

## DIRECT EFFECT OF THE CONSTITUTION AND ITS IMPACT ON CASE-LAW IN THE REPUBLIC OF ARMENIA



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### SUMMARY

The article considers the issues with regard to the direct effect of the Constitution. The topic is presented by analyzing the techniques for proper implementation of the Constitution and ensuring the constitutionality of the law enforcement/judicial practice. Author differentiates the content of the concepts „direct effect” and “direct implementation” of the Constitution, presenting the essence of each of the notions. Techniques for proper implementation of constitutional norms are suggested by the author, analyzing also the implementation priority rules. According to the author implementing legislative provisions in conformity with their constitutional-legal content is another precondition for ensuring the proper application of the Constitution. The law enforcement/judicial practice can become a subject of consideration by the Constitutional Court of the Republic of Armenia if it is not an issue of legitimacy of the mentioned practice, but an issue of constitutionality of the latter, an issue of evaluation of the circumstance whether the legal acts are implemented in conformity with their constitutional-legal content in the frames of the mentioned practice is raised.

**Key-words:** *Constitution, official interpretation, direct effect of the Constitution, direct implementation of the Constitution, implementation priority, constitutionality of the law enforcement/judicial practice, case-law.*

### EFFECTUL DIRECT AL CONSTITUȚIEI ȘI IMPACTUL ACESTEIA ASUPRA JURISPRUDENȚEI ÎN REPUBLICA ARMENIA

#### SUMAR

Prezentul articol abordează efectul direct al Legii Supreme. Subiectul este prezentat prin analiza tehnicilor pentru implementarea corectă a Constituției și asigurarea constituționalității aplicării legii/practicii judiciare. Autorul diferențiază conținutul conceptelor „efect direct” și „implementare directă” a Constituției, prezentând esența fiecărei noțiuni. Sunt sugerate tehnici pentru implementarea corectă a normelor constituționale și analizate regulile prioritare de implementare. Potrivit autorului, punerea în aplicare a dispozițiilor legislative în conformitate cu conținutul lor constituțional-legal este o altă condiție prealabilă pentru asigurarea aplicării corecte a Constituției. Aplicarea legii/practicii judiciare poate deveni un subiect de examinare de către Curtea Constituțională a Republicii Armenia – dacă nu o chestiune de legitimitate a practicii menționate, atunci o chestiune de constituționalitate a acesteia din urmă, o chestiune de evaluare a circumstanțelor dacă actele juridice sunt aplicate în conformitate cu conținutul lor constituțional-juridic.

**Cuvinte-cheie:** *Constituție, interpretare oficială, efect direct al Constituției, implementare directă a Constituției, prioritate de implementare, constituționalitatea aplicării legii/practicii judiciare, jurisprudență.*

### I. Introduction

Issues of direct effect of the Constitution are among the most interesting and most discussed topics in modern constitutional law. There are various, even mutually exclusive approaches in legal literature with this regard.

The main problem here arises in the result of the fact that in legal systems, where a Constitutional Court exists, there is often an approach that the official constitutional interpretation is provi-

ded by the Constitutional Court and no other body can interpret and apply the Constitution.

In my previous works I analyzed the issues of official interpretation of the Constitution, drawing a conclusion that the main distinctive features of the official interpretation from a non-official one are the mandatory nature of the interpretation for its addressees, and the fact that it is given by the body, specially authorized for that. According to Article 167 of the Constitution of the Republic of Armenia Constitutional Court administers constitutional justice, ensuring the supremacy of the Constitution. It is obvious that the implementation of the mentioned tasks is possible just in condition of existence of uniformity in the frames of perception and implementation of constitutional norms, in other words, existence of a definite uniform constitutional doctrine. This is ensured through interpretation of constitutional norms.

