



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

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**ON THE CASE OF CONFORMITY OF THE OBLIGATIONS STIPULATED IN THE  
AGREEMENT BETWEEN THE REPUBLIC OF ARMENIA AND THE CZECH  
REPUBLIC TO FACILITATE THE APPLICATION OF THE EUROPEAN  
CONVENTION ON EXTRADITION OF 13 DECEMBER 1957 WITH THE  
CONSTITUTION**

Yerevan

March 15, 2021

The Constitutional Court composed of A. Dilanyan (Chairman), V. Grigoryan, H. Tovmasyan, A. Tunyan, A. Khachartryan, Ye. Khundkaryan, E. Shatiryan, A. Petrosyan, A. Vagharshyan,

with the participation of (in the framework of the written procedure):

the representative of the Government:

pursuant to Clause 3 of Article 168, Part 3 of Article 169 of the Constitution, as well as Articles 23, 40 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 Agreement between the Republic of Armenia and the Czech Republic to Facilitate the Application of the European Convention on Extradition of 13 December 1957 with the Constitution.

By the Decision N 1595-A of 30 September 2021, the Government approved the legislative initiative of the Government of the Republic of Armenia on the draft law of the Republic of Armenia on the Ratification of the Agreement between the Republic of Armenia and the Czech Republic to Facilitate the Application of the European Convention on Extradition of 13 December 1957, and

rendered a decision to apply to the Constitutional Court for determining the compliance of the obligations stipulated in that Agreement with the Constitution.

The case was initiated on the basis of the application of the Government submitted to the Constitutional Court on 5 October 2021. The case proceedings were suspended by the Procedural Decision PDCC-253 of 14 December 2021. The case proceedings were resumed by the Procedural Decision PDCC-42 of 25 February 2022.

Having examined the above-mentioned Agreement, the written explanation of the representative of the Government, as well as other documents of the case, the Constitutional Court **FOUND:**

1. The Agreement between the Republic of Armenia and the Czech Republic to Facilitate the Application of the European Convention on Extradition of 13 December 1957 (hereinafter referred to as the Agreement) was signed in Prague on 9 June 2021. The agreement desires to promote more effective co-operation between the two States in the matter of extradition, in particular with reference to the principle of *aut dedere aut judicare* (either extradite or prosecute), and facilitating the fulfillment of the obligations assumed by the two States laid down in the European Convention on Extradition of 13 December 1957 /hereinafter also referred to as the Convention/ (ratified by the Republic of Armenia by the Decision N-228-2 of the National Assembly dated 21 November 2001 /DCC-320/) providing an opportunity to recognize and enforce the final judgments of their nationals by the courts of the other Contracting Party. The Convention also has two protocols, namely, the Additional Protocol to the European Convention on Extradition signed on 15 October 1975 (ratified by the Republic of Armenia by the Decision N-041-3 of the National Assembly dated on 22 October 2003 /DCC-445/ and the Second Additional Protocol to the European Convention on Extradition signed on 17 March 1978 (ratified by the Republic of Armenia by the Decision N-040-3 of the National Assembly dated on 22 October 2003 /DCC-446/).

According to the preamble to the Agreement, the provisions of the Convention shall remain in force with regard to any other issue not covered by this Agreement.

The Constitutional Court states that the Republic of Armenia has made a number of statements and reservations when acceding to the Convention, including refusal to surrender, execution of judgments, political crimes, war crimes, and the right to refuse extradition of its nationals: in particular, pursuant

to Paragraph 1 “a” of Article 6 of the Convention, the Republic of Armenia has declared that it shall not extradite a national of the Republic of Armenia.

2. The Agreement stipulates that each Contracting Party upon a request of the other Contracting Party shall recognize and enforce a final judgment, imposing a sentence of imprisonment or other measure involving deprivation of liberty on its own nationals by the courts of the other Contracting Party, in its territory, in case when the extradition of the person sought was refused or cannot be granted for the only reason of his or her nationality as it is stipulated in Article 6 of the European Convention on Extradition of 13 December 1957.

