

COURT'S VERDICT ANTI CONSTITUTION

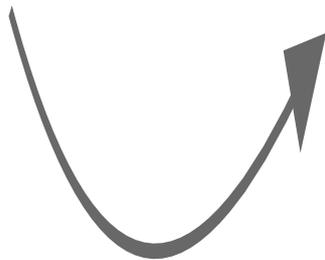
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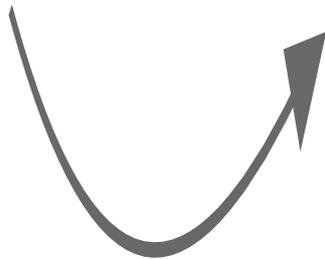


By Ara Papian, Former RoA Ambassador to Canada, [Modus Vivendi Centre](#), 12 January 2010



The Constitutional Court of the Republic of Armenia came to a decision on the unfortunate pair of Armenia-Turkey protocols. As seen as being bound to happen, it was declared that '*the obligations codified in the protocols are in accord with the Constitution of the Republic of Armenia*'. Of course, there could have been another declaration, which would have been more desirable. I maintain my position, that the protocols contradict the Constitution of the Republic of Armenia, and the processes of their authentication and signing have been in violation of the corresponding laws and regulations currently in place in the Republic of Armenia.

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The Constitutional Court of the Republic of Armenia came to a decision on the unfortunate pair of Armenia-Turkey protocols. As seen as being bound to happen, it was declared that '*the obligations codified in the protocols are in accord with the Constitution of the Republic of Armenia*'. Of course, there could have been another declaration, which would have been more desirable. I maintain my position, that the protocols contradict the Constitution of the Republic of Armenia, and the processes of their authentication and signing have been in violation of the corresponding laws and regulations currently in place in the Republic of Armenia.

The deed is now done, however, and so the most important question arises: what must we do? One thing remains, to take a deep breath and carry on the struggle. The decision in question of the Constitutional Court provides even more opportunities for that struggle, as the legal opinion of the Constitutional Court is not absolute and without qualification, but has certain clear interpretations and reservations. Of course, it would take much longer and much greater detail for an analysis to lay

out the leeway in its entirety. Nevertheless, it is clear at first glance itself that such leeway exists. For example, the Constitutional Court codifies in its legal opinion that the protocols are only '*mutual*' and that they '*bear exclusively a bilateral inter-state character*'. It is thus clearly stated that Armenia-Turkey relations are separate from Armenia-Azerbaijan relations or relations between Turkey and the Armenian Diaspora. Or, what I find most significant, '*international treaties can have juridical force with regards to the Republic of Armenia ... only while taking into account their validity based on international law*'. That is to say, the Constitutional Court has codified that, for example, if the treaties of Alexandropol, Moscow or Kars are void as per international law – and there can be no doubt on the matter that they are – then those treaties cannot '*have juridical force with regards to the Republic of Armenia*', and the frontiers described in them consequently cannot act as legal bases for "*the existing border*". Accordingly, by the legal opinion of the Constitutional Court of the Republic of Armenia, the protocols cannot and do not render legal the treaties of Alexandropol, Moscow or Kars, as well as the consequences of other possible unlawful legal instruments that are void from the perspective of international law. Put simply, the Constitutional Court of the Republic of Armenia has provided an interpretation for the application of one of the basic and general principles of law with regards to the unfortunate protocols, namely *jus ex injuria non oritur, illegal acts cannot create law*.

The Constitutional Court has also found that the clauses of the protocols '*cannot be interpreted and applied such that they contradict the clauses of the preamble to the Constitution of the Republic of Armenia and the demands of the eleventh clause of the declaration of independence of Armenia*'. I would like to recall that, according to the clause in question, "*The Republic of Armenia stands in support of the task of achieving international recognition of the 1915 Genocide in Ottoman Turkey and Western Armenia*".

The decision of the Constitutional Court is a very important and legally-defined step in the process of expressing the conduct of the Republic of Armenia when it comes to international treaties. Nevertheless, it forms part of the domestic process and has almost no significance in international law. In most countries, constitutional or other levels of courts have no role to play in foreign relations. In order for the opinion declared by the Constitutional Court of the Republic of Armenia to have any legal force in international law, it must be included as an official reservation, forming part of the corresponding decision of the legislature of the Republic of Armenia. The National Assembly must consider without question that the decision in question of the Constitutional Court is based on certain legal positions, and that the decision contains clear reservations and interpretations. Thus, the legislature of the Republic of Armenia *is obliged* to reflect in its discussions and, moreover, to at

least include in its decision, all the reservations and interpretations expressed by the Constitutional Court.

Even after considering all this, I do not believe that ratifying the Armenia-Turkey protocols would be in favour of the interests of the Republic of Armenia and of the Armenian people. The best way out would be the general rejection of those protocols. Why are we creating problems for ourselves, that we may heroically overcome them later? Is the spirit of Comrade Panchouni still thriving among us? He would say, '*Close the door, I'll come in through the window*'. Let us not close the open door today, so that we are not forced to come in through the window tomorrow.

I would prefer using the term 'legal', as the "juridical" is with regards to jurisprudence, that is, with the science of law, while something "legal" refers to rights and laws.

