

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

**ON THE CASE OF CONFORMITY OF PART 9 OF ARTICLE 1087.2 OF THE CIVIL
CODE OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION ON THE
BASIS OF THE APPLICATION OF RUDIK KHOJOYAN AND ARTYOM KHOJOYAN**

Yerevan

June 16, 2020

The Constitutional Court composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan, F. Tokhyan, A. Tunyan (Rapporteur), A. Khachatryan, H. Nazaryan, A. Petrosyan, with the participation of (in the framework of the written procedure):

A. Kiviryan, the representative of the applicants Rudik Khojoyan and Artyom Khojoyan, the respondent: K. Movsisyan, official representative of the National Assembly, Head of the Legal Support and Service Division of the National Assembly Staff,

pursuant to clause 1 of article 168, clause 8 of part 1 of article 169 of the Constitution, articles 22, 40 and 69 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of part 9 of article 1087.2 of the Civil Code of the Republic of Armenia with the Constitution on the basis of the application of Rudik Khojoyan and Artyom Khojoyan.

The Civil Code of the Republic of Armenia (hereinafter – the Code) was adopted by the National Assembly on 5 May 1998, signed by the President of the Republic on 28 July 1998 and entered into force on 1 January 1999.

Part 9 of article 1087.2 of the Code, titled: **“Procedure for and conditions of compensation for non-pecuniary damage caused as a result of violation of fundamental rights and wrongful conviction”**, stipulates:

“The claim for compensation for non-pecuniary damage may - together with the claim for confirming the violation of the right prescribed in part 2 of article 162.1 of this Code - be submitted to the court within one year from the moment the person has become aware of the decision taken by the investigator or the prosecutor, which has not been abolished or appealed against on violation, as well as after entry into force of the judicial act confirming the violation of that right, or after rejecting initiation of a criminal case on a non-acquittal ground, or not conducting criminal prosecution or dismissing proceedings of the criminal case or terminating criminal prosecution”.

The above-mentioned article of the Code was amended in accordance with the Law HO-21-N of 19 May 2014, the Law HO-184-N of 21 December 2015, and the Law HO-241-N of 16 December 2016.

The case was initiated on the basis of the application of Rudik Khojoyan and Artyom Khojoyan submitted to the Constitutional Court on 20 January 2020.

Having examined the application and the attached documents, the written explanation of the respondent, other documents of the case, as well as the relevant provisions of the Code, the Constitutional Court **FOUND:**

1. Applicants' arguments

According to the applicants, “within the meaning of article 162.1 of the RA Civil Code, non-pecuniary damage is physical or mental suffering”.

In their opinion, having included this norm in the Civil Code of the Republic of Armenia, the legislator pursued the goal of protecting not only the property rights of a person, but also non-property rights related to the person. This, in turn, means that the state must provide mechanisms for the proper protection of these rights.

Referring to the significance of the law, the applicants believe that it is intended to express and protect the rights of a person. In other words, the law should follow from human rights, and not limit them.

Turning to the challenged provision, the applicants note that, in contrast to the one-year time limit provided for compensation for non-pecuniary damage, a three-year general time limit for statute of limitations applies for filing a claim for compensation for material damage. One of the

applicants notes that the legislator not only provided for the time limit for filing a claim for compensation for non-pecuniary damage, but also “subordinated” it to the procedural time limit provided for filing a claim for compensation for material damage.

In this regard, the applicants would like to see considered the legitimacy of the time limit for statute of limitations established for filing a claim for compensation for non-pecuniary damage, as this leads to legal uncertainty, at the same time violating a person’s right to protection of his violated rights in court.

The applicants consider that the one-year time limit provided for filing a claim for compensation for non-pecuniary damage is not reasonable and justified.

The applicants note that a six-month time limit was established before the legislator established the one-year time limit in article 1087.2 of the Code, and the applicants, positively assessing this circumstance, however, consider that it does not sufficiently ensure the right of a person to apply to court and the right to a proper judicial protection; therefore, it contradicts the Constitution.

According to the applicants, international practice is developing in exactly the opposite direction. In some states, no procedural time limit is provided for filing a claim for compensation for non-pecuniary damage, and those states where it exists are on the path of excluding it through law enforcement practice. The goal is one - to protect the moral integrity of a person, without burdening him with unnecessary procedural time limits.

In this regard, the applicants believe that non-material damage is moral suffering, and “moral suffering cannot be regulated by peremptory norms and strictly procedural time limits, since moral suffering, the time limit of moral suffering and the time limit for overcoming them are very individual”.

