

**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 IN
COUNCIL OF EUROPE CONVENTION ON THE PROTECTION OF CHILDREN
AGAINST SEXUAL EXPLOITATION AND SEXUAL ABUSE SIGNED IN
LANZAROTE ON 25 OCTOBER 2007 WITH THE CONSTITUTION**

Yerevan

31 March 2020

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan, A. Tunyan, A. Khachatryan, H. Nazaryan, A. Petrosyan (Rapporteur),

with the participation of K. Grigoryan, the Representative of the Government of the Republic of Armenia, Deputy Minister of Justice of the Republic of Armenia,

pursuant to Clause 3 of Article 168, Part 3 of Article 169 of the Constitution, as well as Articles 22, 23 and 74 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of the obligations stipulated in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed in Lanzarote on 25 October 2007 with the Constitution.

The case was initiated on the basis of the application of the Government of the Republic of Armenia submitted to the Constitutional Court on 15 November 2019. Ruled by the Procedural Decision PDCC-26 of 11 February 2020 on the obligations stipulated in Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed in Lanzarote on 25 October 2007 with the Constitution, the examination of the case was

suspended until provision of the revised official Armenian translation of the Convention by the Government.

By the Procedural Decision PDCC-67 of the Constitutional Court adopted on 27 March 2020, the examination of the case regarding the obligations stipulated in the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed in Lanzarote on 25 October 2007 with the Constitution, was resumed as the grounds for the suspension of the case were lifted.

1. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Violence (Convention) was signed on 25 October 2007 in Lanzarote.

The purposes of this Convention are to:

- a. prevent and combat sexual exploitation and sexual abuse of children;
- b. protect the rights of child victims of sexual exploitation and sexual abuse;
- c. promote national and international co-operation against sexual exploitation and sexual abuse of children.

The Convention entered into power on 1 July 2010.

The Republic of Armenia signed the Convention on 29 September 2010.

2. Under the Convention, the Republic of Armenia shall , in particular:

1) ensure the implementation of the Convention, in particular, the implementation of the measures to protect the rights of the victims (of any child exploited or abused sexually) without discrimination on any ground,

2) take the necessary legislative or other measures to prevent all forms of sexual exploitation and sexual abuse of children and to protect children,

3) take the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the

education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities,

4) the necessary legislative or other measures to encourage awareness of the protection and rights of children among persons who have regular contacts with children in the education, health, social protection, judicial and law-enforcement sectors and in areas relating to sport, culture and leisure activities. This information, provided in collaboration with parents, where appropriate, shall be given within a more general context of information on sexuality and shall pay special attention to situations of risk, especially those involving the use of new information and communication technologies,

5) the necessary legislative or other measures to prevent or prohibit the dissemination of materials advertising the offences established in accordance with this Convention,

6) the necessary measures to ensure the co-ordination on a national or local level between the different agencies in charge of the protection from, the prevention of and the fight against sexual exploitation and sexual abuse of children, notably the education sector, the health sector, the social services and the law-enforcement and judicial authorities,

7) encourage mechanisms for data collection or focal points, at the national or local levels and in collaboration with civil society, for the purpose of observing and evaluating the phenomenon of sexual exploitation and sexual abuse of children, with due respect for the requirements of personal data protection,

8) establish effective social programmes and set up multidisciplinary structures to provide the necessary support for victims, their close relatives and for any person who is responsible for their care,

9) take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age,

10) take the necessary legislative or other measures to encourage and support the setting up of information services, such as telephone or Internet helplines, to provide advice to callers, even confidentially or with due regard for their anonymity,

11) take the necessary legislative or other measures to assist victims, in the short and long term, in their physical and psycho-social recovery. Measures taken pursuant to this paragraph shall take due account of the child's views, needs and concerns,

12) take the necessary legislative or other measures to ensure that the following intentional conduct is criminalized,