With this regard the circumstance is worth mentioning that both the above-mentioned tasks and aims, and interpretation of the Constitution, are, in their nature, constitutional-legal issues, solution of which is granted to the **body, administering constitutional justice**. Therefore, interpretation of the Basic Law is the important function of the Constitutional Court of the Republic of Armenia, which is without it would be difficult to imagine the implementation of the mission of the latter. This, in turn, leads to a conclusion that the Constitutional Court interprets the Constitution of the Republic of Armenia while administering constitutional justice. Moreover, noting the mentioned circumstances and the regulation defined in Article 167 of the RA Constitution, according to which in the Republic of Armenia constitutional justice is administered by the Constitutional Court, hence, no other judicial body is authorized to solve constitutional-legal issues, I consider that the Constitutional Court is the special body authorized to interpret the Constitution of the Republic of Armenia.

Moreover, according to Article 61, Part 4 of the Constitutional Law of the Republic of Armenia „On the Constitutional Court” the decisions of the Constitutional Court on the substance of the case are mandatory for all the state and local self-government bodies, their officials as well as for the natural and legal persons in the whole territory of the Republic of Armenia. Therefore, the discussed legal positions of the RA Constitutional Court, being an important integral part of its decisions, are mandatory for all the mentioned addresses in the whole territory of the Republic of Armenia. In other words, they are endowed with universally binding nature.

The above-presented analysis leads to a conclusion that in the Republic of Armenia the official interpretation of the Constitution is provided by the Constitutional Court [3, p. 126-133].

## II. Direct Effect of the Constitution in the Modern Constitutional Thought

In this context a question arises whether there is another judicial body, which can give an official interpretation of the Basic Law. This question is directly connected with the content of concepts “direct effect” and “direct implementation” of the Constitution.

Constitutions of various states, including Article 6 of the Constitution of the Republic of Armenia before amendments of 6 December 2015, define that the Constitution has a highest legal force and its norms have direct application. The latter has often led to such conclusions that the mentioned norm presupposes direct implementation of RA constitutional norms by courts, this requires their interpretation, hence, all the judicial instances are endowed with the authority of official interpretation of the Basic Law.

In order to analyze the presented issue we will firstly touch upon the following questions: 1. What does the content of the concept „direct effect of the Constitution” imply? 2. Is the latter identical with the term „direct implementation of the Constitution”?

In legal literature effect of law is characterized as a feature (ability) of law to have an ideological-motivational impact on an individual, society of people in concrete environment and in the result – to ensure legitimate activity and behavior of an individual according to its aims and principles [9]. In other words, effect of law is the whole impact the law has on the conscience of people and on social relations in general [8].

Whereas, implementation of law - as a form of realization of law - is the active authoritative activity of the state (its authorized bodies) intended to the solution of a concrete legal case [10]. It is a type of a state-authoritative activity of authorized bodies implemented in special manner defined by law, directed to realization of legal norms in concrete cases and adoption of acts of implementation of law. In other words, implementation of law is a type of state-authoritative activity directed to realization of legal regulations [7]. The presented definitions lead to a conclusion that the mentioned form of realization of law is endowed with several peculiarities. Among them are the facts that in comparison with other forms of realization of law, law can be implemented just by state bodies and officials authorized for that,



as well as implementation of law has state-authoritative nature, and the acts adopted in the result of it have a definite legal force, being mandatory for addressees.

Therefore, in the mentioned context it should firstly be noted that contents of concepts „effect of law” and „implementation of law”, hence also „effect of Constitution” and „implementation of Constitution”, thoroughly differ from each other.

Taking the above into account, I consider that effect of Constitution is the impact the Basic Law has on concrete social community and on predetermination and regulation of social relations in the frames of this community. Whereas, implementation of Constitution is the state-authoritative activity of authorized bodies implemented in special manner prescribed by law, directed to realization of constitutional norms in concrete cases and adoption of corresponding acts of their implementation. In other words, implementation of Constitution is a type of state-authoritative activity directed to realization of constitutional regulations.

