

**THE INTERRELATION BETWEEN THE DECLARATION OF
INDEPENDENCE OF ARMENIA AND THE CONSTITUTION WITHIN
THE PARADIGM OF STATE SOVEREIGNTY**

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Abstract

The scientific issue of this article is the analysis of two main constitutional acts of the Third Armenian Republic, the Declaration of Independence and the Constitution, as cornerstones of the sovereignty of the Armenian state. Particularly, using historical-legal, comparative and systemic methods of research, the author has presented theoretical and institutional landscape of interrelations between the Declaration of Independence, which is the institutional basis and historical symbol of regaining of sovereignty by the Armenian people, and the Constitution, which is a legal and political “roadmap” of functioning of a sovereign Armenian state. As a result, the author has substantiated, that during the evolution of the Armenian statehood the Declaration of Independence ceded its constitutional role to the Constitution, as after adoption the latter assumed the status of the prime regulator of social relations within the state. Accordingly, the author has presented plausible scientific evidence, claiming, that the Declaration of Independence has no autonomous existence within the legal system of Armenia, since the relevant (but not all) principles of organization of sovereign state, in pursuance of the Preamble of the Constitution, are incorporated in its body text, whereas the remaining postulates, which do not have legal meaning per se, remain solely as political provisions without legal effect.

Notwithstanding all the above, the author has elaborated upon political and value significance of the Declaration of Independence, both before and after the Constitution’s adoption, negating any public debate, which aims at or results in confrontation between two main legal and political acts, effectuating the sovereignty doctrine of Armenia.

Keywords: Declaration of Independence, Constitution, sovereignty, parliament, nationwide goals, fundamentals of organization of sovereign statehood.

Introduction

The Declaration of Independence is the institutional source of the process of re-establishing Armenia's sovereignty, which makes its multidimensional study relevant especially nowadays, taking into consideration internal and external political and institutional challenges, faced by our country.

In essence, both the Declaration of Independence and the Constitution are system-creating factors of Armenia's sovereignty, being in the mode of evolutionary, historical-political and legal relationship with each other, while the native legal and political thought has not yet formed a unified or at least general approach to these two fundamentals in terms of succession and complementarity of these two constitutional acts, as well as the content transformation of the Declaration of Independence in the current period of Armenia's relatively mature constitutional statehood.

Therefore, an attempt will be made below to make some observations on the aforementioned issues, using historical-legal, comparative and systemic methodology, with the aim of promoting a constructive professional debate, which will undoubtedly positively affect public perceptions of the normative content and institutional symbols of sovereign statehood, gradually overcoming non-state irrational stereotypes.

The Legal and Political Nature of the Declaration of Independence as the Founding Act of the Sovereignty of the Republic of Armenia

The Declaration of Independence is the starting point of formation of the constitutional order of a sovereign state and expresses dominant political, social, and cultural views and trends of a society.

There are proponents of the point of view among scholars, that the declaration of independence politically, morally and legally directs the content of the constitution, adopted afterwards, serving as one of the bases for interpretation of the constitution (Strang, 2008, p. 422). For example, several profound constitutional amendments were made in the US, such as the abolition of slavery, the acknowledgment of women's electoral rights and non-discrimination, that were rooted in the Declaration of Independence (Strang, 2008, pp. 417-422).

The above-mentioned approach reflects Armenian reality and particularly, stems from the high level of legitimacy of the Declaration of Independence of Armenia and the analysis of its content.

The Declaration of Independence of Armenia was adopted by the newly elected Supreme Council (parliament) of the Armenian Soviet Socialist Republic (ASSR) on August 23, 1990. For the first time, since establishment of the Soviet rule, parliamentary elections were free and competitive. Thus the Supreme Council was granted the direct mandate of the people, thus acting in

the capacity of the highest representative state institution. Under this new status the Supreme Council adopted the Declaration of Independence of Armenia. As a result, the Declaration of Independence indirectly, through the parliamentary “conduit” expressed the constitutive will of the Armenian people.

