IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT
OF THE REPUBLIC OF ARMENIA

City of Yerevan 16 April 2025

ON THE CASE CONCERNING THE CONSTITUTIONALITY OF THE LAW "ON CIVIL FORFEITURE OF ILLEGAL ASSETS", RAISED BY THE APPLICATION OF AT LEAST ONE FIFTH OF THE TOTAL NUMBER OF DEPUTIES OF THE NATIONAL ASSEMBLY OF THE REPUBLIC OF ARMENIA

The Constitutional Court of the Republic of Armenia, composed of:

President: Arman Dilanyan,

Justices: Vahe Grigoryan,

Davit Khachaturyan,

Yervand Khundkaryan,

Hovakim Hovakimyan,

Edgar Shatiryan,

Seda Safaryan,

Artur Vagharshyan,

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

Applicant:	at least one fifth of the total number of deputies of the National Assembly (hereinafter also referred to in this Decision as "the Applicant"),
Representative:	Davit Harutyunyan,
Respondent:	National Assembly (hereinafter also referred to in this Decision as "the Respondent"),
Representative:	Mary Stepanyan, Head of Legal Support and Service Division of the Staff of the National Assembly,

pursuant to point 1 of Article 168, point 2 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 68 of the Constitutional Law "On the Constitutional Court";

Examined in an open court session through written procedure the Case "Concerning the constitutionality of the Law "On civil forfeiture of illegal assets", raised by the application of at least one fifth of the total number of deputies of the National Assembly of the Republic of Armenia".

Having examined the application, the written explanation of the Respondent, the other documents available in the Case, and having analysed the disputed Law, the Constitutional Court hereby **established:**

Proceedings before the Constitutional Court

1. Law of the Republic of Armenia No HO-240-N "On civil forfeiture of illegal assets" (hereinafter referred to as "the Law") was adopted by the National Assembly on 16 April 2020, signed by the President of the Republic on 11 May 2020, and entered into force on 23 May 2020.

2. Since its adoption, the disputed Law has been supplemented and amended by Laws HO-91-N of 3 March 2021, HO-334-N of 14 April 2021, HO-159-N of 9 June 2022, HO-270-N of 9 June 2022, HO-578-N of 23 December 2022, HO-396-N of 24 October 2024, and HO-196-N of 11 April 2024.

3. The reason for examining the Case is the application of at least one fifth of the total number of deputies of the National Assembly entered at the Constitutional Court on 23 November 2021.

4. Upon Procedural Decision of the Constitutional Court No PDCC-47 of 25 February 2022, the Case "Concerning the constitutionality of the Law "On civil forfeiture of illegal assets", raised by the application of at least one fifth of the total number of deputies of the National Assembly of the Republic of Armenia" was accepted for examination. It was decided to conduct the trial of the case through written procedure, and to involve as the respondent party in the procedure the body having adopted the indicated Law, *i.e.* the National Assembly.

5. Upon Procedural Decision of the Constitutional Court PDCC-115 of 8 July 2022, the proceedings in this Case were suspended until the receipt of the *amicus curiae* of the European Commission for Democracy through Law regarding the questions specified in this Procedural Decision. For the purpose of obtaining an *amicus curiae,* the following questions were posed upon the mentioned Procedural Decision:

   (1) Is the presumption that the asset is of illegal origin, provided for by Article 22 of the Law "On civil forfeiture of illegal assets", compatible with the applicable European standards for the protection of the right to peaceful enjoyment of one's possessions, set before the institute of non-conviction based asset forfeiture?

   (2) From the perspective of comparative constitutional law, what constitutes the

best practice in the member states of the European Commission for Democracy through Law with regard to the fair distribution of the burden of proof and the standards of proof between the parties in the proceedings for non-conviction based asset forfeiture, for the purposes of protection of the right to fair trial and the right to peaceful enjoyment of one's possessions?

(3) Given that the Law "On civil forfeiture of illegal assets" entered into force on 23 May 2020, is the procedural obligation to prove the legality of the origin of assets acquired prior thereto compatible with the potential applicable European standards on the prohibition of retroactive application of law?

(4) Is the non-definition of a maximum time limit enshrined by the Law "On civil forfeiture of illegal assets" for the initiation and conduct of proceedings for civil forfeiture of illegal assets after a criminal judgment of conviction has entered into legal force compatible with the European standards for the protection of the right to the peaceful enjoyment of one's possessions?

6. On 23 December 2022, *Amicus Curiae* of the European Commission for Democracy through Law (hereinafter also referred to as "the Venice Commission") CDL-AD(2022)048 (No 1108/2022) of 19 December 2022 (hereinafter also referred to as "the *Amicus Curiae*") was received.

7. Upon Procedural Decision of the Constitutional Court PDCC-83 of 7 July 2023, the proceedings in this Case were resumed, as the grounds defined by Procedural Decision PDCC-115 of 8 July 2022 had been eliminated.

8. Upon Procedural Decision of the Constitutional Court PDCC-84 of 7 July 2023, the proceedings in the Case were suspended until the receipt of the information and other evidence requested upon the same Procedural Decision from the Prosecutor General's Office of the Republic of Armenia. The response from the

Prosecutor's Office was received on 18 August 2023.

9. By Letters SDD-57 of 11 May 2022 and SDD-44 of 11 July 2023, the Reporting Justice requested information from the Prosecutor General as well, the responses to which were received on 1 June 2022 and 17 August 2023, respectively.

10. By Letter SDD-58 of 11 May 2022, the Reporting Justice requested information from the Chairperson of the Corruption Prevention Commission as well, the responses to which were received on 2 and 7 June 2022.

11. By Letter SDD-59 of 11 May 2022, the Reporting Justice requested information from the Representative on International Legal Matters as well, the response to which was received on 6 June 2022.

12. By Letter SDD-43 of 11 July 2023, the Reporting Justice requested information from the Judicial Department as well, the response to which was received on 14 August 2023.

13. Upon Procedural Decision of the Constitutional Court PDCC-46 of 25 March 2025, the proceedings in this Case were resumed.

14. Upon Procedural Decision PDCC-45 of 25 March 2025, the Constitutional Court decided that the participation of Hrayr Tovmasyan, Justice of the Constitutional Court, in the examination of the Case was impossible.

15. Upon Procedural Decision PDCC-47 of 26 March 2025, the Constitutional Court decided not to recognise the materials received from the Judicial Department of the Republic of Armenia upon the request of the Reporting Justice in the Case, with the information contained therein as materials of the case based on the considerations of not having significance for any outcome of the Case, as well as ruling out the disproportionate intervention, without a legitimate aim, in the inviolability of the private and family life, honour and good reputation, and personal data protection of the persons mentioned therein, guaranteed by

Articles 31 and 34 of the Constitution.

I. SCOPE OF THE CONSTITUTIONAL DISPUTE

16. This Application was submitted by at least one fifth of the total number of deputies of the National Assembly, whereby the Applicant challenges the issue of compliance of the entire Law with the Constitution. The justifications submitted in the Application, while containing references to specific provisions of the Law in certain instances, are primarily of a general nature in conditions of the raised questions having mainly a conceptual nature.

