

OFFICIAL TRANSLATION

MINISTRY OF JUSTICE OF THE REPUBLIC OF ARMENIA

IN THE NAME OF THE REPUBLIC OF ARMENIA

## DECISION

OF THE CONSTITUTIONAL COURT  
OF THE REPUBLIC OF ARMENIA

Yerevan

3 June 2010

ON THE CASE CONCERNING THE DETERMINATION OF THE ISSUE OF  
CONFORMITY WITH THE CONSTITUTION OF THE REPUBLIC OF ARMENIA OF  
OBLIGATIONS LAID DOWN IN THE RESTATED SECOND MEMORANDUM OF  
UNDERSTANDING BETWEEN THE GOVERNMENT OF THE REPUBLIC OF ARMENIA  
AND THE LINCY FOUNDATION SIGNED ON 27 MAY 2010

The Constitutional Court of the Republic of Armenia, composed of V. Hovhannisyan (Presiding Judge, Rapporteur), K. Balayan, H. Danielyan, F. Tokhyan, M. Topuzyan, H. Nazaryan, V. Poghosyan,

With the participation of A. Gyurjyan, official representative of the President of the Republic, Deputy Head of Staff to the President of the Republic of Armenia,

In accordance with Article 100(2) and point 1 of the first part of Article 101 of the Constitution of the Republic of Armenia, Articles 25, 38 and 72 of the Law of the Republic of Armenia "On the Constitutional Court",

Examined, in an open court, through oral proceedings, the case "concerning the determination of the issue of conformity with the Constitution of the Republic of Armenia of obligations laid down in the Restated Second Memorandum of Understanding between the Government of the Republic of Armenia and the Lincy Foundation signed on 27 May 2010".

The reason for examination of the case was the application of the President of the Republic of Armenia filed with the Constitutional Court of the Republic of Armenia on 27 May 2010.

Hearing the report of the Rapporteur of the case, the explanation of the official representative of the President of the Republic, examining the Restated Second Memorandum of Understanding and other documents of the case, the Constitutional Court of the Republic of Armenia ***FOUND OUT THAT:***

The Restated Second Memorandum of Understanding between the Republic of Armenia and the Lincy Foundation was signed on 27 May 2010.

The aim of the Restated Second Memorandum of Understanding is to implement an additional project in Armenia aimed at providing for the well-being of the people of Armenia through the improvement and renovation of educational facilities (“Second School Project”).

The Republic of Armenia undertakes to fulfil in good faith the financial obligations provided for under the second paragraph of Article II, Section 2.1(a)(i) of the Restated Second Memorandum of Understanding, so as to complete the Project within the specified time-frame.

The Republic of Armenia also undertakes to allocate funds in the State Budget of the next year to cover the difference in excess of the funds of the Project, in case circumstances provided for in the fourth paragraph of Article II, Section 2.1(a)(i) of the Restated Second Memorandum of Understanding arise.

The Republic of Armenia undertakes — in accordance with Article IV, Section 4.6 of the Restated Second Memorandum of Understanding — not to levy any taxes, duties, and charges imposed by Governmental Authorities from Lincy, its authorised representatives that are not citizens of the Republic of Armenia or entities formed under the legislation of the Republic of Armenia, as well as for any supplies and services utilized in connection with the Project, except as otherwise agreed to in advance and in writing by the Lincy Foundation.

The Parties agree that the Restated Second Memorandum of Understanding be adopted as an international treaty in Armenia and as a binding domestic and international obligation of the Government of the Republic of Armenia. The legal basis of the mentioned obligation for the Republic of Armenia are the provisions of Article 6(4) of the Law of the Republic of Armenia “On international treaties of the Republic of Armenia” of 22 February 2007, which read: “An international non-governmental organisation or union, or that of a foreign state, which, in the territory of the Republic of Armenia, implements or intends to implement charitable, humanitarian, development activities or activities aimed at technical, economic or financial assistance, or which renders or will render humanitarian or financial aid to the Republic of Armenia may also have the capacity to conclude an international treaty with the Republic of Armenia.”

Article VII of the Restated Second Memorandum of Understanding provides that when settling possible disputes between the parties, the Memorandum shall be interpreted under the laws of New York City, State of New York, United States of America, and the English versions of all documents shall control.

Based on the findings of the examination of the case and acting in accordance with Article 100(2), first and fourth parts of Article 102 of the Constitution of the Republic of Armenia,

Articles 63 and 64 of the Law of the Republic of Armenia "On the Constitutional Court", the Constitutional Court of the Republic of Armenia *DECIDED*:

1. The obligations laid down in the Restated Second Memorandum of Understanding between the Government of the Republic of Armenia and the Lincy Foundation signed on 27 May 2010 are in conformity with the Constitution of the Republic of Armenia.

2. According to the second part of Article 102 of the Constitution of the Republic of Armenia, this Decision is final and shall enter into force upon its publication.

**Presiding Judge**

**V. Hovhannisyan**

3 June 2010  
SDVo-892