

**IN THE NAME OF THE REPUBLIC OF ARMENIA
DECISION OF THE CONSTITUTIONAL COURT OF
THE REPUBLIC OF ARMENIA**

**ON THE CASE OF CONFORMITY OF THE OBLIGATIONS STIPULATED BY THE
TREATY ON THE CUSTOMS CODE OF THE EURASIAN ECONOMIC UNION
SIGNED ON APRIL 11, 2017 WITH THE CONSTITUTION OF THE REPUBLIC OF
ARMENIA**

Yerevan

10 October 2017

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, A. Gyulumyan, F. Tokhyan A. Tunyan (Rapporteur), A. Khachatryan, V. Hovhanissyan, H. Nazaryan, A. Petrosyan,

with the participation (in the framework of the written procedure) of V. Mirumyan, official representative of the President of the Republic of Armenia, Deputy Chairman of the State Revenue Committee under the Government of the Republic of Armenia,

pursuant to Article 100, Point 2, Article 101, Part 1, Point 1 of the Constitution (with amendments of 2005) of the Republic of Armenia and Articles 25, 38 and 72 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of the obligations stipulated by the Treaty on the Customs Code of the Eurasian Economic Union signed on April 11, 2017 with the Constitution of the Republic of Armenia.

The Case was initiated on the basis of the Application submitted to the Constitutional Court of the Republic of Armenia by the President of the Republic of Armenia on 28.08.2017.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Representative of the President of the Republic of Armenia, having studied the Treaty and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Treaty on the Customs Code of the Eurasian Economic Union (hereinafter referred to as the "Treaty ") was signed by the Heads of the States of the Eurasian Economic Union on April 11, 2017 for ensuring the uniform customs regulation in the Eurasian Economic Union.

2. The Treaty consists of six articles and three annexes. Annex No. 1 includes the Customs Code of the Eurasian Economic Union (hereinafter - the Code), which consists of 9 sections, 465 articles and 2 annexes. Annex No. 2 is a list of international treaties that are part of the Law of the Eurasian Economic Union, which cease to exist due to the entry into force of the Treaty on the Customs Code of the Eurasian Economic Union. Annex No. 3 includes the list of provisions of international treaties which are part of the Law of the Eurasian Economic Union, which are recognized as invalid due to the entry into force of the Treaty on the Customs Code of the Eurasian Economic Union

3. According to the Code, set forth in Appendix No. 1 to the Eurasian Economic Union (hereinafter referred to as the "Union"), a unified customs regulation is established, including the establishment of the procedure and terms for the movement of goods across the customs border of the Union, their location and use in the customs territory of the Union or abroad, the procedure for the performance of customs operations associated with the arrival of goods in the customs territory of the Union, their departure from the customs territory of the Union, temporary storage of goods, their customs declaration and issuance, other customs operations, the procedure for payment of customs duties, special, anti-dumping, countervailing duties and customs control, as well as the regulation of power relations between customs authorities and persons exercising possession, use and (or) disposal of goods in the customs territory or outside of the Union.

Customs regulation in the Union is based on the principles of equal rights for persons transferring goods across the customs border of the Union, preciseness, clarity and consistency in the performance of customs operations, publicity in the development and application of international treaties and acts in the field of customs regulation and their harmonization with the norms of international law as well as application of modern methods of customs control and maximum use of information technology in the activities of customs authorities.

Customs legal relations, not regulated by international treaties and acts in the field of customs regulation, prior to the regulation of relevant legal relations by such international treaties and acts are regulated by the legislation of the Member States of the Union (hereinafter - the Member States).

4. Under the Treaty, the Republic of Armenia accepts, inter alia, the following obligations:

- 1) as a member state, adopts the Customs Code of the Eurasian Economic Union, which is included in Annex No. 1 to the Treaty;
- 2) in connection with the entry into force of the Treaty, the validity of the international treaties entering into the right of the Eurasian Economic Union in accordance with the list prescribed in Annex No. 2 to the Treaty, and the provisions of the international treaties entering into the right of the Eurasian Economic Union, in accordance with the list prescribed in Annex No. 3 to the Contract to recognize as invalidated;
- 3) accept that by mutual agreement of the Member States, amendments and additions may be made to the Treaty, which are formalized by separate protocols;
- 4) do not admit any reservations to the Treaty;
- 5) settle disputes related to the interpretation and (or) application of the Treaty, in accordance with the procedure specified in the Treaty on the Eurasian Economic Union of May 29, 2014;
- 6) accept that the Treaty takes precedence over other international treaties regulating the customs relations of the Eurasian Economic Union, with the exception of the Treaty on the Eurasian Economic Union of May 29, 2014.

5. Having examined the nature of the international treaty in dispute as a legal act, the Constitutional Court of the Republic of Armenia states that this act, in fact, is considered to be ranked to the sources of *supranational* law. In the classical sense, the difference between international law and supranational law is mainly that the norms of the latter regulate not only the relations between states (**horizontal**), but also the relations operating within the state (**vertical**).

