, because there is still limited awareness in some parts of the society about the essence of the EU policy and the agreement. It should be taken into account that the political society can be considered the main actor in the

implementation of the CEPA, as it can act as a driving force for the reforms implemented in the country (Delcour et al., 2017).

Thus, relations with Armenia are special because, failing to sign the Association Agreement with the Union and being a member state of the EAEU, it also cooperates with the EU at the same time. Currently, relations with the EU are regulated within the framework of the CEPA, which creates significant opportunities for the modernization of Armenia's legal and political systems. The state continues to deepen cooperation with the EU by adopting a number of common priorities, such as democracy, human rights, science, education and technology, regional development, conflict resolution and etc.

Conclusion

After gaining independence, the EU actively began to establish relations with Armenia. At the initial stage of the cooperation, the EU supported the country to overcome the difficulties of the transition phase. Then, in order to strengthen its presence in the country and deepen relations, Armenia was also involved in various programs initiated by it, within the framework of which it cooperates with the state. However, it should be noted that relations are not developing at such a fast pace due to a number of obstacles.

The challenges facing the EU, including the economic crisis, the irregular flow of refugees, Brexit, separatist movements in national and territorial units in member states, the Russian-Ukrainian war, as well as the Artsakh conflict, the role of Russia are the main challenges that significantly affect and slow down Armenia's EU integration. The analysis of the above-mentioned issues, circumstances, and facts showcases that Armenia still has a lot to do in the way of deepening cooperation and integration with the Union, and it is difficult to talk about the prospects of EU integration. At present, the most important and primary step of Armenia is the quick and proper fulfillment of the obligations assumed by the CEPA.

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LEGAL STUDIES

PECULIARITIES OF THE COMMENCEMENT OF PRESCRIPTION PERIOD IN OBLIGATORY RELATIONS: INTERNATIONAL STANDARDS AND THE ARMENIAN LEGISLATION

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Abstract

This article presents issues concerning the commencement of prescription periods relating to obligatory relations. The discussion begins with some general concepts and then focuses on international standards as well as an analysis of relevant Armenian legislation (pertaining to obligations) in that context. The aim of this article is to discuss the nature of prescription periods and determine how best to interpret regulations addressing prescription periods in obligatory relations or, if necessary, how they should be amended.

Keywords: obligations, creditor, debtor, prescription period, violation, due claim, timeline.

The proper determination of the commencement and end of prescription periods is of great practical significance. The availability of judicial protection of individual rights depends on whether the right-holder submitted an action to the court within this term or after its expiry, meaning the expiry of a prescription period is a sufficient ground for dismissal of a submitted claim, regardless of its validity.

The aim of this article is not to concentrate on all the conditions giving rise to the commencement of prescription periods in general but to focus on special provisions regarding obligatory relations. However, the discussion will begin with

some general ideas of particular importance for further presentation of the subject matter.

The legal regulations concerning prescription periods are closely related to the right to trial. The right to trial has two limbs: the procedural limb of the mentioned right is about one's legal opportunity to plead before the court, while the material one has to do with obtaining satisfaction of the claim submitted to the court against the defendant. The expiry of the prescription period results in the loss of the right to obtain any satisfaction of a legitimate claim and makes the right in question no longer actionable. Accordingly, the introduction of prescription periods is nothing more than a restriction of the right to trial.

In the *Stubbings and others v the United Kingdom* case, the European Court of Human Rights ruled that the provisions of the Limitation Act of 1960, requiring actions for damages for trespass against the person to be started within three years of the alleged injury or the victim's eighteenth birthday, were not a disproportionate restriction on the right to access to court (1996). Limitation periods were held to pursue the legitimate aim of ensuring legal certainty and finality, while still allowing litigants some opportunity to come to court (Rainey et al., 2021, p. 289).

This leads to the conclusion that a prescription period is the term during which a person (victim) can exercise the right to judicial protection of his/her rights (i.e., obtain satisfaction of the claim submitted, which would further be binding and secured by state enforcement). This makes evident that, regardless of any other relevant conditions, a prescription period can commence only after some individual rights violation has taken place, as there is no legitimate expectation to obtain satisfaction of any claim if there is no violation of a right.

The abovementioned is, we believe, the background behind the current definition of "prescription period" given in Article 331-1 of the Civil Code of the Republic of Armenia (hereinafter referred to as the Code), which states as follows: "*Statute of limitations shall be the time period for the protection of rights on*

the claim of the person whose rights have been violated." One can easily extract from this provision that any prescription period (statute of limitations) introduced for the judicial protection of violated rights cannot commence if there is no violation.

In its many judgments, the European Court of Human Rights has stated that a restriction of the right to access to court can be legitimate as long as it pursues a legitimate aim and is not so wide-ranging as to destroy the very essence of the right (Rainey et al., 2021, p. 288). If somehow the prescription period for any claim (i.e., term for seeking judicial protection for violated rights) commenced before the violation itself took place, it would result in a restriction of the right to trial, destroying the very essence of this right. Of course, this does not mean that the court should, in every particular case, establish the fact of the relevant violation having actually taken place before the application of the statute of limitations; instead, (based on the analysis of applicable material law) it should figure out at what moment the alleged violation could objectively have happened.

In obligatory relations, the creditor's subjective right is violated when the debtor does not fulfil the act it is committed to (e.g., through default), fulfils it improperly (e.g., supplies defective goods), or commits certain types of actions despite its commitment to abstain from them (e.g. disclose information despite its commitment under a non-disclosure agreement) (Baibak et al., 2018).

In the Republic of Armenia, issues relating to the commencement of prescription periods are regulated by Article 337 of the Code, which states as follows:

"*1. Running of term for statute of limitations shall start on the day when the person has become aware or should have become aware of the violation of his or her right. Exceptions to that rule shall be prescribed by this Code and other laws.*

2. For obligations, for the fulfilment of which a certain term has been determined, the running of the statute of limitations shall start upon the termination of that term.

3. For obligations, the term for the fulfilment whereof is not determined or is determined on demand, running of the statute of limitations shall start from the moment when the right of the creditor to claim the fulfilment of obligations arises, while in the case when the debtor has been allotted a grace period for the fulfilment of the requirement, the calculation of the statute of limitations shall start after the termination of that term.

4. Running of the statute of limitations for regress obligations shall start upon the fulfilment of the principal obligation."

In the event of an improper fulfilment of a positive obligation to act or a breach of a negative obligation to abstain from a certain type of action, the prescription period commences the day after the creditor became or should have become aware of the improper fulfilment of a positive obligation or the fact that the debtor performed a certain type of action it was obligated to abstain from. This assessment stems from the general rule stipulated in Article 337-1 of the Code. In turn, Articles 337-2 and 337-3 of the Code address the commencement of limitation periods in the event of non-fulfilment of obligations. The remainder of this article will be dedicated to the issues of the commencement of limitation periods for the non-fulfilment of obligations in light of current international standards concerning the subject matter.

Before a thorough examination of Articles 337-2 and 337-3 of the Code, it is of significant importance to present some international standards dealing with the subject, which, we believe, will greatly contribute to a proper understanding and interpretation of the Armenian legislation or, if necessary, to the introduction of new statutory solutions.

Article III.-7:203 (1) of Principles, Definitions and Model Rules of European Private Law: draft common frame of references (DCFR) states as follows: "*The general period of prescription begins to run from the time when the debtor has to affect the performance or, in the case of a right to damages, from the time of the act which gives rise to the right*." According to an

additional comment on this provision, "*as a rule, the period of prescription should run only against a creditor who has the possibility of enforcing the right in court, or of starting arbitration proceedings. For it is in the course of these proceedings that the merits of the case will be investigated. (...) A right can, however, only be pursued in court, or before an arbitration tribunal, when it has become due - that is, when the debtor has to effect performance. The concept of the time when a party has to effect performance is widely known and relevant in many other situations*." (Prepared by the Study Group on a European Civil Code and the Research Group on the Existing EC Private Law (Acquis Group) p. 523)

As such, the prescription period begins only when a debtor has to affect performance and thus the creditor can sue the former. At the very moment when a debtor has to immediately effect the performance but refrains from it, there is a breach of obligation and a creditor's rights violation takes place. Until the moment when the right has become due, the creditor cannot demand any fulfilment and thus cannot sue the debtor for the debtor's inaction (such a claim cannot be satisfied). If the creditor cannot expect any satisfaction of a potential claim until after the right becomes due (and given the fact of non-fulfilment, violated) the prescription period (time period for submitting a claim to the court) should start only from the moment when the creditor's right becomes due, and starting from that point, the creditor should fully enjoy the time period provided for initiating any action. At the moment the right of the creditor becomes due but there is no fulfilment, the creditor becomes or should become aware of a violation of its rights and take appropriate steps.

Article 10.2 (1) of Unidroit Principles 2010 states as follows: "*(1) The general limitation period is three years beginning on the day after the day the obligee knows or ought to know the facts as a result of which the obligee's right can be exercised. (2) In any event, the maximum limitation period is ten years beginning on the day after the day the right can be exercised.*" According to

the additional comments concerning this provision, "*3. (...) An obligee should have a reasonable chance to pursue its right, and should therefore not be prevented from pursuing its right by the lapse of time before the right becomes due and can be enforced. Furthermore, the obligee should know or at least have a chance to know its right and the identity of the obligator. (...) 5. The obligee has a real possibility to exercise its right only if it has become due and can be enforced. Paragraph (2) therefore provides that the maximum limitation period starts only at such date."* (Published by the International Institute for The Unification of Private Law, pp. 346-348)

Thus, the Unidroit Principles also state that the right can be exercised only when it becomes due and enforceable and that the creditor should not be prevented from pursuing its right by the lapse of time before the right becomes due. Indeed, one can submit a lawsuit only when, despite the fact of the right becoming due, the debtor does not fulfil its commitments under a given obligation, so the prescription period cannot start until after such a breach happens.

Article 9 (1) of the 1974 UN Convention on the Limitation Period in the International Sale of Goods states as follows: "*Subject to the provisions of articles 10, 11 and 12 the limitation period shall commence on the date [on] which the claim accrues*." According to Article 10 (1) of the same convention, "*a claim arising from a breach of contract shall accrue on the date on which such breach occurs*."

Again, the emphasis is placed on the fact of a breach in obligatory relations. At the very moment a contractual obligation is not fulfilled, the creditor becomes or should become aware of the breach and can institute judicial proceedings in order to protect its rights.