From the analysis of the actual text of the Declaration of Independence, it follows that it is not only a political document, but also a legal one, because *inter alia* it contains compulsory provisions, that shall be executed. In particular, under Clause 12 of the Declaration: “This declaration serves as the basis for the development of the constitution of the Republic of Armenia and, until such time as the new constitution is approved, as the basis for the introduction of amendments to the current constitution (ASSR Constitution of 1978); and for the operation of state authorities and the development of new legislation for the Republic” (Official Website of the Government of the RA, n.d.).

The quoted provision means that both the Supreme Council and other state institutions were constrained in their activities by the provisions of the Declaration of Independence and were unconditionally obliged to follow them. Accordingly, it may be deduced that before the adoption of the Constitution of sovereign Armenia, the Declaration of Independence in fact had the status of a Constitution, as it had a higher legal force, than the Constitution of Soviet Armenia, then still officially valid. The institutionalization of this new reality was enhanced by the constitutional law “On legislative acts, adopted in accordance with the Declaration of Independence of Armenia”, adopted by the Supreme Council on October 12, 1990. Under this law, provisions of the 1978 ASSR Constitution that contradicted laws enacted by the Supreme Council pursuant to the Declaration of Independence were suspended until the adoption of a new Constitution.

There is a widespread opinion among jurists, that the ASSR Constitution of 1978, which was in force in already independent Armenia until 1995, was essentially a weak normative act, because there were no legal and political institutions that were even formally called to preserve and implement the norms of the Constitution. The government, operating in the new socio-political conditions, had the discretion to give force or not to give force to the Soviet acts, adopted under the conditions of the previous social order (Ghambaryan, 2021, pp. 93-94).

The unique legal nature of the Declaration of Independence does not end with this. As stated in Clause 12 of the Declaration, quoted above, it serves as a basis for drafting a new Constitution. In other words, the new Constitution had to conform to the provisions of the Declaration of Independence.

Based on the mentioned Clause and to emphasize the evolutionary and legal connection between the Declaration of Independence and the Constitution, the

Preamble of the Constitution, adopted by popular referendum on July 5, 1995, refers to the Declaration of Independence, as an orientational document, underlying the constitutional will of the people. For sure, this reference has an important peculiarity in terms of legal formulation and legal interpretation thereof. In the Preamble of the Constitution, as an expression of the sovereign will of the Armenian people, reference was not made to the Declaration of Independence, as a set of norms with the same normative level, but to “the fundamental principles of Armenian statehood and nationwide goals established in the Declaration of Independence”. Such an approach does not indicate the mechanical implementation of the Declaration of Independence in the Constitution, but rather, the substantive direction of the sovereign will of the people to adopt the Constitution in conformity with the provisions of the Declaration of Independence, at the same time differentiating provisions thereof, based on their normative-semantic weight – fundamental principles of statehood or nationwide goals.

The Declaration of Independence is a catalog of legal, political and ideological principles of a sovereign state, the lack of which will deprive the concept of sovereignty of material content. Clause 2 of the Declaration, which defines the concept of sovereignty of the Republic of Armenia, is noteworthy. It states: “The Republic of Armenia is a self-governing state, endowed with the supremacy of state authority, independence, sovereignty, and plenipotentiary power. Only the constitution and laws of the Republic of Armenia are valid for the whole territory of the Republic of Armenia.” Clause 3 of the Declaration connects the state sovereignty with the principle of democracy, defining that: “The bearer of the Armenian statehood is the people of the Republic of Armenia, which exercises the authority directly and through its representative bodies on the basis of the constitution and laws of the Republic of Armenia. The right to speak on behalf of the people of the Republic of Armenia belongs exclusively to the Supreme Council of Armenia” (Official Website of the Government of the RA, n.d.). Accordingly, a democratic political regime is declared in the Republic of Armenia, under which the highest state institutions are formed by the direct or indirect political will of the people. The Declaration of Independence singles out the legislative body of the state, the Supreme Council, to which the Declaration assigns the status of an exclusive state institution, implementing the representation of the people. This indicates that, regardless of the form of government established by the Constitution, the parliament with its legal and political status shall occupy a central role in the system of state institutions, participating in the solution of issues of national importance. Furthermore, the terminology of the Declaration establishes that only the “bearer of statehood” – the constitution-making entity, the people – ranks superior to the parliament. Clauses 1-10 of the Declaration provide for