The international practice of constitutional justice shows that the implementation of the preliminary constitutional control over the legislative acts, regulating vertical legal relations, which are the source of supranational law, cannot objectively guarantee the observance of the constitutional requirements of institutionalization of the mechanisms and procedures necessary for the direct action of the fundamental rights and freedoms of a person and citizen, prescribe the principles of proportionality and certainty of their limitations, as well as the effective implementation of these rights and freedoms.

In addition, taking into account the vertical legal relations of the Code, including the peculiarity of the regulation of administrative legal relations in the field of public law, in assessing its constitutionality, it is also necessary to take into account this interpretation in the law enforcement practice, according to which it cannot be carried out within the framework of the preliminary constitutional control.

6. The analysis of the Constitution of the Republic of Armenia (both in 2005 and 2015 editions) and the Law "On the Constitutional Court" of the Republic of Armenia states that the norms providing for interstate (horizontal) obligations, adopted by the Republic of Armenia regarding the international treaties, may become the subject of preliminary constitutional control in the Constitutional Court.

Article 2 of the RA Law "On International Treaties" of the Republic of Armenia envisages the concept of the international treaty, according to which" the international treaty of the Republic of Armenia is a written agreement signed in accordance with the procedure prescribed by the Constitution of the Republic of Armenia, this Law and international public law (hereinafter - International Law) between the Republic of Armenia and the subject of International Law, as well as organizations provided for by Part 4 of Article 6 of this Law, and which entered into force by the procedure prescribed by the Law which has become mandatory for the Republic of Armenia, which, in connection with the subject of regulation of a certain international treaty, establishes rights and obligations for the parties to the treaty, changes or terminates them.

The international treaty of the Republic of Armenia is also an international treaty that entered into force, to which the Republic of Armenia joined in accordance with the procedure prescribed by this Law and norms of international law.

The international treaty of the Republic of Armenia is also a treaty concluded in accordance with the procedure prescribed in this Law on the introduction of amendments or additions to an international treaty. "

In addition to the abovementioned, according to the RA Constitution and the RA Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia is not entitled to exercise preliminary constitutional control over the provisions of the laws until their adoption by the RA National Assembly

The norms, which regulate vertical legal relations stipulated in this Treaty, by their nature, are acts that are characteristic to the law, the adoption of which, without the provision of preliminary constitutional control, is granted to the legislature by the Constitution.

7. The Constitutional Court of the Republic of Armenia also considers it necessary to apply to the positions expressed by the Court in Decision No. 1175 of 14/11/2014, on the case "The case on conformity of the obligations stipulated in the Treaty on "The Accession to the Treaty Of May 29, 2014 on "The Eurasian Economic Union" signed by the Republic of Armenia" signed in Minsk on October 10, 2014 with the Constitution of the Republic of Armenia ", which are also applicable in the present case.

In particular, the Constitutional Court stated that "The Constitution of the Republic of Armenia, reaffirming its adherence to the universal values of the Constitution of the Republic of Armenia in the Preamble, in accordance with the fundamentals of the constitutional system, underlining the principles and norms of the international law in the implementation of foreign policy, in establishing a legal and democratic state, as primacy international law does not impose any restrictions on the provision of international and regional cooperation and capacity of the structures providing it.

However, there are also precise constitutional requirements, stemming from both axiology and a number of specific provisions of the RA Constitution. These are:

- 1) guaranteeing state, national and national sovereignty;
- 2) equality and mutual benefit of international relations;
- 3) provision of such possible restrictions on human rights, which are equivalent to the norms and principles of international law;
- 4) possibility for the actions of Armenia regarding the decisions of supranational bodies only within the framework of the Constitution of the Republic of Armenia.

The Constitutional Court of the Republic of Armenia considers that any decision that does not comply with these requirements, adopted by any supranational body, to which the Republic of Armenia is a party, is not applicable in the Republic of Armenia. "

8. On the basis of the above-mentioned, the Constitutional Court of the Republic of Armenia considers that the norms governing horizontal legal relations with the participation of the Republic of Armenia and, setting obligations for the Republic of Armenia, may become the subject of preliminary constitutional review in the Constitutional Court. And the rules of law that are the source of supranational law, corresponding to the content of the category "law" and regulating, the vertical legal relations may be a subject to constitutional review in the Constitutional Court in the procedure of "further constitutional control", taking into account also the interpretation provided in the law enforcement practice to any position prescribed in them.

9. The Constitutional Court further states that the obligations stipulated in the Treaty and assumed by the Republic of Armenia are in conformity with the Constitution of the Republic of Armenia, which call for the establishment of good neighborly and mutually beneficial relations with all States.

Proceeding from the results of consideration of the case and ruled by Point 2 of Article 100, Parts 1 and 4 of Article 102 of the Constitution of the Republic of Armenia (with the Amendments of 2005) and Articles 63, 64 and 72 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Obligations, stipulated in the Treaty on the Customs Code of the Eurasian Economic Unions signed on April 11, 2017 are in conformity with the Constitution of the Republic of Armenia
2. In accordance with Article 102 (2) of the RA Constitution (with the Amendments of 2005) this decision is final and enters into force from the moment of its announcement.

Chairman

G. Harutyunyan

October 10, 2017

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