It is of relevance to present also the corresponding legal positions of the Court of Cassation of the Republic of Armenia, which is the court of highest instance in accordance with the

Armenian Constitution, ensuring, in particular, the uniform application of law and other regulatory legal acts.

Referring to Articles 337-1, 337-2, and 337-3 of the Code (among other provisions of the Code) in its decision in the case of *Community of Yerevan v. Shavarsh Gevorgyan* (ԵԴ/21264/02/18, Cass. Ct. Jan. 14, 2022), the Court of Cassation stated that "*(...) Based on the above legal norms and legal positions, the Court of Cassation notes that, in the context of obligatory relations between civil subjects, each party is obligated to properly fulfil its obligation in accordance with the conditions of obligation, law, and requirements of other legal acts, and in case of absence of such conditions and requirements – in compliance with customary business practices or other generally set requirements, while in the event of non-fulfilment or improper fulfilment (with default, with defects of goods and services or with a violation of other conditions determined by the content of the obligation), legal liability may be imposed. The Court of Cassation notes that, as a result of the debtor's failure to fulfil an obligation or inappropriate (with default) fulfilment of an obligation, the creditor's right to take actions aimed at protecting the creditor's violated rights, including filing a lawsuit in court in accordance with the established procedure, arises. Moreover, the exercise of that right must be done during the prescription period, because the expiry of statute of limitations, for the application of which the party to the dispute has requested, serves as a ground for the court to deliver a judgment on the dismissal of the claim."*

Referring to the issues relating to filing a lawsuit in civil proceedings in its decision concerning the case of *Karo Mikayelyan v. "GeoProMining Gold"* LLC (ԵԴ/30480/02/19, Cass. Ct. Apr. 8, 2022), the Court of Cassation stated the following: "*(...) In addition, the mentioned violations include violations of the active or passive legitimacy of the litigants, when the lawsuit was filed by an improper plaintiff or against an improper defendant. The latter case refers to the legal regulation defined in Article 332 of the Civil Code of the Republic of*

Armenia, according to which the statute of limitations is considered to be the time period for the protection of rights on the claim of the person whose rights have been violated. Therefore, when the plaintiff is not endowed with active legitimacy, then he also lacks a violated right within the framework of the given claim, which is the only thing that can serve as the basis for the running of the statute of limitations."

These assessments lead to similar conclusions as are presented above. The creditor's right to take actions aimed at protecting its rights emerges when some violation of the latter takes place. The right to institute judicial proceedings aiming to protect violated rights should be exercised during the prescription period and that term cannot start sooner than when the mentioned right itself arises. Only a violation of the creditor's rights can be the basis for the commencement of the prescription period.

Now, bearing the above-mentioned in mind, we can further concentrate on an analysis and interpretation of Articles 337-2 and 337-3 of the Code.

One can easily find that the primary factor distinguishing two situations regulated by the mentioned provisions is that Article 337-2 deals with obligations, for the fulfilment of which a certain term has been determined, while Article 337-3 refers to obligations, the term for the fulfilment whereof is not determined or is determined on demand. Article 337-2 of the Code is fairly similar to all other provisions presented above, as it provides that a prescription period starts to run when the determined term of the fulfilment expires. The creditor becomes or should become aware of the violation of its right after the mentioned term expires, making evident that an obligation has been violated. In the case of obligations with no determined term of fulfilment (or one to be determined on demand), this scheme is inapplicable, as no certain point of time determining the end of the term of fulfilment can be identified, which is why Article 337-3 of the Code provides a different type of regulation.

According to Article 337-3 of the Code, the prescription period starts when the right of the creditor to claim the fulfilment of an obligation arises, while in the case in which the debtor has been allotted a grace period for the fulfilment of the requirement, the calculation of the statute of limitations shall start after the termination of that term. The question is at what exact moment the creditor's right to claim the fulfilment of the obligation arises.

Articles 352-2 and 352-3 of the Code state as follows:

2. In the cases when an obligation does not envisage a term for fulfilment and does not contain conditions for determining a term, it shall be fulfilled within reasonable terms after the arising of the obligation.

3. The debtor shall be obliged to fulfil the obligation not fulfilled within a reasonable terms, as well as the obligation, the term for the fulfilment whereof is determined by the moment of submission of the claim, within a period of seven days following the day of submission by the creditor of a claim thereon, unless another term for the fulfilment of the obligation follows from law, other legal acts, conditions of the obligation, customary business practices or the essence of the obligation.

According to the mentioned provisions, as a general rule, any obligation with no envisaged term should be fulfilled within a reasonable period of time, and, in the event the obligation is not fulfilled even after the expiry of such a reasonable period, it should be fulfilled within seven days (unless the applicable regulation provides any other specific term) following the day of submission by the creditor of a claim thereon. Besides that, if the term of fulfilment is initially determined by the moment of submission of the claim, the debtor shall fulfill the obligation within a period of seven days following the day of submission, unless another term follows from applicable regulations.

It stems from these regulations that any right emerging from obligations with no strict term of fulfilment becomes due only after a reasonable period of time, as prescribed in Article 352-2 of the Code. Moreover, if according to the applicable rule, the

obligation should be fulfilled within a grace period (which starts after the day of submission of the creditor's claim), the creditor's right becomes due only after the expiry of such a grace period. During the period of time between the arising of the obligation and expiry of the reasonable term for its fulfilment, the creditor cannot have any legitimate expectation of obtaining satisfaction upon demand, regardless of any claim of immediate fulfilment it could submit, and such a claim cannot encumber the debtor, who may ignore it, having full autonomy to pick the exact moment (within the reasonable term) it chooses to comply with the obligation. The same is valid for the grace period, which is separate from the already expired reasonable term and starts after the creditor submits its claim to the debtor.

The above makes it clear that any claim under Articles 352-2 and 352-3 (also specified in Article 337-3) of the Code becomes due and enforceable only upon the expiry of the reasonable term and, if provided by law, of the grace period commencing after the submission of the claim to the debtor. It is of relevance also to mention that, according to Armenian legislation, for any obligation with no determined term which has not been fulfilled within a reasonable timeline after its arising, there is (as a general rule) a grace period of seven days following the day of submission by the creditor of a claim.

Given the above, we reach the conclusion that "*the moment when the right of the creditor to claim the fulfilment of obligations arises*" under Article 337-3 of the Code corresponds to the moment when the reasonable time period under Article 352-2 of the Code expires. The term "*moment when the right of the creditor to claim the fulfilment of obligations arises*" cannot be interpreted as the moment when the obligation arises and the creditor acquires the right to claim the corresponding fulfilment in accordance with the terms of the given obligation. After the obligation arises, the creditor's right is not yet due and enforceable and there cannot be a breach of obligation. Thus, considering the prescription period to start from that particular

moment would be contrary to the very essence of the idea of prescription periods.

In case of an obligation with no envisaged term of fulfilment, the prescription period starts when the reasonable term for it to be fulfilled expires, under the condition that there is no rule of additional grace period discussed above, and thus, the creditor can demand an immediate fulfilment at any time. In this case, after the expiry of the reasonable term provided for the fulfilment, the claim becomes due and enforceable, and there is a breach of the obligation the creditor is or should be aware of. If there is a rule of additional grace period the prescription period starts upon the expiry of that grace period, which itself begins to run after the creditor (subsequent to the expiry of a reasonable term of fulfilment) submits the claim to the debtor. Only after the expiry of this grace period can any violation take place and the claim of the creditor become due and enforceable (as within that term the debtor still has time to deal with that obligation). In addition, it is also worthy to mention that, for the obligations the term of fulfilment of which is determined on demand, the prescription period starts after the expiry of a certain grace period which begins running after the creditor submits the claim, regardless of how long after the arising of the given obligation the claim is submitted.

The presented interpretation is the one which, we believe, directly stems from Articles 337-2 and 337-3 of the Code and complies with the essence of the right to trial and the nature of the legal concept of the prescription period.

However, this scheme does not entirely ensure the objectives underlying the temporal restrictions on the exercise of the right to trial. Particularly, as the creditor is free to submit its claim to the debtor at any time (only after that the prescription period starts), there can be cases when the prescription period has not yet expired even decades after an obligation has arisen. This situation would lead to the deterioration of legal certainty and finality, as possible disputes which are supposed to be automatically settled

after the expiry of some reasonable period of time unless the alleged victim does not initiate judicial proceedings within such time period, would remain active for years, thus affecting the interests of parties to the dispute, as well as those of third parties.

In the already mentioned *Stubbings and others v. United Kingdom* (1996) case, the European Court of Human Rights stated that limitation periods "*serve several important purposes, namely to ensure legal certainty and finality, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time*."

There are two possible solutions to the abovementioned issue. The first is to define a certain general period of time that is longer than the prescription period, runs after the obligation arises, and the expiry of which results in the dismissal of any action, regardless of whether the prescription period even started to run or not. The second is to introduce a legal option (aiming to preserve legal certainty) for a debtor to itself submit either (1) a formal claim demanding that the creditor accepts the fulfilment (as the creditor did not on its own submit the claim in question within a reasonable timeline) or makes it clear that it releases the debtor from the obligation or (2) a formal letter to the alleged creditor denying the fact of arising of a given obligation, which would make the debtor's position clear to the other party. The prescription period should start after the day the creditor receives the corresponding notification.

The abovementioned first solution does not comply with the nature of prescription periods, given that, in that case, a lawsuit can be dismissed on the basis of the expiry of some predetermined timeline even without a violation of rights taking place in reality.

The second solution seems more justified. When the debtor offers a proper fulfilment of the obligation with no envisaged

term, the claim becomes due and so the creditor has to accept it. Thus, the non-commencement of a prescription period after the creditor becomes aware of the debtor's intent but refrains from accepting the proper fulfilment offered by the latter results in a significant misbalance between the interests of the creditor on the one hand and the debtor on the other. Moreover, any notification by the debtor of its denial of the existence of an obligation subject to fulfilment amounts to a violation of the alleged creditor's rights.

Despite the above, the absence of statutory guarantees for debtors cannot in any case justify any interpretation of applicable rules which could potentially lead to the restriction of a plaintiff's right to trial. Such a scenario would amount to a restriction of the right to trial not provided by law, as current Armenian legislation does not contain any provision which would allow any change to the starting point of a prescription period in obligatory relations determined under Articles 337-2 and 337-3.

In this context, it is also necessary to refer to Article 337-4 of the Code. According to the mentioned provision, the statute of limitations for regress obligations shall start upon the fulfilment of the principal obligation, and such a regulation complies with the very nature of prescription periods.