In addition, the applicants refer to the case-law of the European Court of Human Rights, according to which, article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms establishes a direct description of the obligation of the state enshrined in article 1 of the Convention, namely, first of all, to protect human rights and only after that - own legal system.

Based on the foregoing, the applicants request the Constitutional Court to declare part 9 of article 1087.2 of the Code contradicting articles 1, 3, 60, 61, 62, 63, 75, 78, 80 and 81 of the Constitution and void, insofar as it stipulates a one-year time limit for filing a claim for compensation for non-pecuniary damage caused to the person.

2. Respondent's arguments

The respondent notes that the exercise of the right to judicial protection is based on the principle of effect, which is the possibility of a person at his own discretion to dispose of his substantive and procedural rights and choose ways to protect them, i.e. the person decides for himself whether or not to apply to the court for the protection of his rights, freedoms and legitimate interests, to exercise or not his right to judicial protection, to independently determine, in particular, the subject, scope and basis of his claims under the initiated claim. At the same time, a person, when exercising his fundamental right to judicial protection, as well as the courts in the administration of justice, must be guided by the procedure established by law for this form of judicial protection.

Referring to the legal positions of the European Court of Human Rights, the respondent notes that the right to judicial protection (part of which is the right of access to a court) is not absolute and may be subject to restrictions. A restriction is considered to be in conformity with part 1 of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms if it pursues a legitimate aim and if there exists a reasonable relationship of proportionality between the means used and the aim pursued.

According to the respondent, the time limits set by the state pursue certain important goals, in particular, guaranteeing legal certainty, protecting the likely defendant from overdue claims, in which case it would be difficult to prevent injustice that could occur if the courts were forced to consider cases in the distant past on the basis of those evidence that may be unreliable or incomplete due to the fact that a lot of time has passed.

Turning to the legal significance of the statute of limitations, the respondent notes that the person whose rights have been violated is given a very definite, and at the same time, sufficient time limit for judicial protection of his rights.

The respondent also notes that the right of access to a court under certain conditions may also be subject to legitimate restrictions such as statute of limitations, orders to secure court expenses or the requirement of legal representation.

Referring to the case-law of the European Court of Human Rights, the respondent finds that, in terms of time limits, states have discretionary powers to decide how the access to a court should be limited. Moreover, such an approach is not an end in itself and follows from the principle of proportionality, since it is designed to balance the equality of the parties to the proceedings; therefore, there can be no question of unlawful restriction of constitutional rights. There is no contradiction between the establishment of certain statute of limitations and the right to a fair trial prescribed in part 1 of article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. The states themselves, through their domestic legislation, establish specific statute of limitations, which is fully consistent with the essence of article 6 of the Convention.

In addition, the respondent considers that the challenged provision also meets the requirements of the legal law, given that it is sufficiently predictable and complies with the principle of legal certainty, i.e. it is formulated with sufficient precision.

Based on the above, the respondent considers that part 9 of article 1087.2 of the Code is in conformity with the Constitution.

3. Circumstances to be ascertained within the framework of the case

Taking into account the circumstance that the applicants challenge the possibility of filing a claim for compensation for non-pecuniary damage within one year, as prescribed in part 9 of article 1087.2 of the Code, the Constitutional Court will touch upon the constitutionality of only this time limit.

In this regard, the Constitutional Court considers it necessary to address the following issues:

1) Does the establishment of the time limit for filing a claim for compensation for non-pecuniary damage violate the fundamental right to compensation for damage prescribed in article 62 of the Constitution?

2) Is the one-year time limit prescribed in the challenged provision considered as a procedure necessary for the effective exercise of the fundamental right to compensation for non-pecuniary damage from the perspective of article 75 of the Constitution, interconnected with the fundamental right to effective judicial protection prescribed in part 1 of article 61 of the Constitution?

4. Legal assessments of the Constitutional Court

4.1. Article 62 of the Constitution prescribes:

“1. Everyone shall have the right to compensation for damage inflicted by unlawful actions or inaction of state and local self-government bodies and officials, and in cases prescribed by law, also by lawful administration. **The conditions of and procedure for compensation for damage shall be defined by the law.**

2. If a person convicted by a court judgment that has entered into legal force, for committing a crime has been acquitted on the ground that a new or newly-discovered circumstance proves that such conviction was wrongful, the person shall have the right to receive compensation in accordance with the law, unless it is proven that the discovery of such circumstance back in time depended fully or partially on such person”.