the legal, political, diplomatic and economic guarantees of the sovereignty of the Republic of Armenia, which in one way or another were included in the Constitution of 1995 and as a result of two constitutional amendments remained unchanged. These guarantees include: the organization of the state, based on the principles of democracy and the rule of law; the recognition and protection of natural and inalienable human rights by the state; the creation of national armed forces, police and security bodies; the implementation of a sovereign foreign policy; the ownership of natural resources by the people; the state language and national education and the foundation of a scientific and cultural system. Without these guarantees, legal, political, material and value base, needed to organize the Armenian people's political existence free from foreign rule, will be missing. When adopting the Constitution, these guarantees in their entirety, according to the Preamble of the Constitution, were enshrined by the peoples "fundamental principles of Armenian statehood". Together, these guarantees form the substantive core of Armenia's sovereign statehood. Accordingly, legal essence of the preconditions, stipulated in Clauses 1-10 of the Declaration of Independence has been normatively reflected in the Constitution, becoming an integral part of the constitutional system. Consequently, it can be concluded, that the principles, set forth in Clauses 1-10 of the Declaration of Independence, have a clear constitutional-legal significance by virtue of being reflected in the Constitution.

At the same time, the Declaration of Independence also contains extraneous provisions, – provisions outside the system of fundamentals of the organization of sovereign statehood, which, due to the wording of the above-mentioned reference in the Preamble of the Constitution, are not fundamental principles of statehood, but "nationwide goals" and, thus, do not constitute legal norms. This refers to the Preamble of the Declaration, which indicates the joint decision of the Armenian SSR Supreme Council and the Artsakh National Council on the "Reunification of the Armenian SSR and the Mountainous Region of Karabakh," and Clause 11 thereof, which defines the state's commitment to support the international recognition of the Armenian Genocide. Unlike the legal-structural foundations of Armenian statehood discussed above, the aforementioned provisions have only historical and political nature and, accordingly, lack direct constitutional-legal significance. They are not prerequisite for the existence of the state as a political structure, but refer to the directions of the state's political agenda, derived from the extent of the actual potential of the state sovereignty, the intensity, extent and efficiency of which cannot be constitutionally determined.

Considering the above, the inclusion of the listed provisions in the Declaration of Independence creates a need to clarify their nature and relation, if any, to the sovereignty of the state.

In general, any constitutional act, whether it is a declaration of independence, a constitution or another act of a constitutional nature, contains not only legal norms, especially principles, but also political ideas and value assumptions. The latter do not cause direct legal or political consequences, whereas, the emergence of indirect consequences and the extent thereof depend on the state's potential, internal and external political environment, political opportunities, alignment of internal and external political forces, and other circumstances. Political ideas or value orientations express the social ideals or ideas, being dominant in a given historical period. These are propagated to the general public and made widespread by the political elite in a condensed and determined manner through various channels of communication with society (mass media, parliament, rallies, literature, etc.). It is not by chance that the adoption of any constitutional document is preceded or accompanied by deep political processes, that lead to transformations of the social order with the resulting re-evaluations*.

The Declaration of Independence and the Constitution, as a rule, reflect the political and value changes in society, giving them the appearance of certain legal principles or political-value paradigms. In the latter case, in order for political paradigms or guidelines to become reality, internal and external transformations involving the entire state, political agendas, and uniting the society and often a favorable foreign-political environment are necessary. Otherwise stated, the direct or indirect non-application or violation of the constitutional-legal principles and other norms underlying the sovereign state, leads to a constitutional crisis and, sooner or later, also a crisis of statehood. This is because the very essence of society-state, human-society and human-state relations are directly concerned, whereas, political ideas and value orientations do not imply being brought into reality in a relatively short-term historical perspective. As mentioned, such ideas are to a certain extent the result of the self-interested activities of the political elite, as a social stratum,

*For example, in 1918, a new constitution was adopted in Russia, which reflected the change in the socio-economic formation and the form of the state caused by the socialist revolution.

