Non-Official Translation

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

ON THE CASE CONCERNING THE CONSTITUTIONALITY OF ARTICLE 331 AND PART 1 OF ARTICLE 432 OF THE CIVIL CODE OF THE REPUBLIC OF ARMENIA, RAISED BY THE APPLICATION OF "HOVNANIAN INTERNATIONAL" LIMITED LIABILITY COMPANY

City of Yerevan 8 October 2024

The Constitutional Court, composed of A. Dilanyan (Presiding Judge), V. Grigoryan, H. Tovmasyan, D. Khachaturyan, H. Hovakimyan, E. Shatiryan, S. Safaryan, and A. Vagharshyan,

with the participation of (within the framework of written procedure):

the applicant: advocates T. Sargsyan and E. Ohanyan, the representatives of "Hovnanian International" Limited Liability Company (hereinafter referred to as "the Applicant"), and

the respondent: the representative of the National Assembly, M. Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly (hereinafter referred to as "the Respondent"),

according to point 1 of Article 168 and point 8 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 69 of the Constitutional Law "On the Constitutional Court",

examined in an open session through the written procedure the case concerning the constitutionality of Article 331 and part 1 of Article 432 of the Civil Code of the Republic of Armenia, raised by the application of "Hovnanian International" Limited Liability Company.

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

Article 331 of the Code, entitled **"Concept of statute of limitations",** stipulates:

"Statute of limitations shall be the time period for the protection of rights on the claim of the person whose rights have been violated".

Part 1 of Article 432 of the Code, entitled **"Termination of obligation due to the impossibility of fulfillment",** stipulates:

"1. An obligation shall terminate due to the impossibility of fulfillment if this has occurred as a result of such circumstances for which neither of the parties is responsible. In such a case the creditor shall not have the right to demand from the debtor the fulfillment of the obligation".

The contested provisions of the Code were amended/supplemented.

This Case was initiated by the application of the Applicant which was submitted to the Constitutional Court on 10 July 2024.

Having examined the application and the written explanation of the applicant, as well as having analyzed the relevant provisions of the Code and other documents in the Case, the Constitutional Court **ESTABLISHED:**

1. Procedural background of the Case

1.1. On 2 November 2020, the representative of Alexander Hovhannes Manukyan filed a lawsuit with the First Instance Court of General Jurisdiction of Yerevan (hereinafter referred to as "the Court") against the Applicant and the third party – the Cadastre Committee of the Republic of Armenia, requesting to recognize the obligations as terminated and, as a consequence, to oblige the latter to perform state registration of the termination of the restrictions registered with respect to the land plot.

1.2. By the decision of 12 November 2020, the Court accepted the above-mentioned lawsuit for proceedings.

1.3. On 3 December 2021, the Applicant filed a counterclaim against Alexander Hovhannes Manukyan, and the third party – the Cadastre Committee of the Republic of Armenia, requesting to oblige the latter to fulfill the obligations outlined in the Contract.

1.4. By the decision of 14 December 2021, the Court accepted the Applicant's counterclaim for proceedings and decided to examine it jointly with the original claim.

1.5. As part of the counterclaim, on 21 December 2021, Alexander Hovhannes Manukyan's representative filed a petition with the Court to apply the statute of limitations.

1.6. By the decision of 23 February 2022, the Court separated from the civil case No. ED/31572/02/20 the original claim of Alexander Hovhannes Manukyan, represented by his

legal representative Armine Henrik Manukyan, against the Applicant and the third party – the Cadastre Committee of the Republic of Armenia, requesting to recognize the obligations as terminated and, as a consequence, to oblige the latter to perform state registration of the termination of the restrictions registered with respect to the land plot, and the Applicant's counterclaim against Alexander Hovhannes Manukyan and the third party – the Cadastre Committee of the Republic of Armenia, as well as requesting to oblige the latter to fulfill the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4. of the Contract.

1.7. Having examined civil case No. ED/31572/02/20, on 23 February 2022, the Court ruled as follows:

"To partially grant the motion of the Respondent Alexander Hovhannes Manukyan's legal representative Armine Henrik Manukyan's representative, who filed a counterclaim to apply the statute of limitations.