17. The Constitutional Court has expressed in a number of its decisions a position revealing the content of the requirement for justification set for applications addressed to the Constitutional Court by public authorities seeking constitutional justice, including those submitted by the Applicant as well.

18. Specifically, the Constitutional Court has noted upon Procedural Decision PDCC-248 of 3 December 2021 that:

"The Constitutional Court finds it necessary to draw the attention of relevant state bodies and officials who have the competence to apply to the Constitutional Court to the issue that the constituent has vested in them the right to seek constitutional justice in disputes having exclusively constitutional legal content, that is, on issues delineated by Article 168 of the Constitution, the object of which directly relates to the interpretation and application of the norms of the Constitution, guaranteeing legal succession of state power, legal security, resolution of disputes arising between constitutional bodies regarding their constitutional powers, etc.

The Constitutional Court states that by virtue of point 1 of part 1 of Article 29 of the Law, all entities applying to the Constitutional Court are obliged to justify

within the scope of the application that the issue raised is subject to examination by the Constitutional Court, *i.e.* the circumstance of being a constitutional legal dispute[1]."

19. The Constitutional Court has emphasized in another procedural decision — PDCC-251 of 7 December 2021 that:

"(...) in the case of entities applying to the Constitutional Court, such as the National Assembly, at least one fifth of the total number of deputies, a faction of the National Assembly, the President of the Republic, the Government, etc., the legislator's approach of limiting itself to stating general formal requirements for the application submitted to the Constitutional Court does not suggest at all the absence of an obligation for the Applicants to submit proper justifications regarding the alleged unconstitutionality of the disputed provision in the application[2]."

20. The Constitutional Court has highlighted upon Procedural Decision PDCC-46 of 25 February 2022 that:

"(...) the relevant application submitted by entities seeking constitutional justice must meet the requirements enshrined by Article 24 of the Constitutional Law "On the Constitutional Court," containing, *inter alia*, also the essence of the constitutional legal dispute and the arguments attesting to the existence of the given dispute; moreover, *these may not be considered as disagreements with decisions rendered by this or that public authority or as criticism of activity of the given body*[3]."

21. The Constitutional Court has indicated upon Procedural Decision PDCC-105 of 12 September 2023 that:

[1] Procedural Decision of the Constitutional Court PDCC-248 of 3 December 2021, point 3.1.
[2] Procedural Decision of the Constitutional Court PDCC-251 of 7 December 2021, point 4.
[3] Procedural Decision of the Constitutional Court PDCC-46 of 25 February 2022, point 3.4.

"Upon evaluating the arguments submitted by the Applicant regarding the alleged unconstitutionality of the disputed provisions in question, the Constitutional Court concludes that the Applicant's judgements are in no way justified, are based on highly abstract assumptions, possible contradictory interpretation and application in legal practice, which circumstance allows the Constitutional Court to record that the Applicant is guided by *an unjustified presumption of the unconstitutional interpretation and application of the disputed provisions by the law enforcer,* which, itself, may not give a constitutional content to the alleged dispute.

(...)

(...) The Constitutional Court emphasizes once again that it is within the discretion of the Legislator to formulate legal norms, including with the use of uncertain legal concepts, giving the law enforcer the opportunity to give a lawful content/interpretation to the norm during its implementation, based on the specific situation and factual circumstances of the case. Accordingly, the abstract assumptions regarding the possible distorted future interpretation and arbitrary application of the norm due to the uncertain legal concept may not themselves become a subject of constitutional control.

(...)

The Constitutional Court records that the Applicant has failed to submit justified arguments regarding the contradiction of the disputed provisions with the Constitution, and the concerns raised by the Applicant regarding their possible unconstitutional interpretation and application in the law-enforcement practice *may become a subject of constitutional control, where the law-enforcement practice is actually developed in the unconstitutional path referred to by the Applicant.*

(...)

When seeking constitutional justice, the targeted tool-kit for raising — within the

framework of abstract constitutional control — the alleged unconstitutional legal regulations before the High Court by entities engaged in high legislative activity must always serve to establishing and reinforcing the supremacy of the Constitution across all areas of public life.

Applications submitted to the Constitutional Court must raise, in their content, issues related to the constitutionality of various legal regulations in various sectors of public life; therefore, in each case, entities with high status must strive to identify to the maximum, within the framework of the Application, the unconstitutionality of the disputed legal provisions, by enforcing a correct both legal and methodological, as well as interpretive tool-kit, conditioned also by the reality to the effect that the admissibility of an application containing a constitutional legal dispute arises, first and foremost, from the interests of the Applicant guided exclusively by the public interest[4]."

22. The above-listed positions of the Constitutional Court are equally relevant to this Case. The Constitutional Court reiterates that the relevant application submitted by entities seeking constitutional justice must meet the requirements enshrined by Article 24 of the Constitutional Law "On the Constitutional Court," containing, *inter alia*, the essence of the constitutional dispute and arguments attesting to the existence of the given dispute, the logical chain of judgements justifying the incompliance of the specific provisions conditioning the alleged unconstitutionality of the relevant regulatory legal act with the Constitution, which may not be considered as simply the theoretical assumptions and concerns of the applicant regarding the unconstitutional interpretation and application of the disputed provision in law-enforcement practice. Moreover, the possibility of various interpretations of a legal provision within the scope of an abstract review of the constitutionality of that provision may not, itself, suffice to consider it as

[4] Procedural Decision of the Constitutional Court PDCC-105 of 12 September 2023, point 3.

problematic in terms of its conformity with the Constitution.

23. Within the scope of this constitutional dispute, the examination of the case will relate only to checking the constitutionality of the provision(s) of the Law within the scope of the justifications submitted by the Applicant, and the Constitutional Court will not address the questions not posed by the Applicant, for the following reasons:

24. *First*, the Constitutional Court examines an application of an entity having a special status — of at least one fifth of the total number of deputies of the National Assembly, the qualities of the deputies included in the composition whereof due to their involvement in legislative activity are more than sufficient for the Constitutional Court to fully trust that the justifications submitted within the scope of the abstract constitutional control are conclusive for the Applicant. The Constitutional Court may not present justifications instead of the Applicant or another entity and may not address them within the scope of the abstract review. The opposite approach may be permissible in the case of examination of an individual application, as the Constitutional Court has done on multiple occasions, but not in the case of entities that are public authorities.

25. *Second*, the application submitted in this Case is unprecedented in that it challenges the entire Law rather than a specific provision of the Law. Therefore, the Constitutional Court may not separate instead of the Applicant the probable scope of legal provisions that the Applicant intended to challenge. In this regard, the Constitutional Court also states that the Application does not address at all the issue of which specific provisions of the Law are disputed and which are not, and the practice formed by the Constitutional Court to this moment has been to render a decision on rejecting the examination of the case with such applications.

