Armenia's Constitutional Catch-22

Armenian Constitutional Ruling Obscures the Peace Process with Azerbaijan

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In October 2024, the presidents of Armenia and Azerbaijan simultaneously approved a Protocol regulating the joint work of their respective border delimitation commissions. Originally signed in August, this Protocol sets the legal and procedural framework for the subsequent border delimitation process between the two South Caucasus neighbors, who have been locked in a territorial dispute for over three decades. The protocol's enactment in both countries became possible after Armenia's Constitutional Court issued a landmark Decision No. 1749 on 26 September 2024, confirming that the border delimitation agreement complied with Armenia's Constitution. As border delimitation is a key issue in the post-war normalization process between Armenia and Azerbaijan, this favorable decision was widely anticipated. However, the Court's Decision is remarkable not for its outcome, but rather its legal rationale, which traps Armenia in a legal and political Catch-22. I argue that while outwardly supporting border delimitation, the ruling ultimately complicates peace prospects between Armenia and Azerbaijan based on unambiguous recognition of territorial integrity. It reinforces legal ambiguities and opaque constitutional barriers by extending the Constitution's immutability principle to the Preamble, while simultaneously evading clarity on the irredentist claims indirectly referenced in the Preamble and reflected in Armenia's past political and legal practices.

The constitutional immutability dilemma

The Protocol regulating the joint work of border delimitation commissions was the first bilateral legal document to be signed by Armenia and Azerbaijan since both countries regained their independence in 1991. As such, this agreement was a major positive development in the peace process between the two countries with a long history of conflict. The Protocol, whose full contents have not yet been published, outlines procedures for the organization of delimitation works, creating official border maps, and drafting protocol-descriptions of the boundaries, with the aim of achieving a mutually recognized bilateral border.

Against the backdrop of this Protocol, the Court's 33-page ruling has been almost entirely dedicated to discussing "the normative relationship between [Armenia's Independence] Declaration and the provisions of the Constitution". This framing is not coincidental given that Azerbaijan's main demand from Armenia has been the removal of the controversial reference to the Independence Declaration in its Constitution's Preamble, which is interpreted as a territorial claim. Specifically, the Court examined how the "national objectives" enshrined in the Independence Declaration, including a reference to a 1989 Declaration calling for incorporation of the then Nagorno-Karabakh Autonomous Oblast of Azerbaijan into Armenia, relate to Armenia's constitutional framework.

The Court's legal analysis starts by discussion of the constitutional "immutability" clause. Referring to its Decision No. 1590 from 29 April 2021, the Court reiterated that the Preamble and Articles 1, 2, 3 and 203 of the Constitution are "immutable", meaning they cannot be changed under any circumstance, not even by popular referendum. Article 203 of Armenia's Constitution proclaims that only "Articles 1, 2, 3 and 203 of the Constitution shall not be subject to amendment", but it does not contain any direct or indirect reference to the Preamble. Yet, Armenia's Constitutional Court single-handedly expanded the legal effect

of the "immutability" clause to the Preamble, setting a major precedent for future legislative processes.

As long as this legal Decision stands, even if Armenia adopts a completely new constitution – which Prime Minister Nikol Pashinyan hopes to achieve by 2027 – the Preamble must remain unchanged. This requirement effectively blocks any hope of resolving the core disagreement with Azerbaijan through constitutional reforms.

Strategic ambiguity and judicial ambivalence

Having reiterated the "immutability" of the Preamble, the Court proceeded to analyze the "discrepancies" between the Constitution and the Declaration of Independence.

The Court's legal analysis unavoidably touches upon the 1989 Declaration, an issue carefully evaded by Armenia's legal system up to now. This fateful Declaration, dubbed the Miatsum Declaration (Armenian for unification) declared then Nagorno-Karabakh region of Azerbaijan as part of Armenia and extended the rights of citizenship to its ethnic Armenians. It was subsequently incorporated into the 1990 Declaration of Independence, which made its way to the Preamble of Armenia's Constitution "as a basis [for] the fundamental principles of the Armenian Statehood and the national objectives". This formulation is at the core of Azerbaijan's concerns over Armenia's constitutionally embedded territorial claims.

In addressing this key issue, the Court adopted what it terms a narrow interpretation of the national objectives enshrined in the Constitution, arguing that not all objectives listed in the Declaration of Independence have been incorporated into the Constitution. This is an important point, because it implies that the 1989 Miatsum Declaration is not part of Armenia's constitutional-legal framework because it is not explicitly mentioned in the Constitution. However, this thesis contradicts Armenia's past political and legal practices.

The 1998 and 2003 presidential elections in Armenia, which brought to power Robert Kocharyan and were certified by the Constitutional Court, are a case in point. Armenia's Constitution at the time required presidential candidates to have resided in Armenia for 10 years prior to the election and to have been a citizen of Armenia during that period. Kocharyan, a native of Karabakh, moved to Armenia in 1997, thus failing to meet either criterion. Despite the opposition contesting his eligibility, Kocharyan's supporters justified his candidacy by referring to the legal validity of the 1989 Miatsum Declaration in Armenian legislation. Kocharyan's repeated election and the Constitutional Court's approval effectively implied the Miatsum Declaration held legal weight within Armenia's framework, despite its lack of recognition internationally, where Karabakh remained acknowledged as part of Azerbaijan.

Another legal precedent that highlights inconsistencies in the Court's rationale is its 2010 Decision on the Armenia-Türkiye Protocols, which introduced legal caveats that questioned the unambiguous recognition of bilateral borders with Türkiye as established by the 1921 Kars Agreement. The Court ordered that international treaties signed by Armenia must align with the national objectives as stipulated in both the Constitution and the Declaration of Independence. In this context, the Court specifically referred to Paragraph 11 of the Declaration, which cites genocide recognition in "Ottoman Turkey and Western Armenia" as a national objective. Here, understanding the legal significance of the Paragraph 11 is important, because just like the Miatsum Declaration, it is not explicitly mentioned in the Constitution but is indirectly referenced in the Preamble as one of the "national objectives".