1. To partially dismiss the counterclaim (in civil case No. ED/31572/02/20) of "Hovnanian International" Limited Liability Company against Alexander Hovhannes Manukyan, represented by his legal representative Armine Henrik Manukyan and the third party – the RA Cadastre Committee, requesting to oblige the latter to fulfill the obligations outlined in the Contract in part of the request to oblige to fulfill the obligations outlined in points 6.1.1., 6.1.2., 6.1.3., and 6.1.4.1. of the Contract, on the grounds of application of the statute of limitations (…)".

1.8. Having examined civil case No. ED/32029/02/22 based on the claim of Alexander Hovhannes Manukyan, represented by his legal representative Armine Henrik Manukyan, against the Applicant and the third party – the Cadastre Committee of the Republic of Armenia, requesting to recognize the obligations as terminated and, as a consequence, to oblige the latter to perform state registration of the termination of the restrictions registered with respect to the land plot, and the Applicant's counterclaim against Alexander Hovhannes Manukyan and the third party – the Cadastre Committee of the Republic of Armenia, as well as requesting to oblige the latter to fulfill the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4. of the Contract, on 10 March 2023, the Court ruled as follows:

"To satisfy the claim of Alexander Hovhannes Manukyan, represented by his legal representative Armine Henrik Manukyan, against "Hovnanyan International" LLC and the third party – the RA Cadastre Committee regarding the requests to recognize the obligations as terminated and, as a consequence, to oblige the latter to perform state registration of the termination of the restrictions registered with respect to the land plot.

To declare as terminated the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4 of the Real Estate Purchase Contract signed on 07.12.2007.

To cancel the state registration of restrictions at the RA Cadastre Committee regarding the land plot at the address: Gandzasar-21, precinct 5, Vahakni district, city of Yerevan.

To dismiss the counterclaim of "Hovnanian International" LLC against Alexander Hovhannes Manukyan and the third party – the RA Cadastre Committee regarding the request to oblige the latter to fulfill the obligations outlined in points 6.1.4.2, 6.1.4.3, and 6.1.4.4. of the Contract (…)".

In this judgment, the Court inter alia expressed the following legal position:

"Referring to the original claim, the Court considers it to be established as follows:

According to the judgment of the RA First Instance Court of General Jurisdiction of Yerevan (presided over by Judge S. Iskandaryan) in civil case No. ED/31572/02/20 dated 23.02.2022, the counterclaim of "Hovnanian International" Limited Liability Company against Alexander Hovhannes Manukyan, represented by his legal representative Armine Henrik Manukyan and the third party – the RA Cadastre Committee, requesting to oblige the latter to fulfill the obligations outlined in the Contract in part of the request to oblige to fulfill the obligations outlined in points 6.1.1., 6.1.2., 6.1.3., and 6.1.4.1. of the Contract, was dismissed on the grounds of application of the statute of limitations.

(…)

According to part 1 of Article 423 of the Civil Code of the Republic of Armenia, the obligation shall terminate fully or partially on the grounds provided for by law, other legal acts, or a contract.

According to part 2 of the same article, it shall be permitted to terminate the obligation upon the request of one of the parties solely in cases provided for by law or a contract.

The systemic analysis of the above-mentioned judgment and legal norms indicate that the original applicant is no longer obliged to perform the actions stipulated in points 6.1.1., 6.1.2., 6.1.3., and 6.1.4.1. of the Contract, therefore the obligations stipulated in those points have ceased by force of law.

The opposite approach would lead to a violation of the principle of legal certainty, and at the same time, the original applicant's right to property, proclaimed by Article 60 of the RA Constitution, and Article 163 of the RA Civil Code would also be violated.

Based on the above, the Court finds that the obligations outlined in points 6.1.1., 6.1.2., 6.1.3., and 6.1.4.1. must be declared as terminated and, as a consequence, the state registration of restrictions at the RA Cadastre Committee regarding the land plot at the

address: Gandzasar-21, precinct 5, Vahakni district, city of Yerevan, must be canceled in that regard.

