

**IN THE NAME OF THE REPUBLIC OF ARMENIA**

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

**ON THE CASE ON DETERMINING THE ISSUE OF CONFORMITY WITH THE  
CONSTITUTION OF THE REPUBLIC OF ARMENIA  
OF THE OBLIGATIONS STIPULATED BY  
THE PROTOCOL ON THE ESTABLISHMENT OF DIPLOMATIC RELATIONS  
BETWEEN THE REPUBLIC OF ARMENIA AND THE REPUBLIC OF TURKEY AND  
BY THE PROTOCOL ON DEVELOPMENT OF RELATIONS BETWEEN THE  
REPUBLIC OF ARMENIA AND THE REPUBLIC OF TURKEY  
SIGNED IN ZURICH ON 10 OCTOBER 2009**

Yerevan

12 January 2010

The Constitutional Court of the Republic of Armenia, composed of G. Harutyunyan (President), K. Balayan, H. Danielyan, F. Tokhyan, M. Topuzyan, V. Hovhannisyan (Case Rapporteur), H. Nazaryan, R. Papayan, and V. Poghosyan;

With the participation of the Minister of Foreign Affairs of the Republic of Armenia Edward Nalbandian as the official representative of the President of the Republic;

Acting in accordance with Article 100(2) and Article 101(1) of the Constitution of the Republic of Armenia and Articles 25, 38, and 72 of the Republic of Armenia Law on the Constitutional Court;

Examined in a written procedure in public “the Case on Determining the Issue of Conformity with the Constitution of the Republic of Armenia of the Obligations Stipulated by the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and by the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey Signed in Zurich on 10 October 2009.”

The case was initiated by the Application lodged by the President of the Republic with the Constitutional Court on 17 November 2009.

Having reviewed the Application, the written report of the Case Rapporteur, and the written statement of the official representative of the President of the Republic; having examined

the Protocols and other documents in the case, the Constitutional Court of the Republic of Armenia **FOUND:**

1. The Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey were signed by the Ministers of Foreign Affairs of the Republic of Armenia and the Republic of Turkey in Zurich on 10 October 2009.

In accordance with Article 2(2) of the Republic of Armenia (RA) Law on the International Treaties of the RA, any written agreement “... compiled in the form of a treaty, agreement, convention, memorandum, **protocol**, or a document with any other designation, or expressed through the exchange of notes or letters” is considered “an international treaty of the RA.”

In accordance with Article 24 of the aforementioned Law, **interstate international treaties** are subject to ratification by the RA National Assembly. Article 7 of the Law provides that political, cooperative, or consular relations with another country are among the relations governed by an **interstate treaty**.

The 1969 Vienna Convention on the Law of Treaties (Articles 2 and 14), Article 81(2-e) of the RA Constitution, and Article 24 of the RA Law on the International Treaties of the RA stipulate that any international treaty the text of which prescribes ratification shall be subject to ratification.

In accordance with Article 100(2) of the RA Constitution, the RA Constitutional Court shall, prior to the ratification of an international treaty, **determine**, in a procedure of prior control prescribed by law, the conformity with the Constitution of **the obligations stipulated in such treaty**.

2. The materials of the case show that diplomatic relations have not been established between the two neighboring countries after the Republic of Armenia declared independence; in and due to the absence of such relations, numerous legal and treaty issues have accumulated, which cannot be solved by the single act of establishing diplomatic relations. With this consideration in mind, a Protocol on Development of Relations between the two countries was signed in addition to the Protocol on the Establishment of Diplomatic Relations. While the two Protocols are in a formal sense two separate documents, they regulate interrelated and complementary matters, were signed on the same day, are linked through cross-references, and prescribe mutual obligations that are also interrelated. In view of the aforementioned circumstances, the instruments of their ratification shall be exchanged simultaneously, and they

shall enter into force on the same day. Moreover, Article 2(1) of the 1969 Vienna Convention on the Law of Treaties provides that “treaty” means an international agreement concluded between States in written form and governed by international law, **whether embodied in a single instrument or in two or more related instruments** and whatever its particular designation.

The aforementioned two Protocols together are the first step constituting the legal basis for further action within the authority of the two respective states aimed at the regulation of interstate relations.

3. The examination of the Protocols at hand reveals that the two countries, acting on the basis of the fundamental principles of international law; referring to their obligations under multilateral international agreements; governed, in particular, by the commitment to promote international peace and security as well as to recognize the sovereign equality of the member states, as stipulated in the UN Charter; and pursuing the establishment and development of normal interstate relations in different spheres through engaging in dialogue on the level of states; **have agreed**, on the basis of reciprocity:

- To establish diplomatic relations in accordance with the Vienna Convention on Diplomatic Relations of 1961 and to exchange Diplomatic Missions;

- To open the common border within two months after the entry into force of the Protocol on the Development of Relations between the Republic of Armenia and the Republic of Turkey;

- To conduct regular political consultations between the Ministries of Foreign Affairs of the two countries;

- To implement a dialogue on the historical dimension with the aim to restore mutual confidence between the two nations, including an impartial scientific examination of the historical records and archives to define existing problems and formulate recommendations;

- To make the best possible use of existing transport, communications and energy infrastructure and networks between the two countries, and to undertake measures in this regard;

- To develop the bilateral legal framework in order to foster cooperation between the two countries;

- To cooperate in the fields of science and education by encouraging relations between the appropriate institutions as well as promoting the exchange of specialists and students, and act with the aim of preserving the cultural heritage of both sides and launching common cultural projects;

- To establish consular cooperation in accordance with the Vienna Convention on Consular Relations of 1963 in order to provide necessary assistance and protection to the citizens of the two countries;

- To take concrete measures in order to develop trade, tourism and economic cooperation between the two countries; and
- To engage in a dialogue and reinforce their cooperation on environmental issues.