The study of the aforementioned article of the Constitution shows that, by virtue of the Constitution, the right to claim compensation for damage as a fundamental right also includes the right to compensation for non-pecuniary damage **caused as a result of both unlawful criminal prosecution and unlawful conviction.**

In accordance with the requirements of the Constitution, the conditions of and procedure for compensation for damage, including non-pecuniary damage, are established by law.

The procedure for filing a claim for compensation is also an integral part of the procedure for compensation for damage. In accordance with this, the legislator has established the time limit for filing a claim for compensation for non-pecuniary damage - one year. At the same time, taking into account the specifics of non-pecuniary damage, as well as the need to ensure effective

compensation for such damage, the Constitutional Court considers it necessary to consider in more detail the nature of non-pecuniary damage and legal regulations regarding its compensation.

In the Decision DCC-1121 of 05.11.2013, the Constitutional Court noted that “... moral damage and possibility of pecuniary compensation of the moral damage derive from the constitutional legal approaches established in the spheres of protection of human rights. Thus, part 1 of article 3 of the RA Constitution stipulates that “The human being, his dignity and the fundamental human rights and freedoms are an ultimate value”. In this concern, the Constitutional Court finds that one of the pivotal elements of the human dignity, inter alia, is to be free from the moral distress conditional on individual features”.

Based on the foregoing, the Constitutional Court, in the framework of this case, attaches particular importance to the question of whether, in determining non-pecuniary damage, the physical and mental suffering inflicted on a person only during the time limit of criminal prosecution is taken into account.

Article 1087.2 of the Code envisages the procedure for and conditions of compensation for non-pecuniary damage caused as a result of wrongful conviction. In accordance with this, when determining the amount of compensation for non-pecuniary damage, the court takes into account the nature, degree and duration of physical or mental suffering, the consequences of the damage caused, the presence of guilt in causing damage, the individual characteristics of the person who suffered the non-pecuniary damage, as well as other relevant circumstances. That is, all those circumstances that ultimately became the basis of human moral suffering and influenced the depth of this suffering.

As for the international experience, the Constitutional Court states that in the Judgment in the case of Poghosyan and Baghdasaryan v. Armenia (Application no. 22999/06 of 12.06.2012), the European Court of Human Rights, noted: “... The Court considers that Article 3 of Protocol No. 7 is not merely to recover any pecuniary loss caused by wrongful conviction but also to provide a person convicted as a result of a miscarriage of justice with compensation for any non-pecuniary damage such as **distress, anxiety, inconvenience and loss of enjoyment of life**”.

In the Explanatory Report to the Protocol No. 7 to the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), the interpretation of

Article 3 of the same Protocol reads as follows: “... compensation is payable according to the law or the practice of the State concerned”.

Based on the foregoing, the Constitutional Court considers that non-pecuniary damage subject to compensation is inflicted on a person in the framework of criminal prosecution. At the same time, the mental suffering caused may be permanent and must be taken into account in order to establish just satisfaction, which does not imply that non-pecuniary damage is also inflicted after the termination of the criminal prosecution.

As for the procedure for compensation for damage, according to the assessment of the Constitutional Court, **the mechanism and time limit for filing a claim for compensation for damage**, within the meaning of the second sentence of part 1 of article 62 of the Constitution, are obviously **the elements of the procedure for compensation for damage**, which, according to this provision of the Constitution, must be established by law.

4.2. Part 1 of article 61 of the Constitution establishes: “Everyone shall have the right to effective judicial protection of his rights and freedoms,” and according to article 75 of the Constitution, “When regulating fundamental rights and freedoms, laws shall define the organizational structures and procedures necessary for their effective exercise”.

According to the challenged provision, a claim for compensation for non-pecuniary damage caused as a result of wrongful conviction may be brought to court within one year. That is, the possibility of claiming compensation in court is limited by the statute of limitation.

In connection with the limitation of the time limits for the exercise of the right, the Constitutional Court noted in the Decision DCC-1495 of 06.12.2019 that “... the time limits established by civil legislation ... pursue the goal not only to regulate civil turnover in terms of timing, but also to ensure the possibility for subjects of civil relations to exercise their rights, to encourage people to fulfill their duties, and also to contribute to the timely protection of violated rights”.