(…)

(…) The Court concludes that the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4. are derivative obligations of the obligation outlined in point 6.1.4.1, which cannot exist independently without point 6.1.4.1., since point 6.1.4.1. stipulates that the architectural and construction project must be submitted to the Seller no later than 30 September 2009 /two thousand nine/, prior to the conduct of the examinations and/or approvals and/or ratifications and/or other similar formalities/records as defined/prescribed by the legislation of the Republic of Armenia, and the restrictions outlined in points 6.1.4.2., 6.1.4.3. and 6.1.4.4. of the Contract refer to the Seller's comments, considerations, amendments, supplements, and approvals regarding that architectural and construction project.

Under these circumstances, considering that the Court has already declared as terminated the restrictions outlined in point 6.1.4.1. of the Contract, the Court finds that it is meaningless to take into account the Seller's comments and considerations regarding the architectural and construction project for the development of the same land plot, to initiate and/or implement amendments and/or additions and/or other changes to the architectural and construction project agreed with the Seller, as well as to ensure the coordination of the architectural and construction project with the Seller in the appropriate manner and within the appropriate time limits.

Based on the above and considering that the obligations outlined in point 6.1.4.1 of the Real Estate Purchase Contract are declared as terminated, the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4 (which are considered derivative to the same point) should also be declared as terminated and as a consequence, the state registration of restrictions at the RA Cadastre Committee regarding the land plot at the address: Gandzasar-21, precinct 5, Vahakni district, city of Yerevan, must also be canceled in that regard.

Based on the above, the Court also finds that the counterclaim in part of points 6.1.4.2., 6.1.4.3., and 6.1.4.4. is unfounded and subject to rejection".

1.9. Having examined the appeal filed by the Applicant against the Court's judgment No. ED/32029/02/22 of 10 March 2023, the Civil Court of Appeal of the Republic of Armenia (hereinafter referred to as "the Court of Appeal") decided on 12 September 2023 as follows:

"1. To reject the appeal. To leave unchanged the decision of the First Instance Civil Court of General Jurisdiction of Yerevan No. ED/32029/02/22 of 10.03.2023 (…)".

In this decision, the Court of Appeal stated as follows:

"The Court of Appeal considers the above-mentioned conclusions of the court of general jurisdiction to be well-founded and derived from the materials of the case.

(…)

The Court of Appeal considers it necessary to add that the parties mutually agreed that the architectural and construction project should be submitted to the company no later than 30.09.2009, while at the same time, in the contested points of the Contract, the parties provided for restrictions that related to the company's observations, considerations, amendments, supplements, and approvals regarding that project. "Taking into account that the architectural and construction project was not submitted to the company within the specified period, and the company's demand to oblige the company to fulfill this obligation was submitted after the expiration of the period specified by law, therefore, the obligations to take into account the company's comments and considerations regarding the architectural and construction project for the development of the same land plot, to initiate and/or implement amendments and/or supplements, and/or to implement other changes (with the envisaged restrictions) to the project agreed with the company, have ceased due to the impossibility of fulfillment, under the termination of the obligation not to submit the project by the buyer".

1.10. Having examined the issue of accepting for consideration the cassation appeal brought by the Applicant against the decision of the Court of Appeal of 12 September 2023 in civil case No. ED/32029/02/22, the Cassation Court of the Republic of Armenia decided on 17 January 2024 as follows:

"1. To refuse to accept for consideration the cassation appeal brought by "Hovnanian International" LLC against the decision of the RA Civil Court of Appeal dated 12.09.2023 in civil case No. ED/32029/02/22 (…)".