The regressive obligations arise in the event a third party (obligated by the applicable rules as provided by the law, contract, etc.) provides compensation for the damage caused by another or fulfils a given obligation instead of the debtor when the debtor has violated its obligation. Appropriately, the third party gains the right to regress against the wrongdoer (or initial debtor) in the amount paid by the third party.

As the third party (creditor in regress obligation) would never be bound to pay damages or fulfil the initial obligation and bear all the constraints related whereof if there were no damage caused or the debtor delivered proper fulfilment, the former's legal interests are violated exactly at the moment it was compelled to fulfil the obligation of another person or provide compensation

for the damage caused by the other person's fault. As the interests of the creditor in regress obligations are violated by the debtor in regress obligations at the moment the former delivers a fulfilment in place of the latter, it is fair for the prescription period in regress obligations to begin running after the creditor fulfils the given obligation instead of the debtor. Yet, it is another issue to contemplate whether the moment the third party delivers a fulfillment in place of the initial debtor is the same as the moment the former's claim towards the latter becomes due. Given the above, we believe that it is not acceptable to have overlap between the term of fulfillment of a given claim and the prescription period for the protection of the same claim.

However, one should always bear in mind that, according to Article 397-1 of the Code "*Rules on the passing of creditor's rights to another person shall not apply to regress claims*." Thus, in applying Article 337-4, it is of relevance to make a proper distinction between situations when the third-party fulfilment results in the arising of a new (regressive) obligation or in the passing of creditor's rights to that third party within the framework of an already existing obligation. In the latter case, all the existing legal effects, including the one concerning the prescription period and its running, remain in force.

Conclusion

As has been illustrated, the prescription period is the timeline during which a person can exercise their right to judicial protection of their rights, and thus, the running of such a term cannot start before the right itself arises. The right to obtain the satisfaction of a given claim can only be legitimate if there took place a violation of the plaintiff's rights. Therefore, the prescription period starts only after the event of such a violation, when the right of the creditor in obligatory relations is due. Accordingly, the proper interpretation of Article 337-3 of the Code should be such that the prescription period starts after the

expiry of the grace period that begins to run after the creditor submits the claim to the debtor.

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CONCEPT OF RIGHTS AND SECURITY OF NAGORNO-KARABAKH PEOPLE IN LIGHT OF ICJ'S ADVISORY OPINION ON KOSOVO

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Abstract

This article is dedicated to the comparative analysis of the advisory opinion of the International Court of Justice on Kosovo, thereby revealing the criteria of the legality of realization of the right of peoples to self-determination and clarifying the question of their applicability to the Artsakh case. Historical and comparative methods of scientific research were used in the article, by means of which positive and negative aspects of the advisory opinion of the UN Court were highlighted.

The analysis has shown that perhaps for the first time, an attempt was made by the International Court of Justice to define the criteria of the legality of the act of declaration of independence by a national community seeking self-determination, which aims to remove the right of peoples to self-determination from the sphere of political speculation and place it in the realm of legal certainty.

The analysis also showed that the standards developed by the UN Court are fully applicable to Artsakh as well.

The article also made an important record that even in the seemingly non-pro-Armenian stance of the ongoing negotiation process, new negotiation approaches being formed by Armenia are within the context of the legal logic of the UN court and thus have the potential to achieve legal confirmation of the independence of the people of Artsakh, if appropriate diplomatic and military-political work is carried out.

Keywords: self-determination, territorial integrity, advisory opinion, Kosovo, Nagorno-Karabakh, Artsakh.

Introduction

In October 1991 by means of a referendum, Nagorno-Karabakh people declared their independence and then affirmed their right to self-determination during an unequal war unleashed by Azerbaijan planning to suppress the aspirations of Nagorno-Karabakh Armenians to gain independence. As a result of the ceasefire agreement signed in 1994, the war between Nagorno-Karabakh and Azerbaijan stopped, temporarily acknowledging the new delimitation of borders in the South Caucasus region. After the ceasefire agreement, the conflict was transferred from the battlefield to the area of diplomacy and international law and continues till now.

Unfortunately, there is no well-established and universally accepted international legal doctrine which would completely regulate the co-existence of principles of self-determination of peoples and territorial integrity of states, including setting out precise legal bases for the application of the principle of self-determination and the mechanisms of its application. International law has not found the ultimate solution to this problem yet. As a result, the application of these principles is left mainly to the political discretion of the major players in the international law arena and is conditioned by their geopolitical interests.

Though in 2010 a significant step was made towards the development of international law in this area by virtue of the advisory opinion of the International Court of Justice (hereinafter: ICJ) on Kosovo, the issue of its universal application still remains unresolved.

Due to the lack of an internationally accepted unified doctrine of the right of peoples to self-determination, the danger of unfreezing conflicts between former “parent” states and de facto independent national communities and militarily suppressing

national communities' political aspirations increased over time. The result of this was also the tragic 44-day war, in which Azerbaijan, taking advantage of the paralysis of the will of the international community, attempted to "solve" the Artsakh conflict at the cost of military aggression and many other war crimes, which it could not fully implement due to the collective courage of the Armenian people.

At the same time, a radical change in the international political order is currently taking place, which will have an inevitable legal impact on the content of all international legal institutions and the existing structures of ensuring their operation. Therefore, for national communities struggling for self-determination or its international recognition and for states under the auspices of which those national communities survive in one way or another, now is the right time to reconsider the unrealized legal legacy of the recent past and to bring forward new and realistic ideas for the protection of vital rights of indigenous peoples in the period of redistribution of geopolitical power and establishment of a new world order.

In this context, the ICJ's advisory opinion on Kosovo can have a crucial role in triggering the process of setting forth relatively unequivocal legal criteria for the pursuit of the claim for self-determination. Particularly, the ICJ's advisory opinion, adopted on July 22, 2010, is special in that it virtually recognized the legality of the unilateral declaration of independence made by Kosovo (a former province of Yugoslavia) under international law.

Taking into consideration that the Nagorno-Karabakh conflict is far from resolution and the negotiations continue it is important from theoretical and practical points of view to research the legal implications of the ICJ's advisory opinion to find out whether its criteria are applicable to the Nagorno-Karabakh conflict and can be utilized to strengthen the positions of Armenia and Nagorno-Karabakh in the process of negotiations.

This will provide an opportunity to enrich the legal arguments of the Armenian side with a new legal concept, especially when the legal and political benchmark of the negotiations process has objectively changed in the post-war period, turning from the demand for recognition of the Artsakh people's right to self-determination to the demand for the recognition and guarantee of rights and security of the Artsakh people, which, however, does not exclude external self-determination.

The ICJ's Legal Doctrine on Kosovo

On 17 February 2008, the parliament of Kosovo having been elected under the UN supervision in a special session adopted the Declaration of Independence, declaring Kosovo an "independent, sovereign and democratic country". Serbia contended the legality of Kosovo's declaration of independence and secession under international law and managed to instigate a debate within the UN General Assembly in order to engage the services of the International Court of Justice to provide an advisory opinion on this matter. On 8 October 2008, the General Assembly adopted the A/RES/63/3 resolution, where it was stated that "this act has been received with varied reactions by the Members of the United Nations as to its compatibility with the existing international legal order". As a result, the UNGA decided, in accordance with Article 96 of the UN Charter, to request the ICJ, pursuant to Article 65 of the Statute of the Court, to render an advisory opinion on the following question:

Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?

On July 22, 2010, the ICJ issued an advisory opinion in response to a question set out in the 63/3 resolution of the UN General Assembly. This advisory opinion promised to be a landmark for the development of international law particularly in the sphere of self-determination of peoples which is one of the most sensitive problems of contemporary international law.

Though the advisory opinion is not compulsory for states and other international actors the authority of the UN court and its political and legal status in framing and developing international law makes this act highly important and de facto mandatory. However, the UN court delivered an advisory opinion that has not fully satisfied the hopes of construing the legal question submitted to it rather narrowly. It covered only a few of the contentious legal issues relevant in the context of the Kosovo case, remaining silent on such problems as the legal effects of the unilateral declaration of independence, particularly, the validity and legal consequences of recognition of Kosovo as an independent state, the question of whether Kosovo is entitled to declare its independence unilaterally under international law, or whether it is lawful within the current international legal order for entities being a constituent part of a state unilaterally to break away from it, and it did not address the extent of the right of self-determination and the existence of a right of "remedial secession". Notwithstanding this and despite various criticisms of the politically motivated approach employed by the ICJ and the narrow scope of its advisory opinion there are certain nuances deserving attention. The scrutiny of the ICJ's wording shows that the legal doctrine of its opinion factually endorses Kosovo's independence and vicariously opens the door for other secessionist movements to reach the desired outcome. The logic of the ICJ's reasoning should be considered in conjunction with the written statements submitted to the UN court by the UN member states on the issue in question. A considerable part of countries including major actors of international relations such as the USA, UK, etc. favored the principle of self-determination and brought quite interesting arguments from political and legal points of view (Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Request for Advisory Opinion), 2010). These statements partly supplement the gaps and ambiguities of the ICJ's advisory opinion. Besides the statements of the countries expressing their

official approach to the problem of self-determination manifest emerging of *opinio juris* in postcolonial interpretation of this aspect of international law. The subsequent sections will introduce the main legal criteria (the legal doctrine) envisaged by the ICJ.