The Parties have also agreed to establish an intergovernmental bilateral commission which shall comprise separate sub-commissions. To prepare the working modalities of the intergovernmental commission and its sub-commissions, a working group headed by the Ministers of Foreign Affairs of the Parties shall be created during the prescribed time period. The procedure of approving the modalities, as well as the timetable for starting the work of the intergovernmental commission and the sub-commissions have been agreed upon. The timetable and elements agreed by both sides for the implementation of the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey are mentioned in the annexed document, which is integral part of the Protocol.

As stated above, the aforementioned obligations being undertaken by the Parties are interdependent; hence, the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey **shall enter into force on the same day**, i.e. on the first day of the first month following the exchange of instruments of ratification. It implies further that either Protocol cannot acquire legal force or take effect without the other.

The Protocols are done in Armenian, Turkish and English authentic copies in duplicate. In case of divergence of interpretation, the English text shall prevail; the latter has also been examined by the Constitutional Court.

4. Based on a comprehensive analysis of the constitutional-legal content of obligations being undertaken by the Republic of Armenia and the context, object, and purposes of the Protocols, the Constitutional Court, acting within its authority, sets forth the following legal positions:

a) **The mutual obligations** being undertaken by the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey are, under the principles of international law, **exclusively of a bilateral interstate nature**, and cannot concern, or by various references be attributed to, any third party or the relations with such third party of the signatories of such Protocols.

b) Generally-recognized terms, which are widely used in the preambles of international treaties, such as **“taking into account,” “taking into consideration,” “recognizing,” “noting,” “guided by,” “in pursuit up,” “acknowledging,” “emphasizing,” “confirming,” “reiterating,” “asserting,” “referring,” “recalling,” “accepting,” “being convinced,”** and others, denote existing realities, wishes, aims, aspirations, certain common principles, and the like, which the treaty parties take into account in mutually **agreeing to undertake certain international legal obligations**. Two of the concrete obligations being undertaken by the Protocols, i.e. “to establish diplomatic relations” and “to open the common border,” have an interrelated underlying significance. Therefore, any other obligation prescribed by the Protocols can have international legal effect only if the existing border is open and concrete diplomatic relations exist between the Republic of Armenia and the Republic of Turkey, **providing for the prerequisites necessary for the fulfillment of the treaty obligations undertaken by the Parties**.

c) The Protocols do not stipulate any procedures or provisions on the settlement of disputes or the termination or suspension of treaty obligations. The emphasis is primarily on wishes, aims, and the intention to create prerequisites for the further development of relations. Therefore, the Constitutional Court takes into consideration that the establishment and further development of relations between the two countries in different spheres will be anchored in specific agreements concluded between the two countries in written form and governed by international law (according to Article 2(1-a) of the 1969 Vienna Convention on the Law of Treaties). The constitutionality of obligations being undertaken under such specific agreements will be examined and evaluated separately under Article 100(2) of the RA Constitution and Article 72 of the RA Law on the Constitutional Court.

d) The commitment of the Republic of Armenia in the context of the Parties’ commitment to open the common border stipulated by the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey is related to the willingness of the Republic of Armenia to resolve legal-organizational and institutional issues connected to safeguarding the normal operation of border checkpoints.

e) International treaties can have legal effect for the Republic of Armenia only in line with the provisions of Article 6 of the RA Constitution, with due regard for their validity in international law and their being a constituent part of the legal system of the Republic of Armenia in the procedure prescribed by the RA Constitution.

5. The RA Constitutional Court also finds that the provisions of the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey cannot

be interpreted or applied in the legislative process and application practice of the Republic of Armenia as well as in the interstate relations in a way that would contradict the provisions of the Preamble to the RA Constitution and the requirements of Paragraph 11 of the Declaration of Independence of Armenia.

6. The Constitutional Court finds necessary that the steps by the Republic of Armenia towards undertaking the contemplated obligations and towards ensuring legislative and institutional safeguards necessary for the fulfillment of such obligations be consistent with the legal positions set forth in this Decision and the fundamental principles of the constitutional order stipulated by the Constitution of the Republic of Armenia.

Based on the outcome of the examination of the case, taking into account the legal positions set forth in the Decision, and governed by Article 100(2) and Paragraphs 1 and 4 of Article 102 of the Constitution of the Republic of Armenia, as well as Articles 63 and 64 of the Republic of Armenia Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **D E C I D E S** as follows:

1. The obligations stipulated by the Protocol on the Establishment of Diplomatic Relations between the Republic of Armenia and the Republic of Turkey and by the Protocol on Development of Relations between the Republic of Armenia and the Republic of Turkey are in conformity with the Constitution of the Republic of Armenia.

2. According to Paragraph 2 of Article 102 of the Constitution of the Republic of Armenia, this Decision is final and enters into force upon pronouncement.

PRESIDENT

G. HARUTYUNYAN

12 January 2010