26. *Third,* where the same issues are examined by the Constitutional Court under individual applications, in order to avoid a high threshold for admissibility and

the potential decisions on the merits with regard to those applications in the future, within the framework of this constitutional dispute, *questions* will be considered only within the scope of the arguments set forth by the Applicant within the meaning of parts 16 and 17 of Article 68, as well as part 4 of Article 69 of the Constitutional Law "On the Constitutional Court", within which they have been discussed upon this Decision. Therefore, in case a legal *question* with a different content concerning the same provision of the Law is raised within an individual application before the Constitutional Court, the procedure for rendering decisions, provided for by part 2 of Article 29 of the Constitutional Law "On the Constitutional Court", will not be applied to persons having submitted an individual application.

27. Based on the above-stated, the Constitutional Court records that although the Application submitted in this Case contains general justifications regarding the alleged unconstitutionality of the Law, which have not been specified and individualized concerning the specific provisions of the Law, nevertheless, taking into account the ongoing commitment to strengthen and develop constitutionalism, the Constitutional Court will address — within the scope of the abstract check to be conducted in this constitutional dispute — the legal questions posed by the Applicant exclusively within the framework of the justifications contained therein.

II. Regarding the right of ownership

A. Positions of the Parties

1. The Applicant

28. The Applicant indicates that as a result of the regulations provided for by the Law, a mechanism for non-conviction based asset forfeiture (civil forfeiture or non-conviction based confiscation) has been introduced into the legal system of the Republic of Armenia, according to which, in case of certain signals, the

Prosecutor's Office launches an examination of the legality of assets of a person (or persons affiliated thereto), and where the value of the assets belonging to the person (or persons affiliated thereto) exceeds their lawful income, the Prosecutor's Office applies to the court for the civil forfeiture of the assets through the procedure of civil proceedings. During the procedure, if the person or persons are unable to prove that the origin of the assets is confirmed by lawful income, it is forfeited in favour of the Republic of Armenia.

29. The Applicant reports that despite the differences in the regulations concerning non-conviction based asset forfeiture in specific countries, in all cases, they are all developed to resolve the same issue in regard that conviction-based forfeiture does not always serve as an effective tool for law enforcement and judicial bodies for the sufficient forfeiture of assets obtained through crime.

30. According to the Applicant, it follows from the international practice that the mechanism for non-conviction based asset forfeiture is an exceptional measure envisaged for cases where it is objectively impossible to carry out the forfeiture of assets through criminal procedure (specifically, when conviction for the alleged criminal offence is impossible due to the immunity, death, fleeing, or illness of the accused, or establishing a causal link between the assets and the crime is very difficult in certain cases) and to the extent it is permissible from the perspective of fundamental principles prescribed by the internal legislation of states.

31. Considering the regulations provided for by the Law in light of the international practice, the Applicant notes that the vagueness of the objective of the Law is obvious.

32. In this regard, the Applicant firstly notes that the Law does not answer the question as to which assets are to be forfeited, the term "illegal assets" is defined as assets not justified by lawful income, as well as it is based on the presumption

that assets are illegal solely by virtue that there is no evidence justifying the lawful origin thereof, and the "illegal origin of assets" does not condition, in any way, the commission of an act provided for by the Criminal Code or of an administrative offence.

33. The Applicant notes that the vagueness of the objective pursued by the Law is also emphasized when comparing the provisions of the Law with the Rationale of the draft submitted to the National Assembly; it is mentioned in the Rationale that non-conviction based asset forfeiture is a crucial tool for the forfeiture of proceeds of corruption-related and other crimes (the same is also mentioned in the statement made in parallel with signing the Law by the President of the Republic), while the Law does not provide for any clear regulation which connect the "illegal assets" with the crime in terms of a causal link (direct or indirect); on the contrary, this link is entirely severed as a result of certain provisions provided for by the Law.

34. According to the Applicant, the Rationale of the draft Law does not answer the question as to what legitimate aim is pursued by the possibility to conduct non-conviction based asset forfeiture proceedings parallel to the examination of the criminal case, provided for by the Law. A question arises as to why and on what legitimate justification this process may not be conducted within the scope of criminal proceedings itself, in observance of criminal procedural guarantees. The Applicant notes that, in the international practice, the mechanism for non-conviction based asset forfeiture is not an alternative to criminal proceedings but only an exceptional measure for cases when civil forfeiture of assets obtained as a result of crime is impossible through criminal procedure conditioned by objective obstacles.

35. The Applicant also finds that, from the perspective of the legitimacy of the aim pursued by the Law, another problematic issue is that as a result of severance of

the causal link between the types of crimes provided for by the Law and the assets subject to civil forfeiture, the time period of examination of a person's assets may extend also to time periods preceding the commission of the criminal offence and to an extremely wide scope of persons.

36. The Applicant claims that despite the circumstance that the Law does not clearly define the constitutional aim it pursues, and in some cases there are contradictions between the Rationale of the draft Law and the provisions of the Law already adopted, nevertheless, taking into account the international practice, the protection of public interest provided for by part 3 of Article 60 of the Constitution may serve as a legitimate ground for the interference with the right of ownership as a result of the regulations provided for by the Law.

37. According to the Applicant, as a result of the regulations provided for by the Law, the interference with the right of ownership will have a constitutionally justified legitimate aim, that is, it will comply with the protection of public interest, provided for by part 3 of Article 60 of the Constitution, only when there is a publicly dangerous act or a reasonable suspicion of its commission, and there is a causal link between the act and the illegal assets.

38. The constitutional legitimate aim of interference with the right of ownership must be clarified in the relevant provisions of the Law. Whereas, from the perspective of the legitimacy of the aim pursued by interfering with the right of ownership, the grounds provided for by the Law for verifying the legality of assets and the extremely broad scope of the types of crimes that serve as a ground for triggering the processes provided for by the Law are problematic according to the Applicant.

39. The Applicant notes that there are five grounds provided for by part 1 of Article 5 of the Law, in the existence whereof the competent body must launch an examination of the legality of a person's assets. According to the Applicant, in

case of certain grounds, launching an examination may not pursue a legitimate aim provided for by the Constitution; in other words, these grounds do not meet the constitutional requirement of being aimed at the protection of the public interest.

40. It is noted that, pursuant to point 1 of part 1 of Article 5 of the Law, the competent body may launch an examination, when there is a criminal conviction having entered into legal force whereby the commission of one of the crimes provided for by this Law is established, and there are sufficient grounds with regard to materials available in the given criminal case to suspect that the convicted person or the person affiliated thereto possesses illegal assets which have not been forfeited upon a criminal judgment.

41. Referring to Article 103.1 of the Criminal Code and point 16 of part 1 of Article 360 of the Criminal Procedure Code, the Applicant notes that where assets obtained (or otherwise converted) as a result of a crime are revealed within the scope of an instituted criminal case, they must (and may) be forfeited within the scope of criminal procedure.

42. The Applicant finds that failure to forfeit assets within the scope of criminal proceedings may be conditioned by two such factors which directly affect the legitimacy of the aim pursued by the forfeiture of the assets. Specifically, when the body conducting the proceedings has failed to timely discover and submit information on such assets to the court, and when that information has been insufficient, in which conditions the court did not find a connection between the crime and those assets.