The issue of the legality of the unilateral declaration of independence under international law

The gist of the ICJ's advisory opinion is the problem of the legality of the unilateral declaration of independence made by the Kosovo parliament. The ICJ's wording on this issue reads: "... The task which the Court is called upon to perform is to determine whether or not the declaration of independence was adopted in violation of international law. The Court considers that general international law contains no applicable prohibition of declarations of independence. Accordingly, it concludes that the declaration of independence of 17 February 2008 did not violate general international law" (Advisory Opinion on the Accordance with International Law of Unilateral Declaration of Independence in Respect of Kosovo, 2010). When deciding on this issue the Court used the so-called "Lotus presumption" (Burri, 2010). This legal doctrine was first established in the famous Lotus case in 1927 by the Permanent Court of Justice, a judicial organ of the League of Nations, and then also applied by the ICJ itself in the judgment on the Nicaragua case, in the advisory opinion on the legality of the threat or use of nuclear weapons (1996). Under Lotus presumption what is not prohibited under international law is permitted. This is an international legal manifestation of one of the founding principles of the Constitutional law that emerged in the Anglo-Saxon legal system, which applies to natural persons as opposed to state officials, who can act only in accordance with the internal law of the state concerned. As formulated by the Permanent Court of International Justice, the Lotus Presumption applies to relations between independent states and reads as follows: "International law governs relations between

independent states. The rules of law binding upon states, therefore, emanate from their own free will as expressed in conventions and usages generally accepted as expressing principles of law and established in order to regulate the relations between the co-existing independent communities or with a view to the achievement of common aims. Restrictions upon the independence of states cannot, therefore, be presumed (The Case of the S.S. "Lotus", 1927). Applying this test, the ICJ does not ask whether there is a legal entitlement under international law to unilaterally declare independence, but just whether there is a rule prohibiting such a declaration per se. As a result of applying this negative test the Court states, that there is no such a rule in international law, which bans unilateral declaration of independence. It means that the unilateral declaration of independence as such does not violate any norm of international law. The application of this principle by the ICJ begs some questions. Firstly, Lotus presumption only relates to states as major actors of international law. From the ICJ's wording, it can be inferred that this principle can apply also to entities not being states yet such as Kosovo when declaring its independence. This approach seemingly aims to strengthen the positions and roles of these subjects and indirectly contributes to the rise of international legitimacy of the self-determination principle.

Judge Simma, one of the ICJ judges, contends the application of Lotus presumption due to its being outdated. He claims, that, as opposed to the beginning of the 20th century, when international law was consensual in nature and therefore precluded restrictions on state's independence, now the international legal order is not exclusively based on states' consent and is strongly influenced by ideas of public law (Accordance with international law of the unilateral declaration of independence in respect of Kosovo (Declaration of Judge Simma, 2010). Judge Simma inter alia implies the emergence of jus cogens norms, which create obligations for states without their consent. But there is a slight incompleteness in this

reasoning because jus cogens norms are a product of the collective activity of the international community, otherwise stated, the peremptory international legal norms are created by means of universal or at least the overwhelming majority consent or acquiescence of states as members of the international legal order. Thus, states' consent is one of the cornerstones of international law stemming from the principle of sovereign equality enshrined in Article 2 of the UN Charter. Thomas Burri also shares Judge Simma's opinion on this problem (2010), but for the justification of his views, he brings the following arguments: the principle "what is not forbidden is permitted" will probably be applicable in the internal legal order of a particular state because the internal legal order is complete and coherent (Burri, 2010). International legal order, despite the efforts in recent decades to unify it still remains fragmented into considerably incoherent parts. And the application of this approach is not the best solution to fill the gaps existing in international law. The next argument is that the soft law should not be underestimated (Burri, 2010). Recommendations, principles, and best practices regularly establish a framework in which international actors may act. If an international actor ignores these soft rules, it might ultimately be held accountable (Burri, 2010). Though Lotus presumption should not be overestimated, it would not be right to completely set aside this principle. Perhaps it should be deprived of its status of general principle (and it is really deprived now), but there can be areas in international law where the application of this norm would have a positive effect. Which areas would they be state practice will show, and the role of international judicial bodies and particularly the ICJ's impact is important in crystallizing the existing state practice and thus contributing to the creation of international customs. The ICJ in some cases mentioned above and also in the case of unilateral declaration of independence as a recent development points out that the Lotus presumption is applicable.

In this context the Court's views on the practice of the UN Security Council as lex specialis on the matter of declaration of independence bear emphasis. The Court mentions that "Within the legal framework of the United Nations Charter, notably on the basis of Articles 24, 25 and Chapter VII thereof, the Security Council may adopt resolutions imposing obligations under international law. The Court has had the occasion to interpret and apply such Security Council resolutions on a number of occasions and has consistently treated them as part of the framework of obligations under international law." (Advisory Opinion 410, at 30,31). Thus acknowledging that the UN Security Council's resolutions are an important source of international law, the Court continues: "Several participants have invoked resolutions of the Security Council condemning particular declarations of independence: see, inter alia, Security Council resolutions 216 (1965) and 217 (1965), concerning Southern Rhodesia Security Council resolution 541 (1983), concerning northern Cyprus; and Security Council resolution 787 (1992), concerning the Republika Srpska. The Court notes, however, that in all of those instances, the Security Council was making a determination as regards the concrete situation existing at the time that those declarations of independence were made; the illegality attached to the declarations of independence thus stemmed not from the unilateral character of these declarations as such, but from the fact that they were, or would have been, connected with the unlawful use of force or other egregious violations of norms of general international law, (by the people seeking self-determination (emphasize added)) in particular those of a peremptory character (jus cogens). In the context of Kosovo, the Security Council has never taken this position. The exceptional character of the resolutions enumerated above appears to the Court to confirm that no general prohibition against unilateral declarations of independence may be inferred from the practice of the Security Council." (Advisory Opinion 410, at 30,31). It means that the Court, referring to the Security Council's

resolution as a source of lex specialis, points out a precondition for the legality of the unilateral declaration of independence-mandatory requirement that the unilateral declaration of independence shall not be a result of or be connected with the egregious violations of jus cogens and other norms of general international law by the community seeking independence. One more precondition will be discussed below.

The next point, concerning the issue of unilateral declaration of independence, covered by the ICJ, is the link between unilateral declaration of independence and secession. The ICJ has not considered this issue, stating that it is not asked by the General Assembly on the legal effects of the declaration of independence or the right to secession (Advisory Opinion 410, at 30,31). The ICJ restricts its opinion strictly to the narrow formulation of the question submitted by the General Assembly, focusing on the act of declaring independence. A declaration of independence alone is not sufficient for an entity to gain independence since, in the words of the ICJ, sometimes a declaration of independence results in the creation of a new state, and in others it does not. Robert Muhharemi in his article criticizes the ICJ for avoiding stating its opinion on both the legal aspects of secession and the creation of a new state. According to the same author the ICJ thus distinguishes between "declaring" independence and "effecting" it, which seems artificial and unconvincing. The UN court sets forth an approach that a state first declares its independence and then takes steps to actually validate or enforce it. This approach does not indeed reflect the process of the creation of a new state and Kosovo in particular. In June 1999 after the NATO bombing and Miloshevich's capitulation, the UNSC passed Resolution 1244, mandating a UN interim administration (UNMIK) to establish and oversee Kosovo's provisional democratic institutions of self-government within a framework of Yugoslav sovereignty, pending a final settlement. The UNMIC created the provisional institutions of self-government and supported their development to become

properly functioning state bodies (Advisory Opinion 410, at 30, 31). When independence was declared in 2008, all government structures, including a completely new legal framework, were already in place for Kosovo to effectively and independently assume the functions of a state (*International Crisis Group.* Kosovo Conflict History, 2008).

The position, taken by a number of scholars is the right one. The declaration of independence is not an initial, starting point of a state-building process but its logical end, its culmination. The declaration of independence is closely linked with self-determination and secession. This was the case when the Soviet Union collapsed and former Soviet republics including Armenia gained independence. The declaration of independence by these republics and also Armenia was the final step in the process of obtaining statehood i.e. making secession. Thus secession cannot be illegal per se, if the act, which concludes the process of secession, that is the declaration of independence, is considered legal under international law. The ICJ, stating that in not all circumstances the declaration of independence leads to the creation of a state, implies the political means of dispute resolution such as negotiations and recognition i.e. whether the international community of states has recognized an entity in question as a state. Thus the ICJ gives great value to recognition, which in this logic has not only a declarative effect, acknowledging the creation of a new state as an existing fact without any legal effect on the emergence of statehood but also possesses a constitutive asset, meaning that the recognition by other states of an entity is decisive for the statehood to become a fact. This double understanding of recognition can be found in international law theory and also in some international documents such as the Ahtisaary plan on Kosovo (UNOSEK, 2007). The ICJ also recalls Resolution 1244 as lex specialis, where the necessity of political settlement of the Kosovo problem is emphasized. So the ICJ implies the legality of any settlement of territorial dispute including by realizing the principle of self-determination if the

settlement is a product of political compromise of parties involved in the respective conflict. The role of lex specialis under the Court's reasoning is considerable in developing international legal obligations for the parties to the dispute and establishing the order and basic directions of the resolution of the conflict. This was the case in the Kosovo dispute (UNSC Resolution 1244). It can be argued that the ICJ merely restates the status quo. The whole political process per se is a process of bargaining and compromise, where the prospect of success is conditioned by the favorable political situation, the real balance of forces between parties, and the interests of major political poles. But there is a nuance here. The ICJ initially upholds the legality of the claim for secession per se which means that during the political process, the right of peoples to self-determination just crystallizes, concretizes, and is being applied rather than it emerges. Political compromise notwithstanding the issue of the legality of the claim is necessary for the establishment of long-term peace, security, and stability in the world in general and in the region of the dispute in particular.

One more point in the context of the legality of the unilateral declaration of independence, which is addressed in the advisory opinion, is the problem of who possesses the right to declare independence. In this regard, the Court states the following: "The identity of the authors of the declaration of independence... is a matter which is capable of affecting the answer to the question whether that declaration was in accordance with international law" (Advisory opinion, 410 at 20). The ICJ, ruling on this point, adheres to the international customary rule, that "the right to self-determination must be claimed and exercised by an organization that is representative of the entire people. Thus, as far as external self-determination is concerned, there must be a liberation movement or another type of body representative of the whole people (Cassese, 1995). From the ICJ's line of reasoning, it follows, that one more precondition of the legality of the unilateral declaration of independence is its declaration by

representatives of the people seeking cession. The declaration of independence undoubtedly can be made also by means of a referendum, which can be considered a more authoritative tool since the decision is made directly by the people. The ICJ, touching upon this problem, argues that the Kosovo Assembly, when adopting the declaration, was acting as a body, representing the people of Kosovo rather than as a Provisional Institution of Self-Government (PISG) under the UN supervision. Particularly the Court states, that the declaration refers to the "democratic-elected leaders" of the people, which declare Kosovo an independent and sovereign state." (Advisory opinion, 410 at 39). Thus the Court wants to show, that even if the Kosovo Assembly had been elected under the supervision of the UN Interim Administration (UNMIK) at the time of declaring Kosovo's independence, Kosovo's parliament was already emancipated and acted as a representative body of a state rather than a provisional body of a contentious territory. On this point, the Court's wording reads as follows:" The Court considers that the authors of that declaration did not act, or intend to act, in the capacity of an institution created by and empowered to act within that (UN) emphasize added) legal order but, rather, set out to adopt a measure the significance and effects of which would lie outside that order." The Court states, that the declaration confers powers on the Kosovo Assembly, which it did not have under the UNMIK regulation on a Constitutional Framework for Provisional Self-Government (hereinafter "Constitutional Framework") such as external relations, which were vested in the Special Representative of the Secretary-General. The Declaration was not approved by the Special Representative of the Secretary General as it was in the case of acts adopted by the PISG. Also, the procedure of adoption of the declaration differed from the procedure under which the acts of the PISG were adopted (Advisory opinion, 410 at 39). The Court thus arrives at the conclusion that, taking all factors together, the authors of the declaration of independence of 17 February 2008 did not act as

one of the Provisional Institutions of Self-Government within the Constitutional Framework, but rather as persons, who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration (Advisory opinion, 410 at 39).