Recognition of the final judgment passed by the Requested Party shall result in termination of the sentence in the territory of the Requesting Party. If the Requested Party considers that the sentence of imprisonment - imposed on the person sought by the final judgment recognized by the Requested Party - has expired, the Requesting Party shall no longer enforce the sentence.

3. On the basis of reciprocity, the Republic of Armenia shall undertake, in particular, the following obligations:

1) Upon a request of the Czech Party, the Republic of Armenia shall recognize and enforce a final judgment, imposing a sentence of imprisonment or other measure involving deprivation of liberty on its own nationals by the courts of the Czech Party (hereinafter the “final judgment”), in its territory, in case when the extradition of the person sought was refused or cannot be granted for the only reason of his or her nationality of the Republic of Armenia as it is stipulated in Article 6 of the European Convention on Extradition of 13 December 1957 (Article 1);

2) In case the Requested Armenian Party cannot grant the extradition of the person sought solely for the reason of his or her nationality of the Republic of Armenia, the Requested Armenian Party shall, upon a request of the Requesting Czech Party, take appropriate measures in accordance with its national law in order to recognize and enforce the final judgment in the territory of the Republic of Armenia. Consent of the person sought shall not be required (Paragraph 1 of Article 2);

3) Paragraph 1 of Article 2 of the Agreement shall also apply to the final judgments rendered in the absence of the person sought under condition that the person sought had been summoned in person or otherwise informed of the date and place of the court hearing, which led to the judgment rendered in

his or her absence, in conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 4 November 1950) /ratified by the Republic of Armenia by the Decision N-264-2 of the National Assembly dated 20 March 2002 /DCC-350/ (Paragraph 2 of Article 2);

4) The Requested Armenian Party shall not recognize and enforce the final judgment on the grounds prescribed by Article 5 of the Agreement, in particular, if there is a reason for refusing extradition pursuant to Articles 3 to 11 of the European Convention on Extradition of 13 December 1957, excluding the reason of the nationality of the person sought under Article 6 of the European Convention on Extradition of 13 December 1957; if at the time of receipt of the request for recognition and enforcement of the final judgment, the length of the sentence of imprisonment to serve does not exceed five (5) years; if the acts or omissions on account of which the sentence has been imposed do not constitute a criminal offence according to the legislation of the Requested Republic of Armenia or would not constitute a criminal offence if committed within its jurisdiction; and if the person sought who has been sentenced by the final judgment is not criminally liable according to the legislation of the Requested Republic of Armenia (Article 5);

5) If the Requested Czech Party considers the sentence of imprisonment imposed on the person sought by the final judgment that had been recognized by the Requesting Armenian Party to be completed, the Requesting Armenian Party shall no longer enforce the sentence (Paragraph 2 of Article 6);

6) The competent authorities of the Republic of Armenia, as the Requested Party, shall continue the enforcement of the sentence under the conditions set out in Paragraph 2 of Article 7 of the Agreement and governed by the regulations prescribed by the legislation of the Republic of Armenia, with the exception of the regulations of Article 7 and Article 8 of this Agreement, and the Requested Armenian Party shall be competent to take all appropriate decisions (Paragraph 1 of Article 7);

7) If maximum length of punishment prescribed by the legislation of the Republic of Armenia is shorter than length of sentence imposed in the territory of the Requesting Czech Party, the Requested Armenian Party shall take a decision on the enforcement of the punishment with maximum possible length allowed by the legislation of the Republic of Armenia, ensuring that it shall not aggravate, by its kind or duration, the sentence imposed in the territory of the Requesting Czech Party, nor exceed the maximum prescribed by the legislation of the Republic of Armenia (Paragraph 2 of Article 7);

8) The competent authority of the Republic of Armenia, as the Requested Party, shall not convert a sanction involving deprivation of liberty to a pecuniary sanction (Paragraph 3 of Article 7);

9) The part of the sentence, including custody, already served by the person sought in the territory of the Requested Czech Party, shall be deduced from the total duration of the sentence (Paragraph 4 of Article 7);

10) As the Requested Party, the Republic of Armenia shall provide the Requesting Czech Party with a copy of the decision by which the enforcement of the sentence imposed by the final judgment in the territory of the Republic of Armenia is ordered (Paragraph 5 of Article 7);