In the Decision DCC-1119 of 08.10.2013, the Constitutional Court, analyzing article 18 of the Constitution with amendments of 2005, concluded that “... no legal mechanisms must be legislatively defined, which, at first sight, serve as guarantees for realization of the given legal mechanism, though, in fact, in the details of the regulation those legal mechanisms are senseless or

restricted”. At the same time, the Constitutional Court considered that “...certain requirements may be legislatively stipulated or ... the procedures for realization of the given rights may include certain formal conditions, which, however, should not be to the extent which makes the realization of those rights inefficient and distorts their essence ...”.

The European Court of Human Rights has recognized the access to a court as an integral part of the right to a fair trial, and has developed a sustainable case-law in connection with the right of the access to a court, according to which part 1 of article 6 of the Convention guarantees the right to bring an action in court with respect to the rights and obligations of a person. This provision embodies the right to take legal action, namely the right to bring an action in court, which allows the enjoyment of other guarantees prescribed in part 1 of article 6 of the Convention. The characteristics of litigation such as fairness, transparency and speed will certainly not be of value if these processes are not stimulated.

As for the limitation periods, the European Court of Human Rights has stated that the limitation periods set by the state serve several important purposes, namely to ensure legal certainty, protect potential defendants from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time. In terms of limitation periods, states also have discretionary powers to decide how to limit the access to a court (**Case of Stubbings and Others v. The United Kingdom, Application no. 22083/93, 22095/93, Judgment of 22.10.1996**).

In another judgment, the said Court noted that “the fact that an applicant’s claims are subject to a limitation period does not by itself raise any issue with regard to the Convention for the Protection of Human Rights and Fundamental Freedoms” (**Case of Zolotas v. Greece, Application no. 66610/09, Judgment of 01.29.2013**).

4.3. The Constitutional Court states that according to the Code, the general time limit for statute of limitations is three years. On the other hand, article 333 of the Code, which deals with general time limit of statute of limitations, establishes that special time limits shorter or longer than the general time limit for statute of limitations may be prescribed by law for certain types of claims.

For filing a claim for compensation for non-pecuniary damage caused as a result of violation of fundamental rights and wrongful conviction, the legislator has established a shorter special time

limit of one year in comparison with the general time limit. In this aspect, the time limit of one year should be considered from the perspective of the equivalence of the legislative and organizational prerequisites for the exercise of the right of access to a court and the fundamental right to judicial protection.

The Constitutional Court states that, according to the challenged provision, the claim for compensation for non-pecuniary damage caused as a result of a violation of fundamental rights or wrongful conviction may - together with the claim for confirming the violation of the right prescribed in part 2 of article 162.1 of this Code (namely, the right to life, the right to freedom from torture and inhuman or degrading treatment or punishment, the right to personal liberty and inviolability, the right to fair trial, the right to respect for private and family life, inviolability of residence, the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of assembly and association, the right to an effective remedy, and the right of ownership) – be submitted to the court within one year from the moment the person has become aware of the decision taken by the investigator or the prosecutor, which has not been abolished or appealed against on violation, as well as after entry into force of the judicial act confirming the violation of that right, or after rejecting initiation of a criminal case on a non-acquittal ground, or not conducting criminal prosecution or dismissing proceedings of the criminal case or terminating criminal prosecution.

Considering the circumstance that the one-year time limit for filing a claim for compensation is calculated after the person claiming compensation has become aware of certain circumstances, the time limit provided for the formulation and presentation of such a claim in court is reasonable.

In addition, according to article 342 of the Code, titled “Restoration of the time limit for the statute of limitations”, “In exceptional cases, where the court, taking into account the circumstances (serious illness, helpless state, illiteracy, etc.) in relation to the plaintiff, declares as justifiable the omission of the time limit for the statute of limitations, the violated right of the citizen shall be subject to protection. The reasons for the omission of the time limit for the statute of limitations may be declared as justifiable where they have occurred within the last six months of the time limit for the statute of limitations ...”.

Thus, also in certain cases prescribed by law of the omission of the one-year time limit, the list of which is not exhaustive, the restoration of such time limit is allowed.

Thus, the Constitutional Court states that the establishment by the challenged provision of a special one-year time limit for filing a claim for compensation for non-pecuniary damage cannot be interpreted as a violation of the requirements (prescribed in article 75 of the Constitution) of the exercise of constitutionally guaranteed rights to compensation for damage and judicial protection, as well as the right of access to a court arising from the latter.

Based on the above and governed by clause 1 of article 168, clause 8 of part 1 of article 169, parts 1 and 4 of article 170 of the Constitution, as well as articles 63, 64 and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS:**

1. Part 9 of article 1087.2 of the Civil Code is in conformity with 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

H. Tovmasyan

June 16, 2020

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