43. In the first case, it turns out that point 1 of part 1 of Article 5 of the Law provides an opportunity to conduct civil forfeiture of assets through proceedings providing for a much lower protection for the protection of a person's rights, where information on assets obtained as a result of a crime has existed in the

materials of the case and this information has not been submitted to the court due to the negligence by the body conducting the proceedings or other similar reason. According to the Applicant, civil forfeiture thereby acquires a punitive nature, which may not be carried out within the scope of civil proceedings, and moreover, without proving the person's guilt. Hence, the signal for instituting proceedings for civil forfeiture of illegal assets upon this ground provided for by the Law may be not the "materials of the criminal case" but only a final judicial act in which the court, considering the high standards of proof required for criminal procedure, was unable to consider it proven that the assets had originated from the crime concerned.

44. The Applicant notes that a final judicial act confirming any crime prescribed by point 4 of part 1 of Article 3 of the Law may be a signal for launching an examination upon the ground of point 1 of part 1 of Article 5 of the Law. Since not all of the types of crimes prescribed pose a great public danger and it is reasonably impossible to generate significant profit as a result of commission thereof, according to the Applicant, in case of those types of crimes, there is no legitimate aim for providing for proceedings for civil forfeiture of illegal assets.

45. According to the Applicant, another issue of utmost seriousness from the perspective of proportionality of interference with fundamental rights is that this ground provided for by law has no time limitation. It is unclear within what time limits after the entry into legal force of the judicial act of conviction the suspicion regarding the legality of the asset may be raised and the mechanisms provided for by the Law may be launched. In this regard, the Law does not provide for any time limitation for the body conducting civil forfeiture proceedings, which means that the process may be initiated many years after the conviction and even after the sentence has been served.

46. It is noted that, pursuant to point 2 of part 1 of Article 5 of the Law, the

competent body may launch an examination, when a person is involved as an accused in the initiated criminal case for the commission of any of the crimes provided for by the Law, and there are sufficient grounds to suspect that there are illegal assets. In this regard, the Applicant notes that part 3 of Article 10 of the Law, pursuant to which the completion of criminal proceedings pending concurrently with proceedings provided for by the Law, including rendering of judgment of acquittal, or dismissal of the criminal proceedings on a non-acquitting ground, or termination of the criminal prosecution, shall not be a ground for termination of proceedings for civil forfeiture of illegal assets, must also be considered as interrelated to the case of launching an examination. By combining the indicated two provisions, the Applicant concludes that the civil forfeiture process may take place even if it is proven that no crime has occurred. The Applicant notes that a situation might arise, where interference with the right of ownership would have no legitimate aim, as the criminal proceedings are dismissed on acquitting grounds or a final judicial act refutes any relation of the person to the crime from which the illegal assets were allegedly obtained. Whereas, where there is no case of a crime posing great public danger or a reasonable suspicion that such a crime has been committed, there may not be a legitimate aim for limiting the right of ownership.

47. The Applicant also notes that the Law is silent regarding the question of relationship between the parallel running proceedings provided for by the Law and the criminal proceedings. In this regard, it is also unclear by which principle it will be determined within the scope of which proceedings civil forfeiture will be carried out — criminal proceedings or those provided for by the Law, since in most cases the subject of civil forfeiture will be the same.

48. It is noted that, pursuant to point 5 of part 1 of Article 5 of the Law, the competent body may initiate civil forfeiture proceedings when, based on the data established as a result of the operational intelligence measures prescribed by the Law "On operational intelligence activity", there are sufficient grounds to suspect

that the official or the person affiliated thereto possesses illegal assets.

49. Considering the grounds for launching an examination, provided for by part 1 of Article 5 of the Law, the Applicant notes that all the grounds provided for by points 1-4 are directly related to an incident of crime and, in turn, only an incident of a crime posing great public danger may be a legitimate ground for launching an examination, since only then may it be reasonably assumed that a profit reaching a large amount has been obtained as a result thereof.

50. Unlike the grounds provided for by points 1-4 of part 1 of Article 5 of the Law, in the case of the ground provided for by point 5 of part 1 of the same Article neither the existence of a crime posing great public danger nor even a reasonable suspicion regarding the commission of such a crime is required as a pre-condition. Therefore, according to the Applicant, if there is no incident of a crime posing great public danger, the assets undergoing examination may not have any (direct or indirect) causal link with the crime. In such a case, the legitimate aim of interference with the right of ownership is missing, and hence, such a broad interference in the constitutional right of ownership provided for by the Law does not pursue any legitimate aim protected by the Constitution. And if a criminal case is instituted as a result of operational intelligence activities and there is a sufficient body of evidence to involve the person as an accused, the ground for launching an examination will coincide with the ground provided for by point 2 of part 1 of Article 5 of the Law.

51. Upon conducting analysis of the relevant provisions of the legislation on operational intelligence activities, the Applicant notes that prior to the amendments to the Law "On operational intelligence activity" (Law HO-250-N adopted on 16 April 2020), the “side” information (obtaining of which was not provided for by the decision on conducting these activities) obtained on a person while conducting operational intelligence activities might only be used if it was

related to grave or particularly grave crimes. And conditioned by the introduction of the institute of civil forfeiture of illegal assets, as a result of the mentioned amendments, the process of civil forfeiture of assets was placed on the same scale with grave or particularly grave crimes, and it has become possible to use obtained operational data for initiating civil forfeiture proceedings. As a result, a wide scope of interference with the fundamental rights of a person through operational intelligence measures, and risks deriving therefrom have arisen, that are problematic from the perspective of proportionality of the interference with the fundamental rights of a person.

52. The Applicant notes that, in order to trigger the civil forfeiture processes provided for by the Law, point 4 of part 1 of Article 3 of the Law provides for a quite broad range of crimes which open up an excessively broad scope of interference with the constitutional right of ownership, casting doubt on both the legitimacy of the aim pursued by the means chosen and the proportionality of the means to achieve the aim.

53. According to the Applicant, the list of types of crimes provided for by the Law includes such crimes that do not share anything with the types of crimes usually permissible in the international practice, in case of which the application of this emergency mechanism for civil forfeiture of assets is considered justified, such as giving bribe to electors, inappropriate use of a credit, unlawful participation in entrepreneurial activity, bribing of participants and organisers of professional sporting events and commercial competition shows.

54. The Applicant finds that the broad range of the types of crimes provided for by the Law, as a result of which it is reasonably impossible to obtain significant profit, does not derive from the legitimate aim provided for by part 3 of Article 60 of the Constitution (civil forfeiture of assets obtained through crimes posing great public danger), to the benefit of which such intense interference with a

fundamental human right might be deemed as legitimate.

55. The Applicant finds that from the perspective of the Law, the interference with the person's right of ownership may serve the protection of public interest and be balanced only when there is such a criminally punishable act posing great danger or a reasonable suspicion thereof, which is capable of generating significant profit.

56. The Applicant notes that, in order to render a final judicial act on civil forfeiture of assets, it is only necessary to prove that the person has not justified his or her assets by lawful income. The law does not provide for any regulation, but on the contrary, it severs the causal link (direct or indirect) between the crime and the alleged illegal assets. According to the Applicant, upon the above-mentioned logic, the Law itself becomes generally contradicting the Constitution, taking into account the regulations provided for by part 2 of Article 22 of the Law.