The impact of the Constitution on the concrete social community and on predetermination and regulation of social relations is obvious in the context of presented definitions. It is also evident that this impact is direct and ***in the frames of prescribed regulations*** isn't intermediated with necessity of adoption and operation of other acts. It is another issue that the Constitution can itself presuppose necessity of adoption of other acts for the thorough regulation of social relations. But even in these situations the Constitution is endowed with the feature of direct effect ***in the frames of concrete regulations prescribed by the Basic Law***. In particular, in cases when the Constitution defines that details of concrete issues are prescribed by law (for instance, Articles 49, 51, 52 of the Constitution of the Republic of Armenia), one cannot draw a conclusion that the Basic Law doesn't have direct effect any more. Just in the mentioned cases the direct application of the latter is limited by the frames of regulation of concrete relations, which are definitely determined in the constitutional norm. More precisely, in the presented situation the Constitution directly presupposes that the discussed questions are subject to additional regulation, and the details of these additional regulations should be defined just by law, and not by any other act.

Moreover, it is not the existence of a provision on direct application in the text of the Constitution, which provides the latter with a feature of direct effect. While discussing the example of the Republic of Armenia, it should be noted that there is no such provision in the current text of the Ar-

menian Constitution. At the same time, there are several issues worth mentioning in the discussed context. Article 88 of the Basic Law, for instance, defines that the powers of the National Assembly shall be prescribed by the Constitution, and the National Assembly shall operate in accordance with its Rules of Procedure. The mentioned two provisions have direct impact and application, but each in the frames of its own provisions, that is: 1. the Constitution shall itself prescribe the powers of the National Assembly; and 2. in order to regulate the operation of the National Assembly Rules of Procedure shall be adopted. Hence, there is no need to adopt any other intermediate act in order to ensure that the Constitution prescribes the powers of the National Assembly. In case of an opposite approach one can conclude that for instance, if in case of the second situation no other additional intermediate act defines that the National Assembly shall operate in accordance with its Rules of Procedure and such Rules should be adopted, then the mentioned act cannot be enacted in order to regulate the operation of the National Assembly, as well as the National Assembly itself cannot operate in accordance with its Rules of Procedure.

Hence, the main conclusion in the mentioned context is the following: the Constitution has direct impact and application in all the cases, and ***in the frames of defined regulations*** isn't intermediated by necessity of adoption and operation of other acts.

### III. Direct Implementation of the Constitution

As mentioned above, „direct application” and „direct implementation” of the Constitution are concepts with different content. The issue of the direct implementation of the Constitution is sensitive and one should be extremely careful while drawing conclusions on it.

Speaking about the direct implementation of constitutional norms, I consider that it would not be logical to suppose that the norms, having direct impact form the aspect of regulation of social relations, can't be implemented by corresponding bodies. It is another issue that during this implementation it is necessary to note concrete criteria and principles, as well as to realize constitutional norms just in the context of the latter.

In particular, the first important circumstance, which should be paid attention with this regard, is the fact that implementation of the Constitution is a type of state-authoritative activity of ***authorized subjects***, and application of the latter by any other body different from them can't be considered legitimate.

It is also important to note that constitutional norms have direct impact just from the aspect of those relations and towards those subjects of relations, with regard to which they are applicable and relevant. I already presented examples on this while speaking about the direct effect of the Constitution.

What about the impact and relevance of constitutional norms from the aspect of concrete participants of legal relations, it should be noted that as a rule, it is obvious from the formulation of a constitutional norm, to whom it shall concern and between whom it shall establish relations. At the same time, there are such constitutional norms, the frames of impact of which on concrete participants of relations is sometimes perceived not definitely, leaves room for disagreements, which, in turn, leads to their irrelevant and problematic implementation.

Constitutional rights and the scope of their application are worth mentioning in this context. It should be emphasized that fundamental constitutional rights don't establish relations between private subjects, are addressed just to the state and directly don't restrict private parties.

