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THE IMPLICATIONS FOR COUNCIL OF  
EUROPE MEMBER STATES OF THE  
RATIFICATION OF THE  
ROME STATUTE OF THE  
INTERNATIONAL CRIMINAL COURT

LES IMPLICATIONS POUR LES ETATS  
MEMBRES DU CONSEIL DE L'EUROPE  
DE LA RATIFICATION DU STATUT DE  
ROME DE LA COUR PENALE  
INTERNATIONALE

# **PROGRESS REPORT BY ARMENIA**

The Republic of Armenia has signed the Statute of the International Criminal Court on 1<sup>st</sup> of October 1999. Thus Armenia has expressed its readiness to co-operate with the international community in fighting against such serious crimes as genocide, crimes against humanity and military crimes.

The court, which will be founded by the Rome Statute, will direct its actions to preventing and punishing those cases, in which competent State bodies, including the judicial bodies, unreasonably postpone or do not diligently bring criminal cases concerning the persons who are guilty of the above-mentioned crimes. The importance of the given circumstances, first of all, consists in its influence on the increase in efficiency of the competent State bodies' activity and on the acceleration of criminal cases.

As well as in other States, between the Statute and the legislation of the Republic of Armenia there are certain contradictions and, quite naturally, the establishment of independent procedural norms for the international court is presently being discussed.

The basic contradictions of legislative character are between the Statute and the Criminal and Criminal Procedure Codes of the Republic of Armenia (RA).

1. Thus, the provisions of the first sub-paragraph of Article 5 of the Statute, which determine crimes falling under the jurisdiction of the International Criminal Court, contradict Articles 26 and 38 of the Criminal Procedure Code of the RA, in which it is stipulated that all procedural actions connected to the advancing of criminal case and to the criminal prosecution, are performed and decisions are adopted within the framework of the powers of the bodies and officials, which are determined by the code, and the administration of justice on criminal cases is carried out only by Courts of the first instance, Courts of Appeal and the Cassation Court of the RA.

On the same basis, the abovementioned articles of the Criminal Procedure Code of RA also contradict the provisions of Articles 11-19 of the Statute, which concern the competence of the Court as to criminal cases.

2. The provisions of sub-paragraphs c, d, ? of Article 6, sub-paragraphs c, d, i of Article 7 and subparagraphs v, e of paragraph 2 of Article 8 contradict the provisions of the first part of Article 7 of the Criminal Code of RA, in which crimes are determined as public dangerous acts enumerated by that Code. However, those criminal offences enumerated in the abovementioned articles of Statute are not individually determined by the Criminal Code of RA and therefore, by virtue of Article 7 of the Criminal Code, cannot be considered criminal offences.

3. The provisions of paragraph 2 of Article 20 of the Statute, according to which nobody condemned by the Court can be condemned for the same crime by any other court, contradicts the norms of the third part of Article 5 of Criminal Code of RA, which concerns the citizens of RA and stateless persons residing in Armenia, which serve the punishment outside Armenia. In these cases an Armenian court can again nominate punishment, accordingly softening punishment or releasing from it.

4. The provision of statutory limitation stipulated in the Statute contradicts the requirements of Article 44 of the Criminal Code, according to which for some types of crimes, including those determined in the Statute, respective terms for prescription are provided.

5. There are also some contradictions between the Statute and legislation of the Republic of Armenia which relate to punishment measures. Thus the Statute stipulates imprisonment up to 30 years and life-imprisonment. It contradicts the provisions of the actual Criminal Code of RA, on which the maximal term for imprisonment 20 years is stipulated, and the life imprisonment is not stipulated at all.

6. Those provisions of the Statute which give discretion to the Court in the decision of extradition issues, contradict Article 489 CPC of RA, which provides, that

- i. firstly: the request of the State, instead of international organization, can be satisfied,
- ii. and secondly: in case there are many requests for extradition, the issue on satisfaction of any of them is solved by the body which has received requests.

7. The provisions of the Statute which provide for the possibility to refuse satisfaction of requests for assistance when the transfer of the required documents or publication of the facts can damage national security of the assisting State Party, contradicts Article 477 CPC of RA, which allows not to carry out the order if it damages the independence of Armenia and its legislation.

While considering the existing contradictions between the Rome Statute and the legislation of RA, it should be mentioned, however, that this circumstance cannot interfere with the ratification and implementation of the Statute, as Article 6 of the Constitution of Armenia defines that "International treaties that have been ratified by the National Assembly / Parliament/ are a constituent part of the legal system of the Republic of Armenia. If norms are provided in these treaties other than those provided by the laws of Armenia, then the norms provided in the treaty shall prevail". Moreover, many of these contradictions will be eliminated by the adoption of the new Criminal Code. In the special part of the draft Criminal Code there is a new section "crimes against the world and safety", in which the *corpus delicti* of genocide, crimes against humanity and military crimes are formulated. In a general part of the draft the principle of non-application of the statutory limitation in relation to these crimes is affirmed.

In the same part of the draft Code are envisaged such articles as aggressive war, the infringement of norms of international humanitarian law during armed conflict, the application of forbidden means and methods of conducting war.

With regard to the contradictions of the Statute with the Constitution of Armenia, the final solution to this issue may be provided only by the Constitutional Court of Armenia. In the Constitution of Armenia there are no provisions on immunity for the Head of State, on refusal of extradition of Armenian nationals, but, at the same time, the immunities of the deputies of the Parliament are provided, and provisions are made for the right of the President to grant pardons.

Presently in Armenia a Commission on Constitutional Reforms is functioning, in which the representatives of legislative and executive authorities as well as law academics are involved. It is intended to submit also the Rome Statute for consideration by the Commission in order to exclude possible contradictions.

After the ratification process, in to ensure its application, it will be possible to talk about the establishment of a governmental commission, in which the competent bodies, representatives of the relevant ministries and departments will be involved. The objectives of the commission will be to search for possible amendments to the legislation of the country, including exploring the practice of other countries. The terms of this commission will be determined and appropriate proposals for consideration by the Government of RA will be submitted.