2. Positions of the Applicant

2.1. The Applicant, in particular, notes that the legal norms prescribed by Article 331 and part 1 of Article 432 of the Code are interpreted as follows: in one case, Article 331 of the Code regulating the statute of limitations was interpreted in such a way that the statute of limitations shall apply to the performance of the debtor's obligations, in particular, the expiration of the statute of limitations was considered a basis for the termination of obligations prescribed by law in the context of Article 432 of the Code, and in the other case, the legal norm prescribed by Article 432 of the Code was interpreted in such a way that the specified norm shall be applied when the statute of limitations has expired, in other words, the fact of the expiration of the statute of limitations was interpreted as the

impossibility of performing obligations, for which neither of the parties is to blame, and therefore, it is a basis for recognizing the obligations as terminated.

2.2. The Applicant believes that within the framework of examining civil case No. ED/32029/02/22, the Court identified the expiration of the creditor's right to apply to court with the impossibility of the debtor fulfilling their obligations and interpreted this fact in such a way that there is an objective and real impossibility for the debtor to fulfill their obligations in case the creditor's right to apply to court has expired.

2.3. According to the Applicant, the impossibility of performance is a circumstance that objectively deprives the parties to a legal relationship of the opportunity to perform the actions that constitute the content of the given legal relationship, and the objective existence of the impossibility of performance implies the exclusion of the possibility of avoiding the performance of an obligation through an arbitrary approach.

2.4. The Applicant finds that the grounds for termination of obligations prescribed by Chapter 27 of the Code do not include the grounds for the expiration of the statute of limitations defined by Article 331 of the Code. That is to say, having exhaustively defined all the grounds on which obligations may terminate, the legislator did not establish such a ground that the obligations shall terminate in case the statute of limitations within the meaning of Article 331 of the Code has expired, since the fact of the expiration of the statute of limitations is in no way correlated with the impossibility or termination of the performance of the obligations.

2.5. The Applicant notes that "(...) the interpretation of the courts has led to the fact that they have linked the institution of 'termination of the obligation due to impossibility of performance' with the institution of 'statute of limitations', and have made the legal norms regulating these two institutions a condition for the application of one another". The Applicant believes that as a result of such interpretation of the norms, all the obligations of the debtor have been declared as terminated, including those that had been made the subject of examination under part 2 of Article 335 of the Code, however, the Court had rejected the application of the statute of limitations to the claim for the performance of those obligations.

2.6. The Applicant claims that there was no judicial act regarding the obligations outlined in points 6.1.4.2., 6.1.4.3., and 6.1.4.4. of the respective Contract, in particular, no statute of limitations was applied to the aforementioned contractual obligations. Meanwhile, according to the Applicant's assertions, the aforementioned contractual obligations were terminated by the courts. According to the Applicant, his right to claim regarding the aforementioned obligations existed, without any restrictions.

2.7. The Applicant notes that as a result of the courts' interpretations of the above-mentioned legal norms, the existing obligations towards him were terminated, and therefore he was deprived of the right to a legitimate claim.

2.8. The Applicant requests "To declare the legal norms prescribed by Article 331 and part 1 of Article 432 of the RA Civil Code, with the interpretation given within the framework of civil case No. ED/32029/02/22, as contradicting Articles 59 and 60 of the RA Constitution and void".

3. Positions of the Respondent

3.1. Submitting the relevant legal positions of the Constitutional Court, and the contested provisions of the Code, the Respondent finds that the termination of the obligation due to the impossibility of performance and the expiration of the statute of limitations are different legal concepts.

3.2. The Respondent states that "the impossibility of performance refers to the situation where the performance of an obligation assumed under a contract becomes impossible because an unforeseen event has occurred that hinders the performance of the obligation. On the other hand, the period of the statute of limitations defines the time period within which respective legal claims must be filed, regardless of whether the obligation could have been performed. Termination of the obligation due to impossibility of performance is a norm of substantive law, while the statute of limitations is a procedural institution. It is the time period of judicial protection of a subjective right. Thus, the impossibility of performance is directed at the feasibility of performing the contract, and the second is at the time of initiating legal actions. Therefore, when the statute of limitations expires, the impossibility of performance does not arise, and the right to a claim filed in court ceases with the very fact of the expiration of the statute of limitations".