57. The Applicant finds that even if the legality of the asset belonging to a person is not justified by lawful income, this is not sufficient itself yet to conclude that the asset has been obtained as a result of the commission of a crime. This fact may only be confirmed when sufficient justifications are submitted, whereby the causal link between the crime and the assets being forfeited is proven.

58. The Applicant is convinced that — from the perspective of severing the causal link between the types of crimes provided for by the Law and the asset subject to civil forfeiture and thereby the legitimacy of the aim pursued by the Law — another problematic circumstance is that the time period for examination of a person's assets may, without any exception, also extend to the time period preceding the crime incriminated thereto. This problem is further highlighted, when such a type of crime is incriminated to the person or the person is convicted of committing such a type of crime a mandatory element of the *corpus delicti* whereof the special subject is; e.g., in the case of the crime prescribed by

Article 311 of the Criminal Code, only an official may be a subject of the crime. Therefore, where a person has been convicted or is suspected of committing a crime a mandatory element of the *corpus delicti* whereof the special subject is, then, according to the Applicant, there may not be any causal and logical link between the specified type of crime and the asset belonging to the person that the person has acquired in the period preceding the alleged crime.

59. Conditioned by the mentioned, the Applicant finds that the logic of the Law as a result of which the causal link between the commission of the acts provided for by the Law and the asset subject to civil forfeiture is not taken into account, may not be deemed as a necessary measure from the perspective of the intense interference with the person's right of ownership provided for by the Law.

60. The Applicant notes: "Despite the fact that part 2 of Article 7 of the Law deems as a standard period of time subject to examination 10 years [prior to launching an examination], the Law grants the body conducting examination an absolute discretion to extend this time period back to 21 September 1991, without prescribing any objective criterion." The Applicant finds that the enforcement of the Law with such a long retroactive time period significantly complicates the process of proof by a person of the legality of his or her assets, up to depriving him or her of that opportunity.

61. Addressing the position of the Respondent on the proportionality of the interference with the right of ownership, the Applicant notes that from the perspective of assessing the legitimacy of the interference with the fundamental right of ownership the key question is what aim is invoked as the justification for the adoption of a law that limits the right of ownership, and whether the actual regulations of the Law or their application match with the aim pointed out by the legislator. The Applicant does not deny that various mechanisms for preventing crimes and combating economic circulation of illegal assets are in place in the

international practice, nor the Applicant denies that these mechanisms may pursue legitimate aims.

62. The Applicant notes that in order for the mechanisms of the Law providing for such intense interference with the right of ownership be justified from the perspective of the legitimate aim of protecting public interest, the existence of a reasonable suspicion of a publicly dangerous act and the commission thereof, as well as a causal link between the act and the illegal assets is necessary.

63. Whereas the grounds provided for by the Law, as well as the area of crimes serving as a ground for triggering the processes provided for by the Law are too broad, falls outside the scope of prevention of crimes and combating economic circulation of illegal assets, invoked by the Respondent as a legitimate aim, and the link between the publicly dangerous act and illegal assets is severed in the mechanisms provided for. As a result, according to the Applicant, the Law fails to meet the constitutional legal requirement of proportionality of limiting the fundamental right of ownership.

64. The Applicant notes that, in order to launch an examination, the existence of a mechanism for forming suspicion is not sufficient itself to claim that the illegal origin of the asset is justified and that there is a legitimate ground for the civil forfeiture of the asset. It is noted that the European Court of Human Rights (hereinafter referred to as "the ECtHR") also attaches importance to the "existence of reasonable justifications to the effect that the assets are most likely of criminal origin" both for launching an examination of legality of a person's assets and civil forfeiture of such assets.

65. The Applicant criticises the fact that, in their view, the provision for grounds for launching an examination under the Law is presented by the Respondent as a mere formality, highlighting that it is not assumed at all at the legislative level that the start of the examination must be regulated. According to the Applicant,

the grounds for launching an examination may not be viewed, in any case, as a mere formality and not be enshrined by law.

66. The Applicant finds that the Law prescribes an excessively broad scope of affiliated persons. As a result, it is possible for an intensive interference to take place with the rights of a wide range of persons, even when they have a quite distant connection to any public official or any transaction.

67. The Applicant finds the Respondent's claim that the legislative mechanisms of Bulgaria, which, in the assessment of the ECtHR, placed a heavy burden on the Respondent not individually but in combination, do not exist in Armenia, to be groundless. In this regard, the Applicant finds that the arguments brought by the Respondent not only fail to rule out the concerns raised by the Applicant but also make it clear that the positions expressed by the ECtHR in the case of *Todorov* are more than applicable in the case of the disputed law.

68. The Applicant has informed in the additional explanations that, on the one hand, the legislator links the commencement of proceedings for civil forfeiture of assets to the suspicion of commission of the types of crimes provided for by the Law, but, on the other hand, starting from the title of the Law, uses the concept "illegal assets" in the entire Law, which is not identical with the concept of "criminal assets", and these two concepts must be clearly distinguished from one another.

69. The Applicant finds that it is obvious in case of a range of international legal instruments that it is about assets obtained as a result of crime. According to the Applicant, the use of such formulation is not accidental, because only civil forfeiture of criminal assets or, in other words, assets obtained from crime may serve as a legitimate aim for the protection of public interest. Otherwise, according to the Applicant, a situation is possible when assets not justified by lawful income might be equalled to assets obtained as a result of crime.

70. In the Applicant's position, despite the fact that the mere invoking of the international practice by the Respondent may not itself be a legal argument on the constitutionality of the Law, nevertheless, even that invoking does not justify the Respondent's conclusions.

71. Addressing the comparison of the cases of *Gogitidze* and *Todorov*, invoked by the Respondent, the Applicant notes that in the case of *Todorov* the ECtHR further specified the existence of the link between the crime and the assets being forfeited. If the ECtHR stressed in the case of *Gogitidze* "the confiscation of property linked to serious criminal offences (...)" as a "common European and [even] universal legal standards", in the case of *Todorov*, following the position of the Bulgarian Supreme Court, the ECtHR clarified the link between the crime and the confiscated assets, highlighting that "(...) in assessing the proportionality of the interference, the Court will follow the position of the Bulgarian Supreme Court which, in its interpretative decision of 2014, prompted by the divergent case-law under the 2005 Act until then, held that a causal link, direct or indirect, had been established, or had to be presumable, between the assets to be forfeited and the criminal activity."

72. The Applicant's position is that such a broad range of the types of crimes provided for by the Law, whereby it is reasonably impossible to obtain significant profit, does not derive from the legitimate aim provided for by part 3 of Article 60 of the Constitution, to the benefit of which such intense interference with a fundamental human right might be deemed as legitimate. Such a highlight by the Applicant was made firstly to make it obvious in case of which types of crimes posing great public danger the need for the institute of non-conviction based asset forfeiture has historically arisen, and secondly, in order to emphasise that only a crime as a result of which it is reasonably possible to generate significant profit may serve as a signal for such proceedings. According to the Applicant, the circumstance that the tool-kit provided for by the Law "are subject to

application in exceptional cases" is also pointed out by the Respondent itself.