In 1958, the Fifth Republic was proclaimed in France with the adoption of a new constitution. The constitution made a transition from a parliamentary form of government to semi-presidential one. The establishment of the Fifth Republic was due to the defeat of the French colony of Algeria and the deep economic and political crisis that brought France to the brink of a military coup.

After the democratic revolution in Georgia in 2011, the Georgian Parliament adopted a constitutional law called the "Freedom Charter", which banned communist and Nazi ideologies and propaganda as violations of human rights and freedoms, and also banned the use of symbols of communism and Nazism. Employees of the Soviet special services and extraterritorial agents, as well as members of the Communist Party, were deprived of the right to work in legislative and executive bodies.

forming the political agendas, meanwhile, the interests or political ideas, why not, the political elite can also change, affecting the consolidating capacity of these ideas. That capacity may increase or decrease also as a result of foreign political transformations and the effects caused by them, because self-isolation of states as such is not realistic in the modern interconnected global world. Therefore, when studying the possible constitutional-legal aspects of any political phenomenon, it cannot be abstracted from the paradigm and internal logic of the development of historical-political processes. Otherwise, the result will be legal fetishism and an under-perception of the political consequences of social phenomena, the result of which is the rejection of the inevitable interaction between law and politics, and thus the paralysis of the structure of raising and implementing the public interest.

The Declaration of Independence, being a political document as well, expressed the logic of the political processes of the relevant historical period. In particular, until the final milestone of achieving independence was clarified, the means and methods of reaching that goal were being fermented, and in order not to give the central government of the USSR a pretext to start a new wave of repressions, the Declaration of Independence announced the beginning of the process of Armenia's independence, rather than declaring independence as an established legal and political fact. In this regard, professor A. Vagharshyan also mentioned the Nagorno Karabakh issue as a reason for the caution, shown by the leadership at that time in the legal and political process of Armenia's independence (Vagharshyan, 2015, p. 3).

The process of Armenia's independence was finalized on September 21, 1991, when the Armenian people, as the constitutional and political authority, decided to declare independence from the USSR through a referendum.

The reference to the joint decision of the Armenian SSR Supreme Council and the Artsakh National Council on the "Reunification of the Armenian SSR and the Mountainous Region of Karabakh" of December 1, 1989, in the Preamble of the Declaration of Independence reflected the political reality of the time, when the political unification of the Republic of Armenia and Artsakh had taken place, and, according to point 6 of the aforementioned decision, the political integration of Nagorno-Karabakh into the Armenian SSR had begun (Joint Decision of the Armenian SSR Supreme Council and the Artsakh National Council, 1989, point 6). Meanwhile, as is known, on September 2, 1991, the joint session of the representative body of Artsakh, the regional council of deputies and Shahumyan regional council of deputies adopted the Declaration of Independence of Artsakh, and on December 10 of the same year, following the results of the referendum, the people of Artsakh declared their independence. Under such conditions, the decision on the reunification of the Republic of Armenia and Artsakh automatically lost its force, since, from

the perspective of domestic constitutional law, the people of Artsakh, having exercised their right to self-determination, separated from Armenia. As for the commitment of the Republic of Armenia to support international recognition of the Armenian Genocide is concerned, it also does not have the status of a constitutional principle of state sovereignty. Instead, it represents a national-political goal, related to holding the Republic of Turkey, the successor of Ottoman Turkey, to international political and legal responsibility for the unprecedented crime that thwarted national-political aspirations of the Armenian people. This commitment, undertaken at the state level, has the significance of an idea as well, which unites both Armenians in the motherland and those in the Diaspora. At the same time, the scope and means of support to the international recognition of the Armenian Genocide are variable and determined by Armenia's political potential as a sovereign state and the international context. Therefore, the commitment to support the recognition of the Armenian Genocide has no impact on the content of the sovereignty of the Republic of Armenia, but is more a political "promise", derived from the potential of substantive realization of sovereignty.