According to the 2010 Decision, the provisions of the Armenia-Türkiye Protocols "cannot be interpreted or applied… in a way that would contradict the provisions of the Preamble to the [Armenia's] Constitution *and* [my emphasis] the requirements of Paragraph 11 of the Declaration of Independence of Armenia." Thus, the Court effectively adopted an *expansive* interpretation of the "normative relationship" between the Independence Declaration and the provisions of the Constitution, asserting that international treaties signed by Armenia must be consistent with objectives laid out in both foundational texts. Of note, following this ruling, neither Armenia nor Türkiye moved to

ratify the protocols; Armenia suspended the ratification in April 2010 and formally withdrew its signature in 2018.

Apparently cognizant of this glaring inconsistency between its past and present approaches, the Court attempted to proactively address this point. It relied on a technical distinction, arguing that the Preamble of the Constitution and Paragraph 11 of the Declaration of Independence should be treated as separate concepts that were linked by the conjunction *"and"*, as found in the quotation from the 2010 Decision cited above. Thus, the Court concludes in an apparently defensive maneuver, that its 2010 Decision "has no doctrinal inconsistency with [the current] decision of the Court" (Para 3.4.1.).

This is a remarkable display of judicial contortion. Essentially, the Court devoted 33 pages of dense, opaque legal text to argue that a single conjunction resolves any "doctrinal inconsistency" between its 2010 expansive and 2024 narrow interpretations of the "normative relationship" between the Independence Declaration and the provisions of the Constitution. However, the fact that the Court's assertion hinges entirely on a mere conjunction word raises serious questions. After all, what guarantee is there that in another 15 years, should the balance of power tilt in Armenia's favor, its Constitutional Court would not reinterpret the provisions of its Constitution once again by citing another obscure technicality?

Lastly, having decided that the 1989 Miatsum Declaration – by virtue of not being explicitly mentioned in the Constitution – does not form part of the Constitution, the Court abruptly concluded, in one short paragraph, that it is under no obligation to further assess the implications of the Miatsum Declaration for Armenia's legal framework (Para 3.7). The Court thus offered no clarification on whether the Miatsum Declaration has any validity within the Armenian legal framework. Instead, it simply dodged the most important issue at the core of the legal controversy.

To sum up, these two landmark Court Decisions – 2010 and 2024 – demonstrate a strikingly different interpretations when referring to the controversial "national objectives" embedded in the Independence Declaration and the Preamble of the Constitution. In 2010, the Court effectively held that the Armenia-Türkiye Protocols – as an International Treaty signed by Armenia – must align with the national objectives as stipulated in both the Constitution and the Declaration of Independence. By contrast, in 2024, the Court shifted to a narrow interpretation, ruling that the Armenia-Azerbaijan border delimitation Protocol – as an International Treaty signed by Armenia – need to align only with the Constitution. This narrower approach allowed the Court to sidestep the legal assessment of the Miatsum Declaration, which lies at the heart of the controversy surrounding Armenia's constitutionally embedded territorial claims against Azerbaijan.

Time for clarity

Speaking in parliament on 14 November, Pashinyan proclaimed that Armenia's Declaration of Independence conflicts with the nation's ability to exist truly as an independent state, calling this contradiction "the biggest problem and tragedy" of the Armenian people. Brandishing a cutout map of Armenia before the MPs – some of whom defiantly displayed the flag of the now-defunct separatist NKR, symbolizing irredentist aspirations – Pashinyan asserted that a true patriot of Armenia is one whose sense of homeland is rooted solely within Armenia itself. His statement reveals a coded admission that the irredentist Miatsum principle listed in the Declaration – and referenced in the Constitution's Preamble as a "national objective" – is a major obstacle not only to peace with Azerbaijan but also to Armenia's long-term security.

There have been similar statements before. In August 2023, Pashinyan famously said that Armenia's Declaration of Independence created a "confrontational narrative…that kept [Armenia] in constant conflict with [its] neighbors." In January 2024, he went further by proclaiming that maintaining a reference to the Miatsum Declaration in the Constitution "means that we'll never have peace." The recent Decision of the Constitutional Court is a missed opportunity, as it

fails to address the dilemmas Pashinyan repeatedly acknowledged.

Despite greenlighting the border delimitation activities, the Court's Decision is a setback for the Armenian-Azerbaijani peace process overall. By extending the principle of immutability to the Preamble, selectively reinterpreting past rulings and by avoiding a legal appraisal of the 1989 Miatsum Declaration, the Court obscured rather than clarified Armenia's territorial claims against Azerbaijan. The ruling also leaves Pashinyan in another Catch-22 of a political sort: while he acknowledges the need to shift Armenia's political discourse from past irredentist claims to a more pragmatic approach that facilitates peace, the current rigid framework set by the Court does not allow Armenia to unequivocally abandon those claims. This ruling vividly illustrates the urgent need for re-evaluation and reform of Armenia's constitutional-legal framework to enable meaningful normalization with Azerbaijan.

As I have argued before, one potential solution to the current legal impasse could be the formal rescinding of the 1989 Miatsum Declaration, which lies at the core of the controversy over Armenia's legally entrenched territorial claims against Azerbaijan. Given that Pashinyan's party holds a confident majority in the parliament, rescinding the Miatsum Declaration through a simple majority vote in the parliament would be a guaranteed outcome. This would bring a much-needed legal and political clarity to the core issue of unambiguous recognition of territorial integrity and significantly reduce the controversy over future constitutional reforms in Armenia.

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