Thus, the unilateral declaration of independence of Kosovo meets the criteria of democratic decision-making elaborated by the ICJ.

Testing Applicability of ICJ's Legal Doctrine on Nagorno-Karabakh Case

As it was previously mentioned the ICJ has defined certain criteria for the unilateral declaration of independence to be lawful: (1) the independence shall be declared by the representatives of the people seeking self-determination. (2) the declaration of independence shall not be a result of or be connected with egregious violations of jus cogens and other norms of general international law by the people seeking self-determination. Does the Nagorno-Karabakh case in conformity with these legal requirements? The answer is yes. The subsequent parts of the article will discuss and substantiate Nagorno-Karabakh's conformity with each of the criteria mentioned above.

The independence shall be declared by the representatives of the people seeking self-determination.

In the 1991 referendum, the Nagorno-Karabakh people by an overwhelming majority voted for independence from Azerbaijan. This act is a unilateral declaration of independence. Moreover, the ICJ established a less ambitious criterion – the declaration of independence by the representatives of the people which in democratic society associates with parliament and forms a type of representative democracy. In 2008 Kosovo parliament adopted the declaration of independence. In Nagorno-Karabakh independence was declared by the people themselves displaying a manifestation of direct democracy, hence Nagorno-Karabakh people not only met the minimum threshold adopted by the ICJ

but took a higher standard of democratic decision-making. It is argued that the plebiscite in Nagorno-Karabakh is not valid since the Azeri community of Nagorno- Karabakh did not participate in it and also because of the absence of international monitoring of the referendum. These allegations are not properly founded. Firstly, the Azeri population constituted at most 25 percent of the whole population of Nagorno-Karabakh at the end of the 1980s being a minority (Bing Bing, 2009). Under customary international law in such cases the position of the majority is conclusive (Bing Bing, 2009). In Kosovo, the declaration of independence was proclaimed even though the 10 Serb members of the Assembly boycotted the voting (Cassese, 1995). The deputies boycotted the voting represented the Serb minority of Kosovo but their absence did not affect the outcome of the voting because the deputies representing the ethnic majority of the province voted for independence. The correlation between representatives of ethnic majority and minority and the lack of opportunity for the parliamentary minority to influence the results of the voting for independence in the Kosovo assembly greatly resembles the situation in Nagorno-Karabakh. In both cases the decision of the ethnic majority obtained legitimacy. The absence of a minority in the decision-making process could not anyway be decisive in the sense of the outcome. The difference is the procedural - the process of decision-making. In Nagorno-Karabakh, the ethnic majority made the political decision directly by means of a plebiscite whereas in Kosovo the decision was made by the representatives of the ethnic majority.

As far as the second argument is concerned it should be noted that neither treaty nor customary international law requires compulsory international monitoring of plebiscites and other means of self-determination. Summing up the above-mentioned considerations it can be concluded that Nagorno- Karabakh's declaration of independence meets the first pre-condition of legality.

The declaration of independence shall not be a result of or be connected with egregious violations of jus cogens and other norms of general international law by the people seeking self-determination.

The violations of international law at the abovementioned level can be unlawful use of force, outrageous human rights violations, etc. Obviously, Nagorno-Karabakh Armenians were not engaged in any such internationally wrongful act. The liberation movement in Nagorno-Karabakh was peaceful, upholding internal and international law (Advisory opinion, 410, at 37, 39). On the contrary Azerbaijani authorities used force against the Armenian minority lawfully striving for self-determination. Awful massacres, killings, pillages, mass deportations of the Armenian population of Azerbaijan and Nagorno-Karabakh and finally war unleashed against Nagorno-Karabakh Armenians are apparent displays of egregious violations of international legal norms perpetrated by Azerbaijan. It can be surely said that the Armenian population of Nagorno-Karabakh had the status of victim and not the aggressor. The declaration of independence together with active measures of self-defense was the only means of overcoming the aggressive policy of Azerbaijan and thus is not a result or is not connected with any international wrongdoing. Thus, Nagorno-Karabakh's unilateral declaration of independence through a plebiscite on December 10, 1991, meets the criteria of legality mentioned in the ICJ's well-known advisory opinion.

Notwithstanding the legality of unilateral declaration of independence is the core legal issue handled by the UN court it is worth touching upon the legal implications of the ICJ's other considerations which can be valuable for Nagorno-Karabakh conflict resolution. The Court makes a distinction between the principle of territorial integrity being applicable to states and the principle of self-determination, at the same time implying the importance of political settlement of a territorial dispute. To put it in other words, the Court does not inhibit the resolution of a

dispute on the basis of self-determination principle but makes it important to reach such a solution by means of political negotiations and compromise between parties and recognition by the international community of the secession of a separatist region (Advisory opinion, 410, at 37, 39).

The ICJ's advisory opinion a priori has the potential to strengthen the positions of Nagorno-Karabakh and Armenia in the sense that it does not prohibit the claim on secession and is permitted to use it in the process of negotiations if properly grounded. Azerbaijan's statements that territorial integrity is predominant over the principle of self-determination and the Armenian claims contradict international legal norms are not lawful and are ill-grounded according to the reasoning of the ICJ's advisory opinion.

Correlations of the concept of guaranteeing the rights and security of the people of Artsakh and the legal position of the UN International Court

In the post-war period, Armenia embarked on restoring the shaken negotiating positions and developing a realistic concept for the settlement of the Artsakh problem, corresponding to the current reality. It is, in fact, summarized in the following provisions: 1. ensuring the rights and security of the people of Artsakh by Azerbaijan, 2. formation of a structure of dialogue between the elected authorities of Artsakh and the representatives of Azerbaijan on the said issue, 3. creation of international guarantees for fixing and ensuring the agreements reached on these issues (Armenpress, Armradio, 2023). In essence, the above-mentioned theses do not neutralize the right to self-determination of the people of Artsakh, and the problem is more etymological and is related to Armenia's weak military potential and the radical geopolitical, strategic, and geo-economic revisions taking place within power centers in the international mixed situation, which made it a vital necessity for the Armenian side to soften the tone and have a tactical break to form

negotiation approaches with international legitimacy and to correct the military-political and economic situation of the state. In the current situation, it is very important for Armenia to be comprehensible to the main international actors and propose a negotiation package that will first of all find the support of the international community and will be realistic enough to neutralize Azerbaijan's lobbying and other countermeasures against that package.

The negotiation tactics chosen by Armenia are quite flexible in this regard, and the chosen diplomatic vocabulary is also flexible enough to include all tools important for the protection of the vital interests of the people of Artsakh. In particular, if we delve into the content of the concept of "guaranteeing the rights and security of the people of Artsakh", we will see that the latter includes all options for realizing the right to self-determination of the people of Artsakh, including the legal confirmation of secession from Azerbaijan. Particularly, the scope of Armenia's claim for recognition and support to the maintenance of rights and security of Artsakh Armenians depends on the respective behavior of Azerbaijan. Being conditioned upon Azerbaijan's attitude towards the vital rights of the Artsakh Armenians, the agreement to be reached with the support of the international community will record the optimal version of the status of Artsakh that will guarantee the vital rights and interests of Artsakh Armenians.

It is obvious that along with the increasing danger of ethnic cleansing, the self-determination of Artsakh within the framework of the concept of "remedial secession" may become more and more unequivocal. Legal and ideological appeals of the mentioned approach can be found in the advisory opinion of the UN International Court of Justice in the case of Kosovo, which considers the status of the national community, seeking independence, as being a "victim" of, parent, state's intense violence and aggression, endangering the life and development of the people. This is one of the main elements of the legitimacy of

the declaration of independence of the national community. In other words, viewing the demand for the secession of Artsakh as not an unconditional and one-time act, but a legal and political consequence equivalent to the intensity of the violation of fundamental rights of the Artsakh Armenians by Azerbaijan, is in fact consistent with the spirit and internal logic of the advisory opinion of the UN court. Moreover, the Kosovo case had similar evolutionary development, and it was Yugoslavia's forceful rejection of Kosovo Albanians' basic rights, amounting to ethnic cleansing which became the climax making Kosovo's independence inevitable (UN Security Council Report, 2007; Security Council Resolution 1244, 1999; Human Rights Watch, 2001; 2010).

In this context, important steps are being taken by Armenia towards legal registration of Azerbaijan's xenophobic policy against Artsakh Armenians at the European Court of Human Rights and at the UN International Court of Justice, where the applications submitted by the Armenian Government refer to massive violations of Artsakh Armenians' fundamental rights at the individual and collective level: the right to life, the right to dignity, the right to property, discrimination on the basis of nationality, etc. All this is very important for the international de-legitimization of Azerbaijan's legal claims against Artsakh.

The efforts of the Armenian side to create a format of Artsakh-Azerbaijani dialogue are related to the criterion of the legality of external self-determination proposed by the UN International Court of Justice for Kosovo: declaration of independence by legitimate representatives of the national community. The proposed dialogue format, apart from the current need for Artsakh's security, will also resolve the issue of the status of Artsakh as a legitimate subject of international law from a strategic perspective. That is also the reason why Azerbaijan rejects any proposal of dialogue with Artsakh on the principle of equality. As for the international guarantee mechanisms for the resolution of the Artsakh issue, it is known from the Kosovo case

itself. Both the OSCE Minsk Group in the case of Artsakh and the famous Troika in the case of Kosovo have tried for years to reach a fundamental resolution to the Kosovo conflict, but in the end, such a solution was guaranteed mainly by the US and NATO, which backed the creation of a new governmental, political and economic structure in Kosovo. The issue of the institutional guarantor of the peace agreement with Azerbaijan, including the issue of Artsakh, is extremely important for Armenia, which is located in the Greater Middle East region, which is made up of states with an asymmetric resource base as well as with diverse historical and cultural roots. Otherwise, the agreements reached can remain on paper.