From the above, we can conclude that the provisions on the reunification of Armenia and Artsakh, as well as the international recognition of the Armenian Genocide in the Declaration of Independence, do not constitute a constitutional guarantee of the sovereignty of the Republic of Armenia. It is out of question that the greater the potential of the Republic of Armenia to influence the external environment, the more ambitious political goals can be set and implemented by the Armenian government. However, having a broad or limited opportunities cannot be a factor that characterizes the sovereignty of a state, just as being rich or poor cannot affect the legal union of a man and a woman, being defined as a family.

The legal significance of the Declaration of Independence was naturally emphasized during the five years preceding the adoption of the Constitution, when it was the exclusive basis of the new state and legal order. Meanwhile, it is conceptually and practically important to elaborate upon the status of the Declaration of Independence in the "post-constitutional" period, as well as the current regime of the relationship between these two fundamental constitutional acts.

The Issue of the Relationship between the Declaration of Independence of Armenia and the Constitution

It is well known that the Constitution has the highest legal force and stands at the top of the pyramid of a state's legal system. At the same time, the Constitution performs the function of a public alliance, which unites members of society as citizens around common goals and values. It establishes mutual

rights, duties and responsibilities between citizens and state authorities, enshrining the principles of the organization of state power and the system of supreme state authorities, their powers, and mechanisms of mutual counterbalance and restraint. From all this, it is clear that with the adoption of the Constitution, a shift in the founding documents of sovereign Armenia's legal order took place, and the Constitution came to the forefront.

For a comprehensive analysis of this issue the decision of the Constitutional Court of September 26, 2024 (DCC-1749, pp. 8-9) is of paramount importance. The decision in question within the context of the analysis of the constitutional and legal content of the territory of the Republic of Armenia, addressed the issue of the interrelationship between the Declaration of Independence and the Constitution. In particular, the Constitutional Court essentially noted that any principle or goal enshrined in the Declaration, within a framework different from that set forth in the Constitution, does not have an independent meaning, different from the semantic framework, enshrined in the Constitution and conveyed by the Declaration, whereas the opposite approach directly contradicts the goal of ensuring constitutional stability and security through constitutional certainty, guaranteed by the adoption of the Constitution. In this regard, Clause 12 of the Declaration outlined one of the significant milestones of the independence process – the adoption of the new Constitution of the Republic of Armenia, which has been the only normative legal act with the highest legal force since its entry into force. Accordingly, the Constitutional Court has excluded a situation, where the holder of supreme constitutional authority – the people – without enshrining in the Constitution any principle or goal, mentioned in the Declaration, at the same time pursued the goal of including them in the scope of the Constitution, forming a system of legal regulations in which the principles and goals, set forth in the Declaration, as a part of the content of the Preamble, would have obvious inconsistencies with other provisions of the Constitution. In other words, the Constitutional Court did not consider the Declaration of Independence in its entirety to be a part of the Constitution and, accordingly, gave constitutional significance to those provisions of the Declaration of Independence, that were included in the text of the Constitution, thus becoming its principles. This approach crystallizes the emerging paradigm regarding the constitutional value of the postulates, summarized in the Declaration of Independence: in fulfillment of the constitutional and founding will of the people, the Constitution, in essence, includes those provisions of the Declaration of Independence that have the meaning and significance of organizing principles of sovereign statehood, while the above-mentioned points, which do not have a state-forming nature and fulfill exclusively political goals, were not included in the scope of the Constitution, since they have no constitutional significance, moreover, they are

not subject to constitutional determination. Therefore, the latter have not become part of the constitutional paradigm of state system by the will of the people.

In any case, the Declaration of Independence, even after the Constitution's entry into force, continues to have the status of a historical and political symbol of Armenia's sovereignty. In this regard, it is appropriate to mention the "matryoshka effect", known to the theory of constitutional law, when the fundamental constitutional acts of a state, based on the chronology of their adoption and the subject of regulation, logically follow each other and form a single system. Accordingly, the historical, political and legal function of the Declaration of Independence in the pre-constitutional period and afterwards its role as a legal and conceptual basis for the development of the Constitution endow the latter with historical, political and ideological significance.