11) As the Requested Party, the Republic of Armenia shall terminate the enforcement of the sentence as soon as it is informed by the Requesting Czech Party of any decision or measure as a result of which the sentence ceases to be enforceable (Paragraph 1 of Article 10);

12) As the Requested Party, the Republic of Armenia shall provide the Requesting Czech Party with information concerning the enforcement of the sentence if it considers the enforcement of the sentence to have been completed, if the person sought has escaped before the enforcement of the sentence has been completed, if the person sought died, or if any additional information is required (Paragraph 2 of Article 10);

13) The Republic of Armenia shall ensure that requests, replies and all supporting documents as well as decisions on recognition of judgments are accompanied by a translation into English (Paragraph 1 of Article 11);

14) The Republic of Armenia shall bear any costs incurred in relation to the recognition and enforcement of the final judgment in the territory of the Republic of Armenia (Paragraph 2 of Article 11);

15) The Republic of Armenia shall also apply this Agreement to requests relating to the recognition and enforcement of final judgment rendered before its entry into force (Paragraph 4 of Article 13).

**4.** For the assessment of the constitutionality of the provisions of the Agreement, the Constitutional Court considers it necessary to reveal the ratio of the Agreement at issue with the international treaties ratified by the Republic of Armenia on the same or related subject matter of the settlement.

**4.1.** The comparison of the **European Convention on Extradition of 13 December 1957**, the two Protocols thereto and of the provisions of the Agreement gives grounds to conclude that:

a) The legal institution of extradition is the only subject matter of the Convention. It does not contain provisions governing other aspects of cooperation between States in the field of legal aid. Pursuant to Paragraph 2 of Article 6 of the European Convention on Extradition, if the requested Party does not extradite its national, it shall at the request of the Requesting Party submit the case to its competent authorities in order that proceedings may be taken, and for this purpose, the files, information and exhibits relating to the offence shall be transmitted;

b) The scope of the Agreement, as set out in Article 1 of the Agreement, and the provisions prescribed in the other Articles, respectively, refer to the institution of “recognition and enforcement of judgments” as a type of legal cooperation between States that differs contextually from “extradition”. In the case of operation of this institution, the Contracting State shall undertake to recognize and enforce the final judgments of their nationals by the courts of the other Contracting State. This institution is also envisaged by a number of international treaties signed and ratified by the Republic of Armenia;

c) According to Paragraph 2 of Article 28 of the Convention, “The Contracting Parties may conclude between themselves bilateral or multilateral agreements only in order to supplement the provisions of this Convention or to facilitate the application of the principles contained therein”.

*Thus, the Constitutional Court concludes that although the Agreement is entitled “Agreement between the Republic of Armenia and the Czech Republic to Facilitate the Application of the European Convention on Extradition of 13 December 1957”, however, it has neither supplementing nor facilitating legal content from the perspective of relationship of the Agreement with the content of the European Convention on Extradition.*

The legal provisions of the Agreement refer only to the institution of “recognition and enforcement of judgments”. The legal regulations of the two international treaties, from the perspective of systemic interrelation, provide the following picture: the European Convention on Extradition shall apply to the Czech Republic and the Republic of Armenia, which refers to the legal institution of extradition. Recalling and reiterating the provisions of the European Convention on Extradition, the Agreement would, after ratification, authorize the operation of the legal institution of “recognition and enforcement of judgments” between the Parties.

**4.2.** According to the **European Convention on the Transfer of Proceedings in Criminal Matters, adopted in 1972** (ratified by the Republic of Armenia by the Decision N-147-3 of the National Assembly dated 25 October 2004 /DCC-510/, entered into force for the Republic of Armenia

on 18 March 2005), when a person is suspected of having committed an offence under the law of a Contracting State, that State may request another Contracting State to take proceedings in the cases and under the conditions provided for in this Convention (Paragraph 1 of Article 6). According to Paragraph 1 of Article 8 of the same Convention, “A Contracting State may request another Contracting State to take proceedings in any one or more of the following cases:

(...)

b. if the suspected person is **a national** of the Requested State or if that State is his State of origin;

(...)

g. if it considers that **the presence of the suspected person cannot be ensured** at the hearing of proceedings in the Requesting State and that his presence in person at the hearing of proceedings in the Requested State can be ensured;

h. if it considers that it could not itself enforce a sentence if one were passed, even by having recourse to extradition, and that the Requested State could do so”.

