

**CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA
PROCEDURAL DECISION**

**ON SUSPENSION OF THE PROCEEDINGS OF THE CASE OF CONFORMITY OF
ARTICLE 300.1 OF THE CRIMINAL CODE OF THE REPUBLIC OF ARMENIA
WITH THE CONSTITUTION ON THE BASIS OF THE APPLICATIONS OF ROBERT
KOCHARYAN**

Having considered the proposals by Hrayr Tovmasyan, President of the Constitutional Court, on application to the European Court of Human Rights and the European Commission for Democracy through Law (Venice Commission) on the case of conformity of article 300.1 of the Criminal Code of the Republic of Armenia with the Constitution on the basis of the applications of Robert Kocharyan, and accordingly suspension of the proceedings of the given case, the Constitutional Court **ESTABLISHES:**

The preliminary study of the applications of Robert Kocharyan reveals that they contain questions which, in the sense of part 1 of article 81 of the Constitution, concern the interpretation and implementation of the norms prescribed in the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention likewise).

The Constitutional Court considers that not only the issue of constitutionality should be resolved in the case in question but also a reference should be made to the implementation of international commitments undertaken by the Republic of Armenia, noting the importance of identification of the best international practice in respect with the implementation of the relevant norms of the Convention and comparative constitutional law. Therefore, there is a need for consultative opinions on the principal issues of interpretation and application of rights and freedoms prescribed in the Convention, as well as on the issues of comparative constitutional law and international law.

Considering the above and based on clause 5 of part 1 of article 56, and part 2 of article 61 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. Based on Article 1 of Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms, to apply to the European Court of Human Rights and launch the following questions to obtain a consultative opinion,

1) Do the qualitative requirements (certainty, accessibility, predictability and sustainability) incur also to the concept of “law”, which identifies an offence within the meaning of Article 7 of the Convention, and to the concept of “law” referred to in other articles of the Convention, for instance, in Articles 8-11?

2) If not, by what standards are they delineated?

3) Whether the criminal law, which contains a reference to certain legal provisions of legal acts that have a higher legal force and the highest possible legally binding power of abstraction and, by virtue of

this, establishing an offence, meet the requirements of certainty, accessibility, predictability and sustainability?

4) In accordance with the principle of prohibition of the retroactive application of criminal law (part 1 of Article 7 of the Convention), which standards are provided for comparing the criminal law in force at the time of the commission of the offense and the amended criminal law, in order to disclose their contextual (essential) similarities or differences?

2. Based on the Statute of the Venice Commission, to apply to the Venice Commission and launch the following questions to obtain a consultative opinion:

1) Do the offences “against the constitutional order” prescribed in the criminal laws of the member states of the Venice Commission contain references to constitutions or their specific articles?

2) How are the concepts of “constitutional order”, “overthrow of the constitutional order”, “appropriation of power” described in the relevant legal acts of the member states of the Venice Commission and, in particular, in criminal laws, and are there legal interpretations of these concepts?

3) What are the European standards for the requirement of certainty for the law identifying the offence?

4) Do the legislations of the member states of the Venice Commission stipulate a similar offense prescribed in article 300.1 of the Criminal Code of the Republic of Armenia?

5) If so, which is the best practice from the perspective of legal certainty?

3. To suspend the proceedings of the case on conformity of article 300.1 of the Criminal Code of the Republic of Armenia with the Constitution on the basis of the applications of Robert Kocharyan, till issuance of the consultative opinions of the European Court of Human Rights and the Venice Commission.

**PRESIDENT OF THE
CONSTITUTIONAL COURT**

H. TOVMASYAN

July 18, 2019

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