As Professor A. Ghambaryan has characterized, the Declaration of Independence is a state-stabilizing (state-preserving) document. According to Ghambaryan, in practice it means, that the Declaration of Independence is a criterion for determining the state balance of the new draft Constitution, that is, a criterion for determining the state-preserving capabilities of a draft Constitution and diagnosing risks. More simply, a new draft Constitution must comply with the state-preserving provisions of the Declaration of Independence (Ghambaryan, 2020, pp. 36-37).

Essentially, the issue is about Clauses 1-10 of the Declaration of Independence, mentioned above, which serve as principled and institutional bases of the sovereign Armenian statehood. At the same time, the status of the Declaration of Independence and its relationship with the Constitution are confirmed by the reference made in the Preamble of the Constitution, to the principles of statehood, defined by the Declaration of Independence, which are also included in the text of the Constitution. Hence, it provides grounds to assert that, under the fundamentals of statehood, the framers of the Constitution meant the fundamental constitutional principles enshrined in Clauses 1-10 of the Declaration of Independence. These principles are adequately reflected in the Constitution as the foundations of the constitutional order. Moreover, several fundamental provisions directly derived from the Declaration of Independence, and in particular, the provisions, defining the sovereign, democratic, and legal nature of the state, have been included in the Constitution as immutable norms (Pursuant to Article 203 of the Constitution of the Republic of Armenia, Articles, 1, 2, 3 and 203 of the Constitution shall be unchangeable.).

Conclusion

As presented above, the Declaration of Independence is the legal and political starting point of Armenia's independence process and, prior to the adoption of the formally written Constitution, it performed the function of a Constitution, playing the role of an institutional "blade" during the transition from a single-party communist totalitarianism and a socialist socio-economic formation to a liberal-capitalist democracy and promoting the overcoming of the systemic barriers of the past by political, state and civil society institutions. However, after the adoption of the Constitution, the Declaration of Independence "ceded" its status as the highest source of state law to the Constitution, embodying the principles of the organization and functioning of a sovereign state in the Fundamental Law, adopted by the people. This circumstance is not an extraordinary phenomenon but a natural stage in the evolution of a sovereign constitutional order, since the Declaration of Independence affirms the emergence of a sovereign state, and the Constitution establishes the legal and structural form of functioning of a sovereign state, including the principles of the relationship between the components of the state organism: state power, society, and individuals. The opposite approach, namely, recognizing the self-sufficient existence of the Declaration of Independence in the post-constitutional period, would mean "constitutional dualism," which calls into question the existence of the constitutional order of a sovereign state in general. Moreover, it is unacceptable, based on the very paradigm of a sovereign state: just as the existence of two equal state authorities is excluded within the territory of a sovereign state, so there cannot be two equal "fundamental laws", defining the foundations of a sovereign state's organization and operations.

The above affirmations in no way diminish the historical and supra-political value of the Declaration of Independence: the Declaration of Independence is an eternal and legal monument, characterizing the essence of the Third Republic of Armenia. At the same time, the characteristic of being a supra-political act suggests that the Declaration of Independence has ceased to perform the function of a normative act, regulating institutional existence of the state, since there is no constitution and constitutional act outside of politics. The issue, however, lies in the cultural and value-based dimension: the enduring significance of the Declaration of Independence for the sovereign Republic of Armenia has never been primarily determined by its inclusion in the formal jurisprudence paradigm. Instead, it carries within itself the value orientations of the Armenian people's political existence, adherence to which is a testament to the maturity of consciousness and will of every citizen. Therefore, contrasting the Declaration of Independence with the Constitution is in itself a false agenda for public debate, and, accordingly, the legal primacy of

the Constitution over the Declaration of Independence in no way diminish the paramount importance of the adoption of the Declaration of Independence and the values of a sovereign state, embodied therein for evolution of public consciousness and rooting of the so-called “culture of sovereignty”. Therefore, in terms of historical perspective, it is time to “reconcile” the Declaration of Independence of Armenia and the Constitution of the Republic of Armenia.

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