The US Supreme Court, for instance, emphasized on various cases that constitutional norms, including corresponding constitutional amendments, concern exceptionally state activities and not any private subject. At the same time, the case-law of the mentioned body has developed in the direction that the activities of a non-state subject in some circumstances can be considered as a "state activity", hence, be restricted by constitutional rights. These are, particularly, the situations, when activities of a non-state body are directly guided by the state power; are implemented in the result of state compulsion or an essential encouragement; when these activities are implemented with the participation of the state, which can be expressed in the form of administration, provision of money and property; or when notwithstanding the absence of obvious state engagement, these activities concern the authorities and functions, which are usually implemented by the state power. At the same time, in all the mentioned situations the relevance of constitutional rights to private activities is indirect, as in all the presented cases the state is in fact responsible for concrete actions.

Touching upon the discussed issue, the German Federal Constitutional Court also noted that the primary aim of fundamental rights is the protection of human rights from the state power interventions. At the same time, the Court equally highlighted the circumstance that the Basic Law isn't a document without values. The chapter on funda-

mental rights establishes a target system of values, and this system mostly strengthens the application of fundamental rights. Thus, it is obvious that fundamental rights impact also the development of the private law. Any regulation of private law should be in accordance with this system of values and should be interpreted in the spirit of this system of values. Thus, fundamental rights have an important from the aspect of the development of the private law function also in Germany and as such, indirectly restrict private subjects. This in literature falls under the terms „horizontal impact” or „third party impact”.

Hence, though according to the general logic accepted in the frames of the doctrine of constitutional law fundamental rights have direct vertical impact, but in conditions of concrete circumstances their intermediated horizontal impact isn't excluded either [1, p. 219-281; 2, p. 21-48; 6].

Article 3 of the Constitution of the Republic of Armenia in edition of 2005 prescribed that the state is bound by fundamental human rights and freedoms as directly applicable law. At the same time, Article 47 stipulated that everyone must respect the rights, freedoms and dignity of others.

The noted obligation that was assigned to everyone was often perceived as a possibility to extend the application of fundamental rights also on the relations between private individuals, which, as noted above, contradicts traditional apprehension of fundamental rights.

Taking into consideration the above, the Specialized Commission on Constitutional Reforms adjunct to the President of the Republic of Armenia, stated that the noted perception contradicts to the traditional ideas on fundamental rights, regarding the given question as a problem, which is in need of new conceptual approaches [12]. As a result, the mentioned provision did not remain in the Constitution of the Republic of Armenia in the new edition of 6 December 2015.

At the same time, as already mentioned, though in the light of the doctrine of vertical application, those rights are addressed only to the state, this doctrine is supplemented by another one – doctrine of *indirect horizontal* application. The reason is that during the implementation of law in any case constitutional values must be respected.

Noting the above, I consider that the perception that fundamental rights are directly addressed only to the state bound by those rights should underlie the conceptual approaches in the Republic of Armenia with regard to fundamental rights. At the same time, in the framework of private legal relations respective solutions must be found in accordance with the stipulated constitutional values. Concerning this Article 35 of the 1999 Consti-



tution of Switzerland is interesting, according to which the authorities shall ensure that fundamental rights, where appropriate, apply to relationships among private persons.

In this context it is also important to note that in some situations, which were already touched upon while analyzing the discussed issue, actions of private subjects can be considered as a “state activity” and be restricted by fundamental constitutional rights.

The above leads to a conclusion that constitutional rights should be implemented, taking into account the discussed circumstances, and the theories of their direct effect and implementation can be based on conceptual approaches formed in the result of noting these conditions.

Summarizing, it should be noted that constitutional norms have direct impact and application just from the aspect of those relations and towards those subjects of relations, with regard to which they are applicable and relevant, and the mentioned norms can be implemented just by the authorized bodies endowed with state-authoritative powers.

It is also important to note that the Constitution of the Republic of Armenia directly states the judicial body, administering constitutional justice in the Republic of Armenia, that is – the RA Constitutional Court. In the result – administration of constitutional justice is clearly differentiated from administration of other types of justice, thus excluding exercise of functions included in the content of the latter and solution of constitutional-legal issues by other bodies. This circumstance and the features of official interpretation lead to a conclusion that other judicial bodies aren't specially authorized for interpretation of the RA Constitution and can't give an **official interpretation** of the Basic Law. It should be noted that the Constitutional Court of Lithuania expressed a legal position that just the Constitutional Court is authorized to officially interpret the Constitution [5].