3.3. The Respondent argues that the impossibility of performance and the statute of limitations are two different institutions that ensure the effectiveness of the legal system, contributing to the provision of property, justice, and legal certainty, therefore, the Respondent notes that the interpretation that the expiration of the statute of limitations serves as a basis for the termination of the obligations prescribed by law does not derive from the logic of the contested articles.

3.4. The Respondent requests to render a decision in this case to declare the contested provisions as conforming to the Constitution.

4. Considerations to be clarified in the Case

In order to determine the constitutionality of the provisions of the law disputed in this application, the Constitutional Court considers it necessary to address, in particular, the following question:

– Is the interpretation of the contested provisions in legal practice – according to which the expiration of the statute of limitations has been interpreted as the basis for the termination (as prescribed by law) of the main obligations defined by the contract, under which conditions the derivative obligations arising thereof have been declared as terminated due to the impossibility of performance – consistent with the freedom to engage in economic, including entrepreneurial, activity and the right to property as prescribed by the Constitution?

5. Legal positions of the Constitutional Court

5.1. According to Article 11 of the Constitution, entitled "Economic Order", the basis for the economic order in the Republic of Armenia shall be the social market economy, which shall be based on private ownership, freedom of economic activity, free economic competition, and through the state policy aimed at general economic well-being and social justice.

The given constitutional regulation received its logical extension in Article 59 of the Constitution, entitled "Freedom of Economic Activities and the Guaranteeing of Economic Competition", which states as follows:

"1. Everyone shall have the right to engage in economic, including entrepreneurial activities. The conditions and procedure of exercising this right shall be prescribed by law.

2. Restriction of competition, possible types of monopoly, and their permitted sizes may be prescribed only by law with the aim of protecting public interests.

3. Abuse of monopolistic or dominant position".

In a number of decisions, the Constitutional Court has addressed the disclosure of the constitutional content of freedom of economic activities. Thus:

The Constitutional Court's Decision DCC-152 of 27 January 1999, specifically states that "*The principle of free economic competition, in turn, stems from the principles of economic freedom and equality and means the equality of all economic entities within a market economy, and the provision of equal conditions and opportunities for them by the state*".

In another decision, the Constitutional Court has stated that *"The freedom of economic activities and economic competition enshrined in the Constitution are important prerequisites and cornerstones of the development of the state, enabling everyone to carry out economic activities in free, fair, equal and competitive conditions"* (Decision DCC-1685 of 25 April 2023).

In the context of the above, the Constitutional Court finds that **economic, including entrepreneurial, activities are a chain of civil-legal relations in legal terms, which is built between economic entities, inter alia, by establishing mutually binding legal relations, the conscientious implementation of which is an unconditional guarantee of the economic development of the state.**

In this regard, the Constitutional Court finds that the freedom of economic activities enshrined in the Constitution is of particular importance in the context of civil-legal relations. Thus, to guarantee the aforementioned constitutional right, the state shall legislate as follows:

(1) the principle of autonomy of will within civil-legal, including contractual relations, which, inter alia, assumes that entities carrying out economic activities shall enter into contractual relations of their own free will and in their interest;

(2) the principle of freedom of contract, which, inter alia, implies that economic entities are free to define their rights and obligations based on a contract, and to determine any terms of the contract that do not contradict the legislation;

(3) the principle of non-arbitrary interference in private affairs, which, inter alia, protects economic entities from undue state interference, constraining the state from interfering with the rights of economic entities in the specified sphere on constitutionally enshrined exclusive grounds;

(4) the principle of the need for the unhindered exercise of civil rights, which, inter alia, is directly correlated to the stability of contractual relations, and is aimed at maintaining these relations in the absence of grounds for termination of contractual relations;

(5) the principle of protection of rights violated within the framework of contractual relations, including judicial protection.

In light of the above, the Constitutional Court considers that to guarantee the freedom of economic activities enshrined in the Constitution, it is of key importance to ensure the stability of the legal bases for the implementation of economic activities not only at the legislative but also at the law enforcement level, in particular, to ensure such a legal framework for the stability and certainty of activities of the economic entities, within the framework of which the contractual relations will be terminated on clear grounds defined by law, other legal acts or a contract, which will be sufficiently certain and predictable for the entities of contractual relations.