According to Paragraph 2 of the same article, “Where the suspected person has finally been sentenced in a Contracting State, that State may request the transfer of proceedings in one or more of the cases referred to in Paragraph 1 of this Article only if it cannot itself enforce the sentence, even by having recourse to extradition, and if the other Contracting State does not accept enforcement of a foreign judgment as a matter of principle or refuses to enforce such sentence”.

Articles 10 and 12 of the Convention also stipulate the grounds for not taking action on the request, and Article 11 defines the cases where the Requested State may refuse acceptance of the request in whole or in part.

**5.** As a result of the comprehensive analysis of the above-mentioned international legal acts ratified by the Republic of Armenia and the Agreement at issue, the Constitutional Court states that:

a) By virtue of the **European Convention on the Transfer of Proceedings in Criminal Matters, adopted in 1972**, in all cases where a national of the Republic of Armenia commits a crime in the territory of the Czech Republic and later appears in the Republic of Armenia, the Requesting State - the Czech Republic, may apply to the Republic of Armenia with a request for proceedings, which shall be accompanied by the original, or a certified copy, of the criminal file and all other necessary documents (or, in some cases, the documents may be sent subsequently) /Paragraph 1 of Article 15 of

the Convention/. Moreover, when the Requesting State has requested proceedings, it can no longer **prosecute the suspected person for the offence in respect of which the proceedings have been requested or enforce a judgment** which has been pronounced previously in the territory of the Czech Republic against him for that offence. Until the Requested State's (in this case – the Republic of Armenia) decision on the request for proceedings has been received, the Requesting State shall, however, retain its right to take all steps in respect of prosecution, **short of bringing the case to trial**, or, as the case may be, allowing the competent administrative authority to decide on the case (Paragraph 1 of Article 21 of the Convention);

b) Where the suspected person has been finally sentenced in the Czech Republic and later appears in the Republic of Armenia, by virtue of Paragraph 2 of Article 6 of the European Convention on Extradition, the national of the Republic of Armenia would not be extradited to the other State, as the same time, however, the Republic of Armenia could at the request of the Czech Republic submit the case to its competent authorities in order that proceedings may be taken if they are considered appropriate.

Moreover, in this case, the national of the Republic of Armenia residing in the Republic of Armenia, who did not waive his right to participate in his trial (hearing) in the Czech Republic, but for instance, was unable to attend the trial in the given country for objective reasons and irrespective of his will, retained the right to participate in the consideration of his case, including his trial (hearing) in the Republic of Armenia when residing in the Republic of Armenia (based on the above-mentioned international legal documents) after the was judgment was rendered in his absence.

The Constitutional Court considers it necessary to state that in the case of not waiving the right to participate in the trial (hearing) /failure to participate in the trial for objective reasons and irrespective of his will, failure to participate in the trial for the purpose of avoiding the trial, etc) and in the event of a final judgment was rendered in the Czech Republic in the absence of the national of the Republic of Armenia and if he appears in the Republic of Armenia, the right of the national of the Republic of Armenia to participate in his trial (hearing), as an element of the to a fair trial, would be restricted by virtue of the legal regulations of Articles 1, 2 and Paragraph 4 of Article 13 of the contested Agreement, since after the entry into force of the Agreement, the possibility of the case consideration in the Republic of Armenia would be excluded and the national of the Republic of Armenia would be deprived of the right to participate in the trial (hearing).



In the light of the above-mentioned, the Constitutional Court considers it necessary to state that the application of the legal regulations on the recognition and enforcement of final judgments rendered before the entry into force of the Agreement, as prescribed by Paragraph 4 of Article 13 of the Agreement, may create a situation where the legal act restricting the person's rights would become retroactive, which in turn would be in conflict with the legal regulations prescribed by Part 1 of Article 73 of the Constitution.