2. The Respondent

73. The Respondent notes that, despite the non-conviction based asset forfeiture mechanism introduced by the Law does not require the establishment of any incident of crime and the link between the assets and that crime is presented, it may not automatically bring to the conclusion that the Law does not pursue the aim of preventing and decreasing crimes and combating the circulation of criminal assets. Therefore, the Respondent claims that the Law pursues an aim deriving from public interest, namely prevention of crimes and combating economic circulation of illegal assets, and thus the Law meets the requirement of existence of an aim conditioned by the public interest for limiting the right of ownership provided for by part 3 of Article 60 of the Constitution.

74. The Respondent notes that the issues existing in Armenia regarding the prevalence of criminal sub-culture and high level of corruption have been recorded on multiple occasions by both domestic and international various institutions, and the state has the political will to strengthen its domestic tool-kit for the fight against crime through the creation of a social environment of intolerance toward criminal sub-culture and corruption, as well as through the introduction of strong and progressive legislative mechanisms. According to the Respondent, the protection of public interests remains an overriding goal for the state from the perspective of the fight against corruption, organised crime, money laundering and financing of terrorism, the illicit traffic in arms and narcotic drugs, as well as trafficking.

75. The Respondent notes that the idea of protection of public interest by the state in all the areas of combating crime, especially in the areas mentioned above, is expressed, *inter alia*, in the norms of Article 5 of the Law. The possibility of initiating proceedings for civil forfeiture of illegal assets was linked to the prevention of the above-mentioned crimes in four out of five cases, and in one

case, it was linked to the need to fight against corruption in the public service sector.

76. According to the Respondent, the ECtHR recorded in *Gogitidze v. Georgia* that the legislation providing for non-conviction based asset forfeiture was adopted in Georgia as a part of a legislative package aimed at strengthening the fight against corruption in the public service sector and has both restorative and preventive aims.

77. Addressing the issue of compliance of the regulations of the Law with the principle of proportionality, the Respondent notes that the Law provides for a reasonable mechanism for forming suspicion that the assets have an illegal origin, *i.e.* the establishment of a significant inconsistence between a person's assets and income in the case when there is a criminal case related to one of the specified types of crimes provided for by the Law with regard to that person or when such a person is or was a person holding a public office.

78. In the Respondent's observation, within the meaning of the Law, persons are vested with sufficient procedural guarantees for presenting their position through general civil procedure, and this must become a subject of a properly consideration by the court examining the case.

79. The Respondent also notes that in a judicial process a person may be represented by a lawyer of his or her choice, and in case of impossibility to involve a lawyer, the right of a person to receive free legal aid at the state's expense is guaranteed.

80. Summing up, the Respondent arrives to the conclusion that, in light of the criteria presented by the European Court of Human Rights, the Law both provides with the existence of the requirement for establishing circumstances necessary for forming reasonable suspicion regarding the illegal origin of assets and ensures sufficient opportunities for individuals to conduct their defence in

observance of all the guarantees of civil procedure.

81. The Respondent finds that the Law complies with the principle of proportionality enshrined by the Constitution, as it provides for pre-conditions which must be met by the competent body to justify the high likelihood that the asset has an illegal origin and only in such a case the presumption provided for by the Law will have effect, which may be refuted in observance of all guarantees of civil procedure by the individual.

82. The Respondent notes that the Law has been adopted as a tool-kit to combat non-conviction based criminal asset circulation. The Respondent finds that the criticisms available in the Application, conditioned by the circumstance that the regime provided for by the Law operates not only in case of impossibility of examination of a criminal case, thereby contradicting the international practice, are inappropriate. The Respondent finds that the tools for combating the criminal circulation of assets may vary in terms of content, and only the fact that the tool mentioned by the Applicant exists as a separate classical model for non-conviction based asset forfeiture, does not mean that its existence excludes the existence of other, internationally acceptable tools and the legitimacy of the application thereof.

83. Summing up the international practice, the Respondent invokes, in parallel with the classical model for non-conviction based asset forfeiture, other accepted models as well — "Extended civil forfeiture," "*In rem* proceedings", and "Unjustified wealth".

84. Particularly, the "Unjustified wealth" model is described as one where actual assets obtained by a person are compared to his or her income with a view to revealing discrepancies, whereas establishing a direct or indirect link with a prior crime is not necessary.

85. The Respondent notes that the mechanism introduced by the Law is classified in the documents of both the United Nations and the European Union as a model

providing for non-conviction based forfeiture.

86. Addressing criminal procedural guarantees, the Respondent notes that the importance of observing the criminal procedural guarantees is relevant to cases when a person's guilt in the commission of the criminal offence is being considered, which may result in the application of punitive measures. Mechanisms for non-conviction based asset forfeiture do not contain such features and, according to the Respondent, do not presume application of the same guarantees.

87. Addressing the Applicant's concerns that proceedings for civil forfeiture of illegal assets do not become an alternative to criminal proceedings, the Respondent notes that the institute under discussion may not, in any case, be assessed as an alternative to the implementation of the state's duty to disclose crimes and hold persons having committed crimes liable. The Respondent notes that criminal prosecution bodies, regardless of the existence and application of the institute for non-conviction based asset forfeiture in the country, are always obliged to exercise their functions of disclosing and preventing crimes in good faith. On the other hand, the Respondent finds that the tool-kit for non-conviction based asset forfeiture is targeted at achieving the overriding goal of combating the circulation of criminal assets by removing the illegal assets from economic circulation and reducing the attractiveness of financial crimes rather than by holding persons liable. Therefore, the Respondent finds that various institutes serving to achieve the same overriding goal through completely different tool-kits may exist in states, and the mere fact of their concurrent existence may not attest to the circumstance that any one of them is an alternative to the other.

88. Taking into account the above-stated, the Respondent concludes that the grounds for launching an examination, provided for by the Law, are not problematic in terms of considering the proportionality of the measure or the

legitimate aim thereof.

B. The law applicable to the resolution of the dispute

89. Article 1 of the Constitution:

"The Republic of Armenia is a (…) state governed by the rule of law".

90. Article 3 of the Constitution: "The Human Being, His or Her Dignity, Fundamental Rights and Freedoms":

"(…)

2. The respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duty of the public power.

3. The public power shall be limited by the fundamental rights and freedoms of the human being and the citizen as a directly applicable law".

91. Article 60 of the Constitution: "Right of Ownership":

"1. Everyone shall have the right to possess, use and dispose of legally acquired property at his or her discretion.

(…)

3. The right of ownership may be limited only by law, for the purpose of protecting public interests or the fundamental rights and freedoms of others.

4. No one may be deprived of ownership except through judicial procedure, in the cases prescribed by law.

(…)".

92. Article 78 of the Constitution: "Principle of Proportionality":

"The means chosen for limiting fundamental rights and freedoms must be

suitable and necessary for the achievement of the objective prescribed by the Constitution.

The means chosen for limitation must be commensurate to the significance of the fundamental right or freedom being restricted."