5.2. Part 1 of Article 10 of the Constitution, entitled “Guaranteeing Ownership”, states as follows:

"All forms of ownership shall be recognized and equally protected in the Republic of Armenia".

Parts 1 and 3 of Article 60 of the Constitution, entitled "Right to Property", state as follows:

"1. Everyone shall have the right to own, use and dispose at his discretion the legally-acquired property.

(...)

3. The right to property may be restricted only by law with the aim of protecting the interests of the public or the fundamental rights and freedoms of others".

In a number of decisions (DCC-92, DCC-630, DCC-649, DCC-650, DCC-667, DCC-669, DCC-735, DCC-815, DCC-901, DCC-903, DCC-1009, DCC-1056, DCC-1073, DCC-1142, DCC-1189, DCC-1203, DCC-1210, etc.), the Constitutional Court has addressed the disclosure of the constitutional content of the right to property, and the issues of protection and possible limitation of that right, expressing legal positions on the essence of the right to property, and the constitutionality of legal regulations related to the limitation and termination of that right, stressing the importance of the need to implement legal measures arising from the principles of the constitutional order in that field.

In the Decision DCC-1432 of 30 October 2018, the Constitutional Court has expressed the legal position that *"As a characteristic of guaranteeing the rights and freedoms of a person in a democratic, social and rule of law state, and also as a mechanism for regulating private and public interests, the right to property is of important constitutional and legal significance"*.

In the above-mentioned decision, the Constitutional Court has also stated that *"(...) the positive obligation of public authority to ensure the inviolability of the right to property is prescribed both at the international legal and constitutional levels, in particular:*

***Firstly**, without any discrimination, to recognize and protect the right to property, regardless of the form of its manifestation;*

***Secondly**, to guarantee the protection of the right to property, creating prerequisites for the possession, utilization, and management of the property legally exercised by the owner freely, as well as for the free development and equal legal protection of all forms of ownership;*

***Thirdly**, to establish the legal framework for the freedom to exercise the right to property according to the purpose predetermined by the Constitution;*

***Fourthly**, to guarantee, in cases established by law, the fulfillment of the constitutional legal requirements for depriving a person of property by court procedure, the compulsory expropriation of property for prevailing public interests, as well as to ensure prior and adequate compensation".*

Reiterating and developing the previously expressed legal positions on the right to property, as well as considering the latter in the context of the institution of the statute of limitations, in the Decision DCC-1611 of 28 September 2021, the Constitutional Court has stated as follows: *"(...) any legislative regulation related to the right to property, its interpretation and application must comply with the regulations enshrined in the Constitution and the legal positions presented by the Constitutional Court concerning the said right, in particular, the latter must guarantee the protection of the right to property by creating prerequisites for the free possession, use, and disposal of property belonging to the owner on a legal basis, as well as for the free development and equal legal protection of all forms of ownership, and must guarantee the fulfillment of constitutional and legal requirements regarding the deprivation (in a judicial manner) of a person of property in cases prescribed by law, **as well as must guarantee the protection of the right to property based on legitimate expectations with a view to acquiring the right to property"**.*

In addition, the European Court of Human Rights notes that, for the purposes of the right to peaceful enjoyment of his possessions within the meaning of Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms, possessions can be not only the existing material means but also the legitimate expectation of acquiring material means ("Trgo v. Croatia", Application no. 35298/04, 11.06.2009, Final 11.09.2009, § 44).

The European Court of Human Rights has also noted that "possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right ("J. A. Pye (Oxford) Ltd and J. A. Pye (Oxford) Land Ltd v. United Kingdom", Application no. 44302/02, 30.08.2007, § 61). An "expectation" is "legitimate" if it is based on either a legislative provision or a legal act bearing on the property interest in question ("Saghinadze and others v. Georgia", Application no. 18768/05, 27.05.2010, Final 27.08.2010, § 103).