The above leads to a conclusion that the interpretation of constitutional norms given by any other body cannot have an **official character**. With this regard the approach is also worth mentioning that it is necessary to implement the Constitution in the context of the case-law of the Constitutional Court. The Constitution is filled in and interpreted in the Constitutional Court decisions, which are more easily implemented by ordinary courts than indefinite and value-aimed constitutional provisions [4]. This is the reason that when we speak about administration of state bodies' authorities according to constitutional regulations, it is clarified that they should be exercised „in accor-

dance with constitutional regulations interpreted by the review body” [11, p. 177].

The Constitutional Court of the Republic of Armenia in its Procedural Decision ՄԴԱՈՒ-7 (dated as of 25 January 2019) mentioned that all the public power bodies shall interpret and implement the Constitution during their activities. At the same time, it highlighted that the Constitutional Court is the body, which gives the final and universally binding official interpretation of the Constitution, ensuring the uniform implementation of the Basic Law.

#### IV. Techniques for Proper Implementation of Constitutional Norms

Noting the above-presented analysis, the following question arises: is it possible to always quote constitutional norms and regulate concrete legal relations without an implementation of any other legal act? This is a very sensitive issue and should be analyzed on the basis of doctrinal and practical solutions, existing in modern constitutional law.

It should be noted that in theory and practice of modern constitutional law norms with lower legal force have implementation priority [13, p. 1]. The logic, undermining this, is the following: the latter should regulate corresponding relations more concretely and in more details than the general norm. Moreover, from the viewpoint of the theory of law the norm can be considered as special just in case, when it has the main features of the general norm, simultaneously containing any additional feature in comparison with the general norm. Otherwise it becomes meaningless to speak about a special norm. Hence, literal repetitions of norms and their simple reproduction in various acts are not normal and literate from the viewpoint of legal technics.

Hence, if the constitutional norm itself contains the guidelines of regulation of the concrete issue and does not need an additional regulation by any intermediate act, it is obvious that the mentioned norm can be implemented for the solution of concrete legal relations. For instance, according to Article 166 of the Constitution of the Republic of Armenia judges of the Constitutional Court shall be elected by the National Assembly for a term of twelve years. The mentioned norm is directly reproduced in no other legal act and has direct implementation.

Hence, notwithstanding the implementation priority of norms with lower legal force, also the mentioned circumstances should be paid attention while analyzing the discussed issues.

## V. Constitutionality of the Judicial Practice as an Important Precondition for Ensuring the Direct Effect of the Constitution

Noting the above-presented analysis, I would like to touch upon an issue, which, in my opinion, has particular importance for ensuring the direct effect of the Constitution – implementation of legislative provisions in conformity with their constitutional-legal content. It is obvious that ensuring constitutionalism, as well as the real power and effect of the Constitution require not just constitutional texts of laws, but also their implementation in a manner compatible with the Constitution. In other words, if the body, administering constitutional justice, provides an interpretation of the legislative provision, in the frames of which only the norm can be considered constitutional, the norm must be implemented just in this constitutional-legal content. Otherwise, its implementation will lead to unconstitutional situation.

At the same time, not always the judicial practice on interpretation and implementation of a particular norm can become a subject for review in the frames of constitutional justice. This issue will be discussed on the example of the Republic of Armenia.

The Constitutional Court of the Republic of Armenia has continuously stated that the legitimacy of the law-enforcement/judicial practice is outside the competence of the Constitutional Court. In its Procedural Decision ՄԳԱՈ-21 (dated as of 17.03.2009) the Constitutional Court of the Republic of Armenia, particularly, mentioned that the application doesn't satisfy the requirement of justification also in cases when the grounding presented by the applicant is connected not with the issue of constitutionality of the challenged provision, but simply concern the legitimacy of implementation of this legislative provision. In all the cases, when the applicant, formally challenging constitutionality of the legislative provision, in essence, raises an issue of legitimacy of its implementation, the application is subject to rejection on the basis of Point 1, Article 32 of the RA Law „On the Constitutional Court” as an application, which raise an issue not subject to consideration by the Constitutional Court.