Conclusion

Kosovo events and the ICJ's advisory opinion show that the attitude of the international community towards the postcolonial interpretation of the self-determination principle is being changed. The ICJ has tried to clarify to some extent how the self-determination principle should be applied in modern international law. It is not surprising that after Kosovo in 2010 the world witnessed the emergence of one more new state separated from the "parent state" South Sudan. At the same time, it is true that without wide international support and consistent state practice, the ICJ's advisory opinion will not become customary law and consequently will not serve as a legal precedent for other secessionist movements. In this light, the South Sudan case is not a manifestation of a chain reaction after the ICJ's advisory opinion but more a result of a political decision of parties to the dispute which was admitted by the international community. This was also the case in 1971 when Bangladesh seceded from Pakistan. The UN court also realizes the importance of politics in the dispute resolution process emphasizing the importance of the political settlement of a conflict.

The hypothetical application of the legal doctrine of the ICJ's advisory opinion to the Nagorno-Karabakh case has revealed that

Nagorno-Karabakh meets the criteria elaborated by the ICJ. The outcome of the Kosovo conflict and the line of the ICJ's reasoning implies that the strongest argument for a minority claiming secession should be the concept of so-called remedial secession i.e. the fact of suppression and gross and continuing violations of human rights by the "parent," state with regard to certain community compactly residing within its borders. Nagorno-Karabakh and Armenia have all the necessary legal and factual bases to substantiate the aforementioned argument.

In a political sense weighted by the ICJ's advisory opinion Armenian and Azeri parties are far from reconciliation. After the 44-day war Azerbaijan occupied around half of the former NKAO, that is the actual territory of Artsakh. Now Azerbaijan endeavors to formalize the consequences of the war meaning that Azerbaijan completely rejects any status of Artsakh and even negates the existence of a compact territory with the name Nagorno Karabakh. Moreover, Azerbaijan has put forward territorial pretensions against Armenia. As a result, Armenia now has to invest resources in two dimensions: the issue of rights and security of Artsakh Armenians and the protection of the territorial integrity of Armenia – a fact that has never existed before the recent war.

At the same time notwithstanding Azerbaijan's ongoing reluctance to humble with self-determination of the Nagorno-Karabakh people and arrange a mutually acceptable negotiation agenda with Armenia, it is time for taking active political measures to eventually reform the negotiation concept in such a way that will ensure support of the international community and boost the rights of Artsakh Armenians. In this way, it is crucial to base negotiation policy on international law and keep distance from pure political bargaining: Azerbaijan has much more financial resources and political leverage for that. On the contrary, international human rights, democracy, and the rule of law are indispensable assets that make Armenia and the international community, mainly the West confederates and by

means of which Armenia can challenge and balance Azerbaijan's post-war self-confidence and arrogance and eventually pull it to the negotiation table.

ICJ's advisory opinion on Kosovo may provide profound institutional prerequisites for pursuing the rights and interests of the Artsakh people. The paradigm offered by the UN court is both relatively flexible and concrete having the potential to accommodate to political realities of certain cases. The ICJ's legal logic is to connect the outcome of the self-determination case with the "parent" and the state's behavior. Thus the burden of proof that the ethnic community may safely co-exist with the titular nation is on the government of that nation. The less trustworthy the proofs the more legitimate the claim for independence.

The Armenian government must take into consideration the flows of the past and take measures to set up a new paradigm of protection of Artsakh people which will encompass setting up mechanisms of protection of rights and security of Artsakh Armenians under international law and political arrangements of boosting punitive actions by the international community against Azerbaijan in case of the latter's reluctance to negotiate.

One thing is straightforward – self –determination implies three phases: a significant process of foundation of the issue, gradual transformation of the international community's attitude towards favoring the community seeking salvation by means of independence, and eventual legal and political guarantees for that independence. Armenia and Artsakh are at the second stage of the process and only patriotic commitment and diplomatic craft may keep the chances of success viable.

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ROLE AND POWERS OF THE NON-EXECUTIVE PRESIDENT IN THE REPUBLIC OF ARMENIA: UNFINISHED CONSTITUTIONAL TRANSITION FROM A SEMI-PRESIDENTIAL SYSTEM OF GOVERNANCE TO THE ARMENIAN PARLIAMENTARY DEMOCRACY

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Abstract

With the constitutional change of 2015, Armenia made an uncomplete transition from the semi-presidential system of governance to parliamentary democracy. Within the first chapter, this article presents the constitutional role, functions of the President of Armenia, and the powers vested in the President in accordance with the constitutional architecture that has been in place since 2015. The adequacy of constitutional status attributed to the President as well as the scope of the powers and duties are assessed given the formation of the Government, election and resignation of the Prime Minister, applicable electoral system, applicable regime of the dissolution of the Parliament, formation of autonomous bodies stipulated by the Constitution (Central Bank, Central Electoral Commission etc.), the given solutions in deadlock situations when the political majority is not able to secure 3/5th of the votes and elect a member of the politically neutral body, the powers given to the parliamentary minority, and the quality of the political discourse. The second chapter discusses what are the main expectations from the President's office, what is the aim of establishing a non-executive president based on the nature of the Armenian parliamentary democracy and adopted constitutional architecture? Considering the models

set out in the guidelines provided by the International IDEA as well as based on the legal comparative research, the second chapter suggests what discretionary powers should be given to the President so that he or she can act as constitutional arbiter but meanwhile prevented from becoming a player in the political game.

Keywords: Head of State, Non-Executive President in the Parliamentary Democracy, Discretionary Powers of the Non-Executive President, Constitutional Arbiter, Amendments to the Constitution.

With the constitutional change of 2015, the Republic of Armenia made a transition from the semi-presidential system of governance to parliamentary democracy. Former President Serzh Sargsyan, who initiated the change, stated on many occasions that he had no aspirations to become Prime Minister and the amendments should not be interpreted as a way for him to hold onto power. Despite that promise, in April 2018 the parliament of Armenia elected Serzh Sargsyan as the country's first Prime Minister after the transition to the parliamentary system. That election prompted demonstrations, marches, and other acts of civilian disobedience of an unprecedented scale paralyzing the work of public institutions which became known as the "Velvet Revolution" (Commission on Security and Cooperation in Europe, 2018). Serzh Sargsyan stood down as Prime Minister on 23 April 2018, and the National Assembly elected the leader of the revolution, Nikol Pashinyan, to the office. In December of the same year, Armenia held snap parliamentary elections, in which the political bloc led by Pashinyan won most seats in the parliament. During the campaign ahead of the 2021 snap parliamentary elections, which came about after the loss of the 2020 44-day Nagorno Karabakh war against Azerbaijan, Prime Minister Pashinyan promised a constitutional revision. Nikol Pashinyan once again secured a confident win in the elections. In

2022, the Prime Minister formed the Constitutional Revision Council (**the Council**) and subsequently the Constitutional Revision Commission (**the Commission**). The Council instructed the Commission that Armenia should remain a parliamentary democracy, but the Commission is supposed to provide its assessment as to the changes that the President's Office should undergo, if any.

Within the first chapter, this article presents the constitutional role, functions of the President of the Republic of Armenia (**the President**), and the powers vested in the President in accordance with the constitutional architecture that has been in place since the constitutional change of 2015. The adequacy of constitutional status attributed to the President as well as the scope of his or her powers and duties are assessed given the adopted procedure for the formation of the government, election of the Prime Minister, applicable proportional electoral system (a guaranteed stable parliamentary majority), the resignation of the Prime Minister and its legal consequences, the applicable regime of the dissolution of the parliament, formation of autonomous (politically neutral) bodies stipulated by the Constitution (Central Bank, Central Electoral Commission, Audit Chamber etc.), the adopted solutions in deadlock situations when the political majority is not able to secure the required 3/5th of the votes and elect a member of the politically neutral body, the powers given to the parliamentary minority, and the quality of the political discourse. The second chapter of this article discusses what are the main expectations from the President's office, what is the aim of establishing a non-executive president based on the nature of the Armenian parliamentary democracy and the adopted constitutional architecture. Considering the models set out in the guideline provided by the International IDEA on Non-Executive Presidents in Parliamentary Democracies (**the Guideline** (International IDEA Constitutional-Building Primer 6, 2017)) as well as based on the legal comparative research, the second chapter suggests what discretionary powers should be given to

the President so that he or she can act as a constitutional arbiter but at the same time prevented from becoming a player in the political game.

Non-Executive President in the 2015 Constitutional Change

With the constitutional change of 2015, the powers and duties of the President have been almost entirely transferred to the Prime Minister. The Constitution exhaustively defines all the powers and duties of the President without enabling the Parliament to bestow the President with additional powers by voting respective laws. According to Article 123 of the Constitution, *the President is the head of the state and observes the compliance with the Constitution. While exercising his or her powers defined by the Constitution, the President is impartial, guided exclusively by state and national interests*. The Constitution does not underline that the President embodies the unity and longevity of the nation or the unity of the state which is common in parliamentary democracies. The Constitution neither contains any reference to the cultural heritage, the shared moral values, and aspirations of the people. The only reference in this regard can be found in Article 127 (3) of the Constitution which stipulates the text of the presidential oath. In the inauguration oath, the President swears to exert all his or her efforts into promoting the national unity. As to its main function as constitutional guardian, there is no guiding provision in the Constitution as to what principles and values the President should protect while observing the compliance with the Constitution, particularly when, for example, he or she considers the constitutionality of individual appointments submitted before him or her. Can we assume that the President while considering appointments based on the proposal submitted before he or she should be guided by the principles of transparency, integrity, and professionalism, look at the entire selection procedure, its competitive and merit-based nature, including assessing the

integrity and past of the nominees in question? The Constitution does not give any hint in this regard leaving it entirely at the mercy of the Constitutional Court.

Of more than a dozen discretionary powers, usually vested in the President in a parliamentary democracy, and listed in the Guideline, the President mainly has three of them:

a. to nominate justices of the Constitutional Court (to be appointed by a 3/5th supermajority in the Parliament);
b. to apply to the Constitutional Court requesting to assess the constitutionality of laws, proposals for appointments of ministers, supreme command of the Armed Forces, ambassadors (upon recommendation of the Prime Minister), judges (upon recommendation of the High Judiciary Council), and motions (granting pardon and citizenship, conferring awards), or return the motion and proposal, together with his or her objections, to the body that filed the proposal or the motion; (Para 2 of Article 139 of the Constitution)
c. presidential discretionary powers in deadlock situations when the political forces fail to reach an agreement and make an election within the politically neutral bodies provided by the Constitution (appointment in the Central Bank, Central Electoral Commission, Audit Chamber, High Judiciary Council, Television and Radio Commission, as well as the nomination of the Human Rights Defender and the Prosecutor General).