The Constitutional Court of the Republic of Armenia has repeatedly stressed the importance of the constitutional provision prohibiting the retroactive effect of laws and other legal acts aggravating the legal status of a person, noting that this mandatory prohibition "... is one of the important components of the principles of the rule of law and the confidence in public administration. At the same time, this principle serves as a possible guarantee for the principle of legal certainty. At the same time, this principle serves as an important guarantee for the principle of legal certainty. From the principle of rejection of the retroactive effect of the law stems the prohibition that the restriction or elimination of the rights, which are fixed on the basis of the previous norms, shall be inadmissible. The Republic of Armenia has undertaken such an obligation under a number of international treaties" (DCC-723 of 15 January 2008). In this decision, the Constitutional Court has stated that the principle of prohibition of retroactive effect of the norms aggravating the legal status of a person entail in the obligation of the State to guarantee the implementation of the principles of legal certainty and respect for legitimate expectations.

In another case, the Constitutional Court, analyzing the issue of compliance of the disputed provision with Part 1 of Article 73 of the Constitution, has expressed the legal position that "The regulation of social relations by such a general principle is foreseeable and legitimate, since the subjects of legal relations, being endowed with mutual rights and duties and the power to implement them in time, are able to manifest legitimate expectations commensurate with the normative requirements and form appropriate behavior, which usually follows the emergence (appearance) of a predetermined fact. The content of legal relations is different in those cases where, due to the facts that have appeared for objective reasons, the content of the norms regulating them changes so that a person, acting within the framework of a relationship already regulated by law, and having certain rights and duties, finds himself in a relatively worse legal situation due to the changes in the law (norm).

(...)

The Constitutional Court considers that in this case, based on the principle of the rule of law, it is necessary to observe such rules for enactment in time and with respect to persons of new legal regulations due to amendment or supplement to the legal act, the implementation of which would guarantee the legitimate conditions for the realization of their rights. In the context of Part 1 of Article 73 of the Constitution, this fact is more important especially in cases where the issue concerns the aggravation (tightening) of the conditions for the realization of the rights of a person due to possible amendments” (DCC-1437 of 18 December 2018).

At the same time, the Constitutional Court states that under Article 28 of the Vienna Convention on Law of Treaties of 1969, the parties to a treaty may give retroactive effect to the operation of the given treaty. However, the procedure for national ratification of such treaties must be based on the constitutionally prescribed and universally recognized principles, which derive from human dignity characteristic to each individual and the principle of legal certainty, as well as the harmonious coherence of those principles with the requirements of international treaties ratified by the Republic of Armenia must be ensured.

**6.** The Constitutional Court also considers it necessary to draw attention to the fact that guidance documents containing guiding principles governing the legal relations in question have been developed at different times by many international organizations. In particular:

A: The UN General Assembly has approved a number of model agreements on cooperation between states in the field of legal aid. One of them is, for instance, the Model Treaty Extradition, adopted by the Resolution 45/116 of 14 December 1990, Article 3 (g) of which stipulates mandatory grounds for refusal of an extradition request “If the judgment of the Requesting State has been rendered in absentia, the convicted person has not had sufficient notice of the trial or the opportunity to arrange for his or her defense and he has not had or will not have the opportunity to have the case retried in his or her presence”.

B. In accordance with the principles prescribed in the Resolution (75) 11 on the Criteria Governing proceedings held in the absence of the accused, adopted by the Committee of Ministers of the Council of Europe in 1973<sup>1</sup>:

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<sup>1</sup> <https://rm.coe.int/09000016804f7581>

“4. The accused must not be tried in his absence, if it is possible and desirable to transfer the proceedings to another state or to apply for extradition.

(...)

7. Any person tried in his absence must be able to appeal against the judgement by whatever means of recourse would have been open to him, had he been present.

(...)

9. A person tried in his absence, but on whom a summons has been properly served is entitled to a retrial, in the ordinary way, if that person can prove that his absence and the fact that he could not inform the judge thereof were due to reasons beyond his control”.