93. Article 79 of the Constitution: “Principle of Certainty”:

When limiting fundamental rights and freedoms, laws must define the grounds and extent of limitations, be sufficiently certain to enable the holders and addressees of these rights and freedoms to display appropriate conduct”.

C. Position of the Constitutional Court

94. The Constitutional Court considers it necessary to commence its analysis of compliance of the provisions of the Law with the fundamental right of ownership provided for by Article 60 of the Constitution, reaffirming the following position it previously expressed in Decision DCC-1699 of 7 November 2023 relevant to this dispute:

"5.2. The Constitutional Court reaffirms its position previously expressed regarding the right of ownership to the effect that the right of ownership, as a characteristic of guaranteeing the rights and freedoms of a person in a democratic, social state governed by the rule of law, and at the same time as a mechanism for regulating private and public legal relations, is of essential constitutional legal significance (point 4.1 of Decision of the Constitutional Court DCC-1432 of 30 October 2018).

The Constitutional Court records that the emphasized importance of the protection of the right of ownership in the legal system of the Republic of Armenia is first of all recorded in Article 10 of the Chapter of the Constitution entitled “Fundamentals of the Constitutional Order”, according to which, all forms of ownership shall be recognised and equally protected in the Republic of

Armenia.

The guarantees for protection of the right of ownership have also been enshrined in Article 60 of the Constitution in order to ensure the protection of the fundamental right of ownership.

In addition to the above-mentioned, the Constitutional Court considers it important to record that the fundamental right of ownership, although subject to certain contextual amendments, has found its place — as a legal enshrining of a fundamental right from 1995 to the moment — with stable consistency in the Constitution and in all amendments made thereto.

In addition, the Constitutional Court also records that the duty of the public power to protect the right of ownership is also an important component of the legal system of the Republic of Armenia under the international treaties ratified by the Republic of Armenia, in particular, but not limited to the Universal Declaration of Human Rights (Article 17, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948) and Article 1 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950.

Based on the fundamental constitutional value that the protection of the right of ownership is a component of the constitutional order of the Republic of Armenia, Article 60 of the Constitution provides for the purposes of, legal ground for and conditions of interferences in the right of ownership: (1) general limitations of the right of ownership; (2) deprivation of ownership; and (3) alienation of property with a view to ensuring overriding public interests (for the needs of the society and the state).

(...)

Recording the importance of protecting the right of ownership for the

constitutional order of the Republic of Armenia, the Constitutional Court records that the right of ownership is not absolute and is subject to constitutionally proportional limitations, *i.e.* any interference in the form of limiting the right of ownership must meet the following general conditions provided for by part 3 of Article 60 of the Constitution:

- the right of ownership may be limited only by a law that complies with the requirements of Article 79 of the Constitution;
- the right of ownership may be limited only for the purpose of protecting public interests or the fundamental rights or freedoms of others;
- the limitation of the right of ownership must comply with the constitutional principle of proportionality provided for by Article 78 of the Constitution;
- the limitation of the right of ownership may not exceed the limitations prescribed by international treaties ratified by the Republic of Armenia.

5.3. The norm provided for by part 3 of Article 60 of the Constitution operates as a general rule (*lex generalis*) for the interference by the public power with the right of ownership.

At the same time, in order to regulate the legal relations for the two special forms of more severe interference with the right of ownership — deprivation of ownership and alienation of property with a view to ensuring overriding public interests (for the needs of the society and the state), special norms have been prescribed by part 4 of Article 60 and part 5 of Article 60 of the Constitution, respectively, and these provisions operate as special norms *(lex specialis)* with respect to part 3 of Article 60 of the Constitution, which, conditioned by the

degree of severity of the interference and the nature of the legal relations envisaged thereby, have provided for other special and mandatory conditions for the constitutional proportionality of interference with the right of ownership.

In particular, along with the general conditions provided for by part 3 of Article 60 of the Constitution, a necessary requirement for the constitutional proportionality of interference with the right of ownership in the form of deprivation of ownership is ensuring the "judicial procedure", as well as that the case of deprivation of ownership must be "prescribed by law",[5] provided for by part 4 of Article 60 of the Constitution".

95. As a result of enforcing the procedures and bringing the mechanisms provided for by the contested Law into being, where the relevant conditions are sufficient, property is forfeited from a person (part 1 of Article 24 of the Law), which leads to deprivation of ownership within the meaning of part 4 of Article 60 of the Constitution. The same provision of the Constitution provided for special requirements for such interference, in particular, a person may be deprived of ownership (**1**) through judicial procedure; (**2**) in the case prescribed by law.

96. Pursuant to part 1 of Article 24 of the Law, the competence of forfeiture of illegal assets — termination of a person's right of ownership of such property, is vested exclusively in the court, which comes to the relevant judgment through the procedures provided for by the Law and the Civil Code, the Civil Procedure Code, and other relevant laws (Article 2 of the Law). Accordingly, the special requirement of *"through judicial procedure"*, provided for by part 4 of Article 60 of the Constitution, is satisfied.

97. The special requirement *"in the cases prescribed by law,"* provided for by part 4 of Article 60 of the Constitution, is also satisfied by the Law, as it provides for the conditions for applying civil forfeiture of the property in question, which are

[5] Decision of the Constitutional Court DCC-1699 of 7 November 2023, points 5.2-5.3.

discussed in more detail in the subsequent parts of this Decision.

98. As the Constitutional Court has already mentioned upon Decision DCC-1699 cited above, part 4 of Article 60 of the Constitution prescribes special conditions that complement the general conditions for the constitutionally proportional interference with the right of ownership provided for by part 3 of Article 60 of the Constitution. That is, the Constitutional Court must ascertain next whether the conditions provided for by part 3 of Article 60 of the Constitution are met as well, in particular, whether the interference with the right of ownership pursues a constitutionally proportional aim, whether it is based on *"law",* and whether the interference with the right of ownership complies with the principle of proportionality provided for by Article 78 of the Constitution.

1. *Does the interference provided for by the Law pursue constitutionally proportional aims?*

99. According to the Respondent, the Law was adopted as a component of systemic reforms aimed at preventing corruption and reducing crime. Accordingly, the Law is aimed at the civil forfeiture of property the acquisition of which is not justified by lawful income, in cases concerning persons who are officials within the meaning of the Law or in respect of whom criminal proceedings with regard to the offences provided for by the Law exist.

100. As a result of a combined examination of points 4 and 11 of Article 3 and Articles 5 and 24 of the Law, the Constitutional Court records that the aims indicated by the Respondent are reflected in the mechanisms provided for by the Law.

101. In this regard, the Constitutional Court records that the aims pursued by the legislator through interference with the right of ownership by civil forfeiture of property on the basis of the Law are: (1) fight against corruption; and (2) combating crime. In these circumstances, the Constitutional Court commences its analysis of the compliance of the Law with the right of ownership by

considering these two objectives — the fight against corruption and combating crime.

102. Although the mentioned two aims are independent and each one is weighty from the perspective of the interests pursued thereby, they are not mutually exclusive by applying the mechanisms and procedures provided for by the Law and may act by both coinciding with or complementing each other (for example, in cases regarding persons related to corruption-related crimes, who are officials within the meaning of the Law), as well as separately.