The President of Armenia neither plays a role during the appointment of the Prime Minister (despite the fact that the heads of the state in countries with a parliamentary system of governance often moderate the negotiations between the political forces, in certain cases pick a candidate and enable him or her to conduct negotiations and receive a vote of confidence), nor has

any say in the process of dissolution of the parliament[1] (Poghosyan & Sargsyan, 2016). According to the Constitution, the leader of the majority by virtue of law becomes a Prime Minister. If no political force gets most of the mandates, then a coalition can be formed in the specified period, and the leader of the latter becomes a Prime Minister by virtue of law. If a political coalition is not formed, then two political forces (alliances) with a greater number of votes go directly to the second round of direct elections[2]. It should be noted that the political forces have overcome the threshold after the first round of elections can join any of them or can keep their mandates and enter the parliament without participating in the second round of elections with any force. The leader of the political force, which has received a greater number of votes in the second round of elections, becomes a Prime Minister by virtue of law. This proportional electoral system is known as a guaranteed stable parliamentary majority, where the winner gets the secured majority, and the elections always end up with the declaration of the winner and the formation of the Government. This two-stage electoral proportional system is unique, its details are elaborated by the Electoral Code of Armenia. As of today, the guaranteed stable parliamentary majority constitutes 52% while at the outset it was 54%.

As clearly demonstrated, the non-executive president has the status of a mere observer in the entire process of the appointment

[1] With the constitutional change of 2015, the Parliament in Armenia is dissolved by virtue of law, automatically when the office of Prime Minister remains vacant, and no one is elected in line with the Constitution. The dissolution of the Parliament by virtue of law is unusual. The international constitutional practice demonstrates that the dissolution of the parliament is within the ambit of the powers of the head of the state who has some discretion in this matter. This was literally mentioned by the authors involved in the constitutional change of 2015.

[2] In the case when the first two political forces with a greater number of votes form an alliance, they go to the second round of the elections with the third political force or the political alliance united around the latter.

of the Prime Minister. Similarly, in case of the office of the Prime Minister becomes vacant (resignation, death etc.), the Constitution does not assign any role to the President. The parliamentary factions are entitled to present a candidate, who must get the support of most of the members of the Parliament (**MP**s), otherwise, the Parliament will be dissolved by virtue of law, automatically, and new elections will take place[3]. Many examples of the decisive role of the president in the comparative constitutional law can be cited such as Italy, where the president moderates the negotiations, and can give a mandate to a concrete leader so that the latter tries to form a government. As to the non-confidence vote against the Prime Minister, the Constitution introduced a constructive vote of no-confidence. The motion should contain an alternative candidate's name with no role assigned to the President. If the motion is voted, then the alternative candidate becomes a new prime minister.

In the process of adoption of laws, the President does not have the power to delay legislation pending further review and scrutiny or to suspend a bill that has been passed by the Parliament pending approval in a referendum. The President does not have discretionary powers when granting pardon, citizenship, or conferring honorary titles. As mentioned above, he or she should act on the submitted motion with two available options-return the motion with his or her objections (including applying to the Constitutional Court) or give a green light.

The role of the President in the formation of the politically neutral bodies stipulated by the Constitution is not significant. He or she can nominate a candidate for the justice of the Constitutional Court on the one hand and ensure interim nominations in the autonomous institutions stipulated by the

[3] The National Assembly is dissolved according to the Constitution, if the National Assembly does not elect a Prime Minister in the prescribed manner after the position of the Prime Minister becomes vacant or after the rejection of the Government's program (see Articles 92, 149 and 151 of the Constitution)

Constitution (deadlock situations) on the other hand. The Parliament is the ultimate decision maker, who elects by a 3/5th of the total number of votes the justices of the Constitutional Court and the judges of the Court of Cassation, the Prosecutor General, the Human Rights Defender, the members of the politically neutral bodies stipulated by the Constitution, as well as the chairs of the Central Bank, the Central Electoral Commission, and the Audit Chamber. Half of the members of the Supreme Judicial Council- legal scholars and other prominent lawyers are elected by the National Assembly, and the other half, professional judges, are elected by the General Assembly of Judges. There is no competitive and merit-based constitutional procedure in place for the election or short-listing of the candidates. Neither the joint formation of the election commission by the parliamentary majority and the minority, nor direct appointments by the parliamentary opposition or the opposition leaders is envisaged by the Constitution. The existing regulations set out in the Constitution refer only to the requirement of a 3/5th of the total number of votes. At first glance, it seems that the high threshold makes the political forces negotiate over the nomination process. However, two scenarios are possible. First, the ruling political force may have a 3/5th supermajority in the Parliament in which case the parliamentary minority theoretically has no role, which we have witnessed in the recent years after the constitutional change of 2015 became effective. The second scenario is when the political force in power does not have the required 3/5th and does not reach an agreement with the parliamentary minority. The constitutional solution then is focused on the President who should secure the interim nominations. Given that the President is elected by the political majority, the final say goes again indirectly to the political majority in power without leaving any leverage to the parliamentary minority. Considering that the President is appointed for a term of seven years, theoretically, it is possible that at a certain moment, there can be a president not elected by the political majority in power. However, given that

the interim candidates are not appointed by the President for a defined period, the Parliament can replace interim presidential nominees at any time. Within this constitutional design, many candidates would not agree to be temporarily appointed by the President, because they can be fired even before assuming the position. In other words, the existing system, in particular the lack of security of tenure, is not attractive for professional candidates. With little choice, the President will likely be forced to consider mainly the candidates supported by the political majority in power.

Apart from the discussed discretionary powers, the non-executive president holds several ceremonial powers such as accepting the credentials and letters of recall of diplomatic representatives of foreign states and international organisations, conferring the highest diplomatic and military ranks, etc. The Constitution is silent on his or her duties as a civic leader. The civic leadership functions of the president may include patronising arts and culture, supporting or encouraging charitable activities, visiting local communities, making speeches, and hosting cultural events (International IDEA Constitutional-Building Primer 6, 2017). The only reference in this regard can be found in Art 128 of the Constitution which states that the President may deliver an address to the National Assembly on issues falling under his or her competencies.

The Ceremonial Figurehead or Constitutional Arbiter with the Limited but Discretionary Powers?

When discussing the functions of the President, as well as the powers vested in the President for performing them, it is necessary to reveal the expectations from the Presidential office in the Armenian parliamentary governance. Particularly, what is the aim of establishing a non-executive president? Shall he or she, as a head of the state, be a ceremonial figurehead, or a constitutional arbiter, with a limited amount, but, nevertheless, with certain discretionary powers, closely associated with the

autonomous, politically neutral institutions established by the Constitution?

Before answering these questions, we need to look at the main features of the Armenian parliamentary democracy and compare it against the Westminster parliamentarism and the German model both often referred to by the Armenian drafters of the constitutional amendments of 2015. Lord Sumption, the former UK Supreme Court's judge, in his lecture at Oxford Martin School noted that the British parliament and other parliaments of the Westminster model are unusual among democratic legislatures. *Parliament is not just a lawmaker and an external check on governance, it is itself an instrument of the government. Its main function is to support the government or to change it for another that it can support. And that is reflected in the fact that the ministers sit in the parliament together with the parliamentary secretaries, they comprise about a fifth of the House of Commons* (Lord Sumption). The Armenian reality is different, the parliament is accepted as a lawmaker and external check over the government. Moreover, parliamentary sovereignty is not a prevailing principle of Armenian constitutional law, and the legitimacy of the government's actions does not entirely depend on the parliamentary sentiment. Second, when designing the office of the President, it is necessary to consider the arrangements made by the Constitution in their entirety, in particular, to take into account ''the entrenched regulations'' that are unlikely to be changed such as the appointment of the Prime Minister without the involvement of the President, the automatic dissolution of the National Assembly, a constructive vote of non-confidence against the Prime Minister, etc. The introduction of these regulations has already widely restricted the role of the President. If the President does not have the necessary powers to be a civic leader and constitutional guardian with a significant role in the formation of the politically neutral institutions established by the Constitution, then the need for maintaining the office of the President may be questioned. This concern was also

raised many times by Armen Sargsyan, the first President of the Republic of Armenia in parliamentary democracy, who even cited the insignificance of powers as one of the reasons for his resignation. Moreover, there is no powerful local governance in Armenia (such as German federalism, British devolution, etc.). The Armenian Parliament does not have a second chamber, which would have been involved in the adoption of laws and could counter the first chamber of the parliament, preventing the latter from adopting populist bills to please the electorate. In such conditions, the Constitution makers should at least consider bestowing the President with powers delaying the bills pending further scrutiny and review as well as calling for a referendum. Otherwise, how to understand the situation when the President does not possess any course of action against the bill adopted with irregularities which do not amount to unconstitutionality? By the way, this concern was also raised by the European Commission for Democracy through Law in its first opinion issued on the Draft Amendments to the Constitution of 2015 (CDL-AD (2015) 037).

As discussed in the 1st chapter, there is no guiding provision in the Constitution as to what principles and values the President should protect while observing the compliance with the Constitution, particularly when, he or she considers the constitutionality of proposals and motions. The Constitution should elaborate and enshrine that the President observes the compliance with the Constitution, protects the rule of law, and contributes to the implementation of principles of transparency, integrity, responsibility, and professionalism, particularly in the formation of public administration. With the strong statement in the Constitution, the potential constitutional disputes related to the scope of the presidential powers will likely be resolved in favour of the President.