The above leads to a conclusion that consideration of legitimacy of the judicial practice, the judicial act adopted in the result of it is outside the competence of the RA Constitutional Court. At the same time, it should be noted that **those legal positions of the Constitutional Court do not concern the assessment of constitutionality of the judicial practice and of the circumstance whether the laws are applied in this practice in accordance with their constitutional-legal content.**

This is evidenced also by the legislation and the practice of the Constitutional Court of the Republic of Armenia. In particular, according to Article 169 of the RA Constitution „1. The following may apply to the Constitutional Court: ... (8) everyone — under a specific case where the final act of court is available, all judicial remedies have been exhausted, and he or she challenges the constitutionality of the relevant provision of a regulatory legal act applied against him or her upon this act, which has led to the violation of his or her basic rights and freedoms enshrined in Chapter 2 of the Constitution, **taking into account also the interpretation of the respective provision in law enforcement practice; ...**”. According to Part 1, Article 63 of the RA Constitutional Law „On the Constitutional Court” in determining the constitutionality of a legal act, the Constitutional Court shall assess both the act itself and **the existing law enforcement practice**. In accordance with Article 69 of the same law „1. The application in cases referred to in this article (hereinafter referred to as an individual application) may be submitted by an individual or legal entity in a particular case, when there is a final judicial act, all domestic remedies have been exhausted, and the constitutionality of the provision of the applied regulatory legal act is challenged with regard to this act, which entailed a violation of the fundamental rights and freedoms, enshrined in Chapter 2 of the Constitution, **also taking into account the interpretation of the relevant provision in the law enforcement practice.**

2. The individual application must contain references to the provisions of the normative legal act the constitutionality of which is being challenged, and justifications that the contradiction of the normative legal act has led to the violation of his or her fundamental rights and freedoms prescribed in Chapter 2 of the Constitution, **taking into account also the interpretation of the respective provision in law enforcement practice.**”

Moreover, one of the types of decisions prescribed by Article 68 of the RA Constitutional Law “On the Constitutional Court” is the decision on recognizing the challenged act or its challenged provision in conformity with the Constitution in the interpretation of the Constitutional Court, which, in the result of consideration of an individual complaint, can become a basis for the review of the final judicial act issued in respect of the applicant on the basis of a new circumstance if the Constitutional Court simultaneously considers that it was applied in a different interpretation with respect to the applicant (Part 10, Article 69 of the RA Constitutional Law „On the Constitutional Court”).



The analysis of the legal positions of the Constitutional Court of the Republic of Armenia is also important for the mentioned issue.

In its Decision DCC-943 (dated as of 25.02.2011) the RA Constitutional Court stated: „The legal positions expressed in the decisions of the Court, as a rule, contain such criteria, underlying the solution of the case, which concern:

- assessment of the law enforcement (including judicial) practice and necessity of implementing the norms of the RA Constitution, laws and other legal acts in conformity with their constitutional-legal content in this practice ... ,
- while deciding on constitutionality of legal acts, according to the requirements of Articles 19 and 63 of the RA Law “On the Constitutional Court”, the Constitutional Court assesses also the judicial practice, revealing also the constitutional-legal content of the applied laws (their particular provisions), developing the constitutional, as well as the branch laws ... .

The Constitutional Court states that the legal positions expressed in the Court decisions are aimed at ensuring the thorough and uniform perception of the RA Constitution, constitutional legitimacy, as well as at guiding the law enforcement practice to the direction of perceiving and implementing the normative acts in conformity with their constitutional-legal content. ...”.