13) take the necessary legislative or other measures to establish jurisdiction over any offence established in accordance with this Convention, when the offence is committed in the territory of the Republic of Armenia; or on board a ship flying the flag of the Republic of Armenia; or on board an aircraft registered under the laws of the Republic of Armenia; or by one of the nationals of the Republic of Armenia; or by a person who has his or her habitual residence in the territory of the Republic of Armenia,

14) take the necessary legislative or other measures to establish jurisdiction over the offences established in accordance with this Convention, in cases where an alleged offender is present in the territory of the Republic of Armenia and it does not extradite him or her to another Party, solely on the basis of his or her nationality,

15) take the necessary legislative or other measures to ensure that the offences established in accordance with this Convention are punishable by effective, proportionate and dissuasive sanctions, taking into account their seriousness. These sanctions shall include penalties involving deprivation of liberty which can give rise to extradition,

16) take the necessary legislative or other measures to ensure that investigations and criminal proceedings are carried out in the best interests and respecting the rights of the child,

17) adopt a protective approach towards victims, ensuring that the investigations and criminal proceedings do not aggravate the trauma experienced by the child and that the criminal justice response is followed by assistance, where appropriate,

18) ensure that the measures applicable under the current chapter are not prejudicial to the rights of the defence and the requirements of a fair and impartial trial, in conformity with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms,

19) ensure that victims have access, as from their first contact with the competent authorities, to information on relevant judicial and administrative proceedings,

20) take the necessary legislative or other measures to ensure that victims of an offence established in accordance with this Convention in the territory of a Party other than the one where they reside may make a complaint before the competent authorities of their State of residence.

3. Taking into consideration the explanations provided by the representative of the Government of the Republic of Armenia, the Constitutional Court, in particular, states:

1) The term "legislative or other means" provided in the obligations stipulated by the Convention is applicable for the Republic of Armenia within the framework of the constitutional-legal regulations of the Republic of Armenia, i.e., if the issue is a subject to resolution only by legislative regulations, it cannot be solved by the other means,

2) The obligation envisaged in Article 10 of the Convention regarding the formation or appointment of independent competent national or local institutions for the promotion and protection of the rights of the child does not mandatorily presuppose the establishment of a new body and the fulfillment of this obligation may be ensured within the framework of the activity of the competent body already operating in the Republic of Armenia.

4. The Constitutional Court considers that the obligations undertaken by the Republic of Armenia under the Convention shall be followed in the terms of protection of the relevant constitutional values, in particular, taking into account the constitutional content of Article 16 of the Constitution (regarding the special protection of children), Part 1 of Article 36, Article 37, Clause 6 of Article 86.

Simultaneously, the Constitutional Court considers necessary to emphasize that the obligation stipulated by the Convention on each party to ensure that children, during primary and secondary education, receive information on the risks of sexual exploitation and sexual abuse, as

well as on the means to protect themselves, shall be delivered mandatorily taking into consideration the maturity level of children and their developing capacities, as well as taking into consideration the provision of the effective control by the State over the priority protection of the best interests of the children for the fulfillment of constitutional obligation of the State to provide special protection for childhood.

5. The Constitutional Court considers it necessary to note that the provision of the necessary legal guarantees for the fulfillment of the obligations undertaken by the Republic of Armenia under the Convention and the law enforcement practice shall be in line with the legal positions expressed in this decision.

6. The Constitutional Court finds that the obligations undertaken by the Republic of Armenia under the Convention are particularly relevant to the powers of the National Assembly and the Government, and the issue of the expediency of the ratification of the Convention is within the competence of these bodies.

Based on the review of the case and governed by Clause 3 of Article 168, Clause 8 of Parts 1 and 4 of Article 170 of the Constitution, as well as Articles 63, 64 and 74 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS**:

1. The obligations stipulated in Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse signed in Lanzarote on 25 October 2007 are in conformity with the Constitution

2. Pursuant to Part 2 of Article 170 of the Constitution this Decision is final and shall enter into force upon its promulgation.

Chairman

H. Tovmasyan

31 March 2020

DCC-1519