A non-executive president should be closely associated with politically neutral institutions established by the Constitution. It is of paramount importance to increase the role of the President in

ensuring the political neutrality of these autonomous bodies and the transparency of the appointments with professionals of high integrity. The President may have multifaceted participation nominating candidates before the National Assembly as a result of the competitive and merit-based selection, making direct appointments to these institutions as well as providing interim nominees when the political factions of the National Assembly have not been able to reach an agreement over a particular nomination and the position remains vacant. As discussed in detail in the first chapter, in line with the current constitutional regulations the President has only the power to nominate a candidate for the justices of the Constitutional Court and plays no role in the formation of the autonomous institutions stipulated by the Constitution. It is necessary to consider, first, empowering the President based on a competitive and merit-based selection process to directly appoint justices of the Constitutional Court, Chairs of the Central Electoral Commission, the Central Bank, and the Audit Chamber[4] (Constitution of Estonia). Secondly, when the National Assembly has not been able to make a selection for the autonomous institutions stipulated by the Constitution (considering that a 3/5th of the total number of MPs is required for the election, such situations may occur often in the future), it is recommended that the President make interim nominations until the convocation of the newly elected National Assembly, but not less than for two years. With these amendments, the National Assembly will be able to come back and make its selection after two years, while it is also a sufficient time for interim nominees to prove themselves in those positions and enjoy a relevant security of tenure. Finally, from the

[4] The President of Estonia is entitled both to make direct appointments such as the appointment of the president of the bank of Estonia on the recommendation of the board of the Bank of Estonia and nominates candidates for the position of Auditor General, Chairman of the Board of the Bank of Estonia and Chancellor of Justice for consideration of the Parliament of Estonia.

perspective of ensuring the political neutrality of the autonomous institutions stipulated by the Constitution, the President should be bestowed with the power to provide a legally non-binding advisory opinion to the National Assembly when the latter considers terminating the mandate of the member of the politically neutral body for his or her unlawful engagement in the political activities.

As a civic leader, the President should speak about the issues bothering the public the most. He or she should act as the conscience of the people, provide a public platform for debate, and contribute to the improvement of the political discourse in society. The parliamentary form of governance has implied a complete transformation of the relationship between the legislative and executive in terms of the balance of powers and political pluralism, as the "dividing line" passes mainly between the political majority and the parliamentary minority. The legislative and executive powers are somehow merged because both branches are virtually in the same hands (Divellec, 2016). Hence, the relationship between the political majority and the parliamentary minority should be viewed from the perspective of the leverages provided to the parliamentary opposition, discussing the effectiveness of the prescribed instruments, and the steps necessary for making their implementation more effective. Furthermore, modern political philosophy places the "procedural concept of democracy" at the heart of democracy when the democratic nature of the decision is explained not by the will of the majority or by the truth revealed by the expert but based on the quality of the process of making that decision. This concept brings into focus the ethics of discourse and the rules and culture of interaction and decision-making among the political forces (Viala, 2014; Habermas, 1997; Habermas, 1987). Therefore, the existing constitutional regulations should be assessed as to what extent they ensure the high quality of the discourse, the implementation of the basic principles of parliamentarism, those of publicity and debate (Schmitt, 1988; Jouanjan, 2016). The

established constitutional architecture often labelled prime ministerial governance or uncompleted transformation into the parliamentary democracy need undergo substantial changes to ensure high quality of public discourse, the constitution makers should tackle the balance of powers and consider giving a significant role to the non-executive president. Saying this, the President however should display leadership in limited cases, intervene in crisis situations, have a necessary arsenal of powers to ensure the compliance with the Constitution and protect the political neutrality of the state through his or her strong association with the institutions that are supposed to be non-partisan. The President should not possess powers, which will enable him or her to impose a political agenda; should not have the right to initiate legislation, preside over the Security Council, and be the commander-in-chief of the armed forces of the Republic of Armenia.

The President can play the role of an additional filter, who is guided by state and national interests, and in tandem with the parliamentary minority he or she can largely contribute to the implementation of two main principles of the parliamentarism and improvement of public discourse. The Constitutional makers can consider bestowing him or her with the powers to delay legislation pending further review and scrutiny, suspend a bill that has been passed by the Parliament but that has not yet received the presidential assent, pending approval by the people in a referendum, return the draft bill to the National Assembly for additional consideration. He or she should carry out these functions if requested to do so by a specified number of MPs and limited times a year. It is worth mentioning that in the Nordic countries (Sweden, Denmark, and Latvia), the minority delay mechanisms and minority-veto referendums have a huge moderating effect. Governments try to modify their proposals in advance to accommodate any specific objection or concern the opposition may have. These tools have contributed to the high quality of public discourse. To avoid a year of delay, the

Government in Sweden tries to respond more carefully to events, with some attempts to build consensus (International IDEA Constitution-Building Primer 22, 2021). Different scenarios of constitutional amendments can be envisaged:

- The President can return the bill on grounds other than unconstitutionality if at least a 1/3rd of the membership of the Parliament requested the President to do so[5].
- The President can suspend the bill that has been passed by the Parliament pending approval in a referendum (i.e. call for a referendum) if at least a 2/5th of the MPs appealed to the President.
- The President can delay legislation pending further review and scrutiny. Given the best practice of the Nordic countries, there can be two separate regimes: one for the bills affecting fundamental human rights and freedoms that can be suspended for six months if at least a 1/3rd of the MPs requires so and any bill can be suspended for up to two weeks if a 1/6th of MPs wishes to do so. The purpose of this delay is to draw the attention of civil society, to put the bills under intensive scrutiny, and force the Government to negotiate with the opposition, particularly when fundamental human rights are at stake.

While reconsidering the balance of powers between the political majority and parliamentary minority, and designing additional mechanisms for the improvement of public discourse, the constitution makers should not neglect the office of the President and consider bestowing him or her with powers and duties sufficient to generate a debate. The President should be able to speak about the issues that bother the public the most, he or she should act as the conscience of the people. It is

[5] All the figures are provisional and can be reconsidered. The idea is to fix a specific number of the MPs who applies to the President with a specific request (return a bill, suspend a bill or call for a referendum).

recommended to consider the following additional powers for the President by the Constitution:

- The power to address the public, and attend the sessions of the Parliament, and its committees. The president should be entitled to make a speech whenever he or she decides to do so.
- The right to participate in the sessions of the Security Council, to require the Government and its members to come up with a report on any issues that fall within the ambit of his or her powers. This should not be considered an element of political responsibility typical of presidential or semi-presidential forms of governance, the non-executive president seeks information in order to be able to generate an effective public debate.
- The national values, recognized as such by the Government (the Byurakan Astrophysical Observatory, The Armenian Genocide Museum-Institute, Mesrop Mashtots Institute of Ancient Manuscripts), along with natural, historical and cultural monuments should be under his or her patronage. Furthermore, the participation of the President can also be envisaged in the selection of the President of the National Academy of Sciences. It is worth mentioning that the President of Albania nominates the Chairman of the Academy of Sciences and the rectors of the universities (Art 92 (g) of the Constitution (Constitution of Albania)) while the President of Hungary confirms the President of the Hungarian Academy of Sciences and the President of the Hungarian Academy of Arts in his or her position (Art 9 (3) (l) of the Constitution (Constitution of Hungary)).

Given that it is impossible to predict the whole spectrum of issues that might arise, where the involvement of the Office of the President might seem reasonable and desirable, it is recommended that the Constitution does not exhaustively define all the presidential powers and leave room to the Parliament to

bestow the President with additional duties in line with the presidential functions stipulated by the Constitution.

Conclusion

The non-executive president of the Republic of Armenia holds mostly ceremonial powers with little guidance and regulations coming from the Constitution. The Constitution stops short of declaring the President as a symbol of national unity and does not stipulate his or her powers as a civic leader. As far as his or her status as a constitutional guardian is concerned, it is not clear how far the President can go in observing the compliance with the Constitution, particularly while approving the appointments in specific positions or acting on motions. As to the discretionary powers that the Constitution vests in the President as a constitutional arbiter, it is evident that they are weak and the main question that remains to be answered is can we afford to have a head of the state with little powers within the new constitutional design, what the main expectations from the Office of the President are? While the dividing line between the political majority and parliamentary minority should be the main focus for further constitutional reforms, to complete the transition into a parliamentary democracy the Office of the President should undergo substantial changes given the cultural perception of the leadership as well as the main current constitutional regulations on the formation of the Government, electoral proportional system, dissolution of the Parliament and its legal consequences, a constructive vote of non-confidence against the Prime Minister. The introduction of these regulations has already widely restricted the role of the President. If the President does not have the necessary powers to be an efficient civic leader and constitutional guardian with a significant role in the formation of the non-political neutral institutions established by the Constitution, then the need for maintaining the office of the President will likely be questioned.

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Two authors

(Lintz & Stepan, 1996),

Lintz & Stepan (1966)

Three and more authors

(Smith et al., 1998), Smith et al. (1998)

Two or more works with different authors

(Torbakov, 2019; Mankoff, 2022)

Two or more works with the same author

(Huntington, 1993, 1996)

Citations with the same author(s) and with the same publication year

Identify citations with the same author(s) and with the same publication year by the suffixes a, b, c, and so forth. Assign the suffixes alphabetically by title (consistent with the order in the reference list).

(Kissinger, 1979a, 1979b).

Authors with the same surname

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R. Smith (2011) and S. S. Smith (2014).

Works with an unknown publication year

When the publication year of a work is unknown, use the abbreviation 'n.d.' (no date).

(Carter, n.d.).

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(*Source Title*, 2020).

When the page number is missing either use an alternative locator or omit the page number.

(James, 2020, Chapter 3) or (James, 2020).

Direct quotations

In a direct quote include the page number or specific parts of a source.

(Brzezinski, 2000, p. 175)

Brzezinski (2000) … (p. 175)

(Atkinson, 2007, Chapter 8)

(Huntington, 1996, Table 2.1, p. 55)

Secondary sources

(Brzezinski, as cited in Kakachia, 2011)

REFERENCES

References must be arranged in alphabetical order by the last name of the (first) author, followed by the initials. (Hanging - 1.5).

The Latin transliteration of all non-Latin references should be included together with the English translation. There is no need to transliterate the author(s) surname(s).

Вебер, М. (1990). *Наука как призвание*. Москва: Прогресс.

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Works by the same author (or by the same two or more authors in the same order) with the same publication date are arranged alphabetically by title. Add lowercase letters - a, b, c, etc. - immediately after the year.

Fukuyama, F. (2018a). Against Identity Politics: The New Tribalism and the Crisis of Democracy. *Foreign Affairs*, 97(5), 90-114.

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Palkovska, I. F. (2018). Characteristics of Judgments of the EU Court of Justice. In K. Cermakova & J. Rotschedl (Eds.), *3rd Law & Political Science Conference, Lisbon,* (pp. 30-52), International Institute of Social and Economic Sciences. DOI: 10.20472/LPC.2018.003.002

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