7. In addition, the Constitutional Court considers it necessary to state that where a national of another State (a stateless person) who has committed a crime in the territory of another State appears in the Republic of Armenia and a final judgment is rendered in the Requesting State in his absence, the provisions of Paragraph 1 of Article 3 of Chapter III of the Second Additional Protocol to the European Convention on Extradition shall apply, according to which: “When a Contracting Party requests from another Contracting Party the extradition of a person **for the purpose of carrying out a sentence or detention order imposed by a decision rendered against him in absentia, the Requested Party may refuse to extradite for this purpose** if, in its opinion, the proceedings leading to the judgment **did not satisfy the minimum rights of defence** recognised as due to everyone charged with criminal offence”. According to the same provision, “However, extradition shall be granted **if the Requesting Party gives an assurance considered sufficient to guarantee to the person claimed the right to a retrial which safeguards the rights of defence**”. In accordance with the Protocol cited above, “...**This decision will authorise the Requesting Party either to enforce the judgment in question if the convicted person does not make an opposition or, if he does, to take proceedings against the person extradited**”.

The Constitutional Court states that, unlike nationals of other States or stateless persons, a request for the extradition of a national of the Republic of Armenia shall be refused or cannot be granted on the basis of his nationality of the Republic of Armenia, inter alia, based on the fact that when acceding to the European Convention on Extradition, the Republic of Armenia has declared that it shall not extradite a national of the Republic of Armenia.

The Constitutional Court states that in the situation described above, a national of the Republic of Armenia having committed a crime in the Czech Republic, who did not waive his right to participate in his trial (hearing) and if he appears in the Republic of Armenia, *would completely be deprived of the right to participate in his trial (hearing)* under the Agreement at issue (which is conditioned by the lack of opportunities to extradite the nationals of the Republic of Armenia and review the final judgment passed in the Czech Republic by the competent court of the Republic of Armenia /Article 9 of the Agreement, Part 5 of Article 499<sup>14</sup> of the Criminal Procedure Code of the Republic of Armenia/) unlike nationals of other States or stateless persons who **are not deprived** of that right, and the realization of that right becomes possible if the Republic of Armenia extradites the person to the Requesting State and a retrial is conducted in the Requesting State (Paragraph 1 of Article 3 of Chapter III of the Second Additional Protocol to the European Convention on Extradition).

In such circumstances, the Constitutional Court states that in case of application of the above-mentioned legal regulations, **persons** of the same status who have been convicted in the Czech Republic and appeared in the Republic of Armenia - **dependent on the nationality and, due to that circumstance, the existence/absence of the possibility of extradition by the Republic of Armenia to another State** - in one case **will be deprived** and in the other case **will not be deprived** of the right to participate in the trial (hearing) in the case of **not waiving** the right to participate in the trial (hearing) and in the event of judgments were rendered in the Czech Republic **in their absence**.

According to the assessment of the Constitutional Court, such a distinction between the rights of the nationals of the Republic of Armenia and the nationals (stateless persons) of other States, who have the same status, can no way be considered justified.

**8.** The Constitutional Court finds that the retroactive provision prescribed by the Agreement at issue – due to its deteriorating content – jeopardizes the implementation of the principle of respect for legitimate expectations of fundamental rights, thus violating the universal principle of respect for human rights and fundamental freedoms.

In addition, as a result of the implementation of the Agreement, the nationals of the Republic of Armenia would find themselves in an unequal situation compared to the nationals of other States (stateless persons), and unlike the nationals of other States (stateless persons), the nationals of the Republic of Armenia will be deprived of the right to participate in the trial (hearing) in the case of not

waiving the right to participate in the trial (hearing), if they appear in the Republic of Armenia, and in the event of judgments were rendered in the Czech Republic in their absence.

Based on the results of the review of the case and governed by Clause 3 of Article 168, 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 obligation prescribed in Paragraph 4 of Article 13 of the Agreement between the Republic of Armenia and the Czech Republic to Facilitate the Application of the European Convention on Extradition of 13 December 1957 contradicts Part 1 of Article 73 of the Constitution.

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

**Chairman**

**A. Dilanyan**

March 15, 2022

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