The Constitutional Court reiterates that the freedom of economic activities is closely interconnected with the right to property and is directly related to everyone's constitutional right to property.

In the Decision DCC-1685 of 25 April 2023, the Constitutional Court has stated that *"The interrelation of guaranteeing freedom of economic activities and economic competition and the right to property is manifested in the fact that as a result of free*

economic activities and economic competition, new prerequisites are created for increasing the volume of property, which, in turn, also provides a real opportunity to expand the scope of free economic activities".

In the context of the above, the Constitutional Court considers that the purpose of establishing contractual relations within the framework of economic activities, inter alia, leads to the formation of a legitimate expectation of the participants in legal contractual relations to acquire property, and the termination of these relations is accompanied by the elimination of the legitimate expectation of acquiring property, attaching particular importance to the guaranteeing of the right to property in the context of the institution of termination of obligations, both legislatively and in law enforcement practice.

5.3. Addressing the issue of the constitutionality of the interpretation of the contested provisions in legal practice in light of the above-mentioned constitutional and legal regulations and the legal positions expressed by the Constitutional Court, the Constitutional Court states that under the interpretation of the contested provisions within the framework of civil case No. ED/32029/02/22, it turns out that in the case the court rejects the request to oblige to perform the main obligations prescribed by the contract by applying the statute of limitations, the derivative obligations prescribed by the contract are recognized by the court as terminated based on the impossibility of performing the obligations provided for by law, and moreover, the application of the statute of limitations by the court in part of the main obligations is considered a circumstance of impossibility.

The Constitutional Court finds that, in essence, this constitutional and legal dispute directly leads to the issue of the scope of direct negative legal consequences arising for a person in the event of failure to observe the legislatively prescribed time period for the statute of limitations for claims in the context of the constitutional and legal regulation of state interference in private relations. In this regard, the Constitutional Court states that private legal relations in general, and civil legal relations, in particular, imply minimal interference by the state, and such an approach to the manifestation of the state's legal regulatory function is conditioned by a number of civil-legal principles, such as the principles of autonomy of will, property autonomy, inviolability of ownership, freedom of contract, the impermissibility of arbitrary interference by anyone in private affairs, and the necessity of unhindered exercise of civil rights (Article 3 of the Code).

The Constitutional Court also states that the interference by the state in contractual relations within the framework of civil-legal relations is expressed, inter alia, in the fact that the regulations related to the institution of termination of obligations have been legislated as follows:

(1) The obligation shall terminate fully or partially on the grounds provided for by law, other legal acts, or a contract (part 1 of Article 423 of the Code);

(2) The grounds for terminating obligations prescribed by the Code shall be as follows: fulfillment, refusal fee, set-off, in case of the debtor coinciding with the creditor, novation, waiver of debt, impossibility of fulfillment, an act of state or local self-government body, death of a citizen, liquidation of legal entity (Articles 424-426 and 429-435 of the Code).

The Constitutional Court finds that applying the statute of limitations to civil-legal obligations in no way terminates those obligations, and only the possibility of protecting civil rights by lawsuit within the framework of those contractual obligations is terminated. Moreover, it does not deprive a person of the opportunity to protect his violated right by other permissible means prescribed by law, such as the possible means for protecting the right prescribed by Article 14 of the Code.

The Constitutional Court states that the expiration of the period for exercising the right to judicial protection can directly cause only one negative legal consequence for a person, namely the lack of the possibility of exercising the violated right in court. The rejection by the court of a claim for the performance of an obligation due to the expiration of the period of the statute of limitations does not imply the termination of the obligation. Moreover, applying the period of the statute of limitations does not deprive the applicant of his substantive legal claim and the opportunity to protect his violated right by other legal means. *Otherwise, it turns out that the institution of the statute of limitations is not only a time limit on the possibility of filing a claim but also a period of "existence" of the substantive legal claim.* The mentioned approach directly contradicts the legal positions of the Constitutional Court revealing the constitutional and legal content of the institution of the statute of limitations, which are as follows:

(1) In the Decision DCC-1495 of 6 December 2019, the Constitutional Court has considered the institution of the statute of limitations in the context of the time limit for the exercise of a right and stated that *"(...) the time periods established by civil legislation (...) are not only aimed at regulating civil circulation in terms of time but also to ensure the possibility of subjects of civil relations to exercise their rights, to motivate persons to fulfill their obligations, as well as to promote the timely protection of violated rights".*

(2) In the Decision DCC-1611 of 28 September 2021, the Constitutional Court has stated as follows:

– *"(...) from the perspective of one of the parties, the institution of the statute of limitations is considered as a restriction on the right to apply to a court, based on a specific procedural rule, which, at the same time, meets the criteria of legitimacy (...) of the restriction of the right. Therefore, any interpretation and application of the aforementioned*

institution, and legal regulations in a manner that contradicts this circumstance would contradict the constitutional content of the latter".

– "(...) the institution of the statute of limitation itself is aimed at guaranteeing the discussed goals related to the rights to property, economic activities, effective judicial protection, fair trial and other constitutional values in civil circulation and, thereby ensuring the stability of civil circulation, the certainty of legal relations, the good faith of their participants, the conscientious use of the instrumentalities for the protection of rights, and, as a result, the protection of the fundamental rights of not one, but all subjects of legal relations. The mentioned goals are of exceptional importance from the perspective of the establishment of a rule of law state and must underlie any legal regulation and law enforcement practice related to the statute of limitations".

In light of the above, referring to the institution of termination of obligations based on the impossibility of fulfilling obligations, the Constitutional Court states that the circumstance of impossibility is qualified by the legislator as an objective circumstance, which is not conditioned by the will of the parties. In this regard, the will of the legislator is clear, i.e. an obligation shall terminate due to the impossibility of fulfillment if it arose from a circumstance for which neither of the parties is responsible.

The Constitutional Court finds that *the interpretation under discussion also distorts the legal content of the given institution since the period of the statute of limitations is applied by the court regardless of the will of the party to the contractual relations, and the application of this institution is the result of the inaction of the relevant party to the legal relationship, which is manifested in the failure to file a claim within the period prescribed by law. Meanwhile, considering the statute of limitations as a factual basis for the termination of obligations prescribed by law, declaring the main obligation as terminated has led to declaring the derivative obligation arising thereof as terminated due to the impossibility of performance under the conditions of declaring the main obligation as terminated, thus violating the constitutional and legal and legislative imperatives on ensuring balanced protection of the rights of the parties to the contractual relations within the framework of civil-legal relations.*

Based on the above, the Constitutional Court considers that the interpretation of the contested provisions in legal practice – according to which the expiration of the period of the statute of limitations was interpreted as a basis for the termination (as prescribed by law) of the main obligations outlined in the contract, under which conditions the derivative obligations arising thereof were declared terminated due to the impossibility of performance – is problematic in the context of guaranteeing the right of a person to

engage in economic, including entrepreneurial activities and the right to property, as prescribed by the Constitution.

Based on the results of the examination of the Case and guided by point 1 of Article 168, point 8 of part 1 of Article 169, and parts 1 and 4-5 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 **DECIDED:**

1. Article 331 and part 1 of Article 432 of the Civil Code of the Republic of Armenia comply with the Constitution by the interpretation that the termination of contractual obligations, including on the grounds of impossibility of performance, cannot be dependent on the fact of the expiration of the statute of limitations.

2. According to part 10 of Article 69 of the Constitutional Law "On the Constitutional Court", the final judicial act rendered against the applicant shall be subject to revision upon the grounds of newly emerged circumstances as prescribed by the Law, considering that Article 331 and part 1 of Article 432 of the Civil Code of the Republic of Armenia had been applied against the Applicant by an interpretation other than given by this Decision.

3. According to part 2 of Article 170 of the Constitution, this Decision shall be final and enter into force upon its promulgation.

PRESIDING JUDGE A. DILANYAN

8 October 2024

DCC - 1756