In its Decision DCC-1359 (dated as of 28.03.2017) the RA Constitutional Court stated that the legal positions are a complex of general legal conclusions of the Constitutional Court, which are the result of interpretation of the Constitution and disclosure of the constitutional-legal content of laws and other legal acts in the decisions adopted in the frames of the authorities of the Court, ***eliminating the uncertainty of their legal perception through this and the possible unconstitutionality of the law enforcement practice conditioned by this.***

Moreover, in some cases the Constitutional Court stated that ensuring the uniform implementation of normative acts is the constitutional function of the Court of Cassation. In the frames of consideration of individual complaints the interpretation provided to a normative act by a public power body, including the Court of Cassation, cannot itself become a subject of evaluation by the Constitutional Court, ***if it doesn't relate the Constitution.*** Stating such a correlation, the Constitutional Court considered it necessary to touch upon the legal positions of the Court of Cassation on concrete issues in order to assess the constitutionality of the challenged provisions

in the frames of various cases, for instance, by its Decision DCC-1453 (dated as of 16.04.2019). In this case the Constitutional Court recognized the challenged provisions in conformity with the Constitution in a concrete interpretation, stating in the final part of the decision that „Noting the fact that the challenged in this case provisions were applied in respect of the applicant in different from the interpretation of the Constitutional Court interpretation, according to Part 10, Article 69 of the Constitutional Law „On the Constitutional Court”, the final judicial act adopted with respect to the applicant is subject to review in a manner prescribed by law on the basis of a new circumstance”.

The above leads to a conclusion that the law enforcement/judicial practice can become a subject of consideration and evaluation by the Constitutional Court, if the applicant raises not an issue of legitimacy of the mentioned practice, but an issue of constitutionality of the latter, an issue of evaluation of the circumstance whether the laws and other legal acts are implemented in conformity with their constitutional-legal content in the frames of the mentioned practice. The presented conclusion is based on the fact that unconstitutional situations emerge not just in the result of existence of an unconstitutional text of a norm, but also due to its interpretation and implementation in the law enforcement practice in a manner, contradicting the Constitution. This mostly concern the situations, when we deal with a stable judicial practice, which, in conditions of modern legal developments, becomes an inseparable part of the norm. It should be noted that according to Article 171 of the Constitution of the Republic of Armenia one of the constitutional functions of the Court of Cassation is ensuring the uniform application of laws or other regulatory legal acts.

Summarizing the above-presented analysis, it should be noted that while assessing the constitutionality of a norm the latter should be examined not just in the context of its formal text, but also in the context of the judicial practice formed with regard to it. Hence, the law enforcement/judicial practice can become a subject of consideration by the Constitutional Court if not an issue of legitimacy of the mentioned practice, but an issue of constitutionality of the latter, an issue of evaluation of the circumstance whether the laws and other legal acts are implemented in conformity with their constitutional-legal content in the frames of the mentioned practice is raised. Otherwise, it will be impossible to ensure constitutionalism, as well as the real power and effect of the Constitution.

## VI. Conclusion

The above leads to a conclusion that while implementing constitutional norms all the state bodies should follow the principle of “expedient self-restraint”, implementing the discussed norms just in cases, when they are authorized for that, as well as when the mentioned norms are applicable and relevant towards a concrete legal relation and its subjects. At the same time, it should be noted that the authorized body for the **official interpretation** of constitutional norms is the Constitutional Court. Hence, the discussed provisions should be implemented in the context of the official interpretation given by the Constitutional Court. Moreover, the concepts „direct effect” and „direct implementation” of the Constitution should be differentiated and various important techniques should be paid proper attention while implementing the Constitution. The laws should be implemented in conformity with their constitutional-legal content. What about the consideration of the law enforcement/judicial practice by the Constitutional Court, it should be noted that the latter can be examined by the Constitutional Court if not an issue of legitimacy of the mentioned practice, but an issue of constitutionality of the latter, an issue of evaluation of the circumstance whether the laws and other legal acts are implemented in conformity with their constitutional-legal content in the frames of the mentioned practice is raised.

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