103. However, taking into account the substantive difference of these two objectives and the peculiarities of the proportionality of the measures chosen for their implementation, the Constitutional Court will address them separately.

2. Objective 1. Fight against corruption

104. The Constitutional Court fully admits the seriousness of the problems and challenges created as a result of corruption for the Republic of Armenia and each of its citizens, as well as that corruption is capable of degrading democratic values and institutes, also equally eroding and discrediting the institutes established to protect the rule of law and fundamental human rights and freedoms. The impact of corruption is capable of paralysing the efficiency of the entire chain — from the highest tiers of power that develop economic development, defence, national security, foreign, education, healthcare, justice, and law enforcement policies to the lower tiers of the system of the public authorities that implement them, by consequently threatening the protection of fundamental human rights and freedoms, their security against internal and external threats, economic and social well-being, the environment of equality before the law and non-discrimination, as well as revealing other negative factors.

105. In this regard, the Constitutional Court also finds it necessary to mention the

United Nations Convention against Corruption[6], the preamble of which notes:

"The States Parties to this Convention,

Concerned about the seriousness of problems and threats posed by corruption to the stability and security of societies, undermining the institutions and values of democracy, ethical values and justice and jeopardizing sustainable development and the rule of law,

Concerned also about the links between corruption and other forms of crime, in particular organized crime and economic crime, including money-laundering,

Concerned further about cases of corruption that involve vast quantities of assets, which may constitute a substantial proportion of the resources of States, and that threaten the political stability and sustainable development of those States,

Convinced that corruption is no longer a local matter but a transnational phenomenon that affects all societies and economies, making international cooperation to prevent and control it essential,

Convinced also that a comprehensive and multidisciplinary approach is required to prevent and combat corruption effectively,

Convinced further that the availability of technical assistance can play an important role in enhancing the ability of States, including by strengthening capacity and by institution-building, to prevent and combat corruption effectively, Convinced that the illicit acquisition of personal wealth can be particularly damaging to democratic institutions, national economies and the rule of law,

Determined to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets and to strengthen international

[6] Convention against Corruption, adopted on 31 October 2003 in New York, for the Republic of Armenia entered into force on 7 April 2007.

cooperation in asset recovery, (...)

Have agreed as follows".

106. Article 1 of the same Convention titled “Statement of purpose” states:

"The purposes of this Convention are:

(a) To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;

(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery;

(c) To promote integrity, accountability and proper management of public affairs and public property”.

107. In the environment of the limited economic capacities, external political and security fraught with serious challenges of the Republic of Armenia, not only the existence of corruption in the public authority, but also the failure to take continuous effective and intensive measures against it, is full of an existential threat to the existence in general, and even more so, the development of the Republic of Armenia as a state complying with the aims and qualities prescribed by the Constitution. In other words, having corruption-free public authorities and a public service system is an unquestionable pre-condition for ensuring constitutional democracy and the supremacy of the Constitution in Armenia.

108. In this regard, the Constitutional Court also notes that the fight against corruption in the system of public authority must not only be implemented effectively but also be convincingly visible to the entire public, leading to the overcoming of corruption in the society collectively and its individual members, as well as strengthening the trust in the immediate countering of future corrupt practices through the existence of clear legal instruments. Perceptions among

the society and each of its members that public authorities lack the will to fight corruption, and that such fight is ineffective are fraught with enrooting lack of public trust in this matter, which itself — by the dictation of a mindset in the public consciousness that the fight against corruption is ineffective, and with a feeling of being "doomed" to co-exist with corruption — is one of the main causes of tolerance toward it in the public consciousness.

109. The Constitutional Court also considers it important to point out the existence of an environment of growing international solidarity around the need for the fight against corruption in the system of public authority.

110. Besides the international legal instruments adopted within the framework of the United Nations, the system of the Council of Europe also attaches importance to the resolution of the same issue both under international treaties concluded within its framework and in documents adopted by the professional bodies of the Council of Europe. In particular, the European Commission for Democracy through Law (hereinafter also referred to as "the Venice Commission") has noted within the meaning of compliance of the mechanism of non-conviction based asset forfeiture with the aim of the fight against corruption that "[C]orruption undermines the rule of law, weakens public trust in political institutions and has adverse effects on the exercise of human rights and fundamental freedoms. (...)[7]". The Venice Commission has reaffirmed the same position in its *Amicus Curiae*[8]. In another opinion, the introduction of the institute of non-conviction based asset forfeiture has been considered an

[7] Venice Commission, CDL-AD(2022)029, Republic of Moldova - Venice Commission and OSCE/ODIHR Joint Amicus Curiae Brief Relating to the Offence of Illicit Enrichment, adopted at 132nd Plenary Session of the Venice Commission (Venice, 21-22 October 2022) para. 9.

[8] Venice Commission Amicus Curiae Brief CDL-AD(2022)048 (No 1108/2022) for the Constitutional Court of Armenia on Certain Questions Relating to the Law on the Forfeiture of Assets of Illicit Origin, 19 December 2022, p. 5, para. 13.

important means of the fight against organised crime and corruption[9].

111. The Constitutional Court, taking into account the highly covert nature of the vast majority of practices that constitute corruption as a whole, also acknowledges that anti-corruption policies continuously face difficulties in identifying corrupt practices and eliminating their consequences[10]. In this regard, the Constitutional Court agrees with the position expressed in the Rationale for the adoption of the Law that the anti-corruption fight carried out through the criminal justice system may not be fully effective, unless it is also coupled with such proceedings and mechanisms which, irrespective of the process of establishing guilt through criminal charges, ensure the possibility of preventing corruption and recovering damages[11].

112. One of the objectives pursued by the contested Law is also to ensure — in cases where the problem of recovery of illegal assets via their civil forfeiture is unsolvable for the criminal justice system — its implementation via the civil procedure tool-kit. In this sense, also taking into account that although the actual property damage caused to the society as a result of corrupt practices is incomparably larger in its economic value and other consequential impacts than the property benefit obtained by persons involved therein, it should be noted that a highly effective means of the fight against such practices is verifying the presence of illegal assets held by a representative of public authority and eliminating the attractiveness of public corruption through its civil forfeiture. Moreover, an effective means of recovering the damage caused by public

[9] Venice Commission, CDL-AD(2022)014, Opinion of the Venice Commission on the Draft Law No 08/L-121 "On the State Bureau for Verification and Confiscation of Unjustified Assets" of the Republic of Kosovo, 22 June 2022, para. 15.

[10] Amicus Curiae Brief, para. 12; see also, Venice Commission, CDL-AD(2022)029, Republic of Moldova - Venice Commission and OSCE/ODIHR Joint Amicus Curiae Brief Relating to the Offence of Illicit Enrichment, adopted at 132nd Plenary Session of the Venice Commission (Venice, 21-22 October 2022,) para. 9.

[11] In this regard see Substantiations on adoption of laws on making amendments and supplements to the Law "On civil forfeiture of illegal assets" and to the related laws, points 6-10, 15, 19-21.

corruption is the elimination of its property consequences, including, first and foremost, the civil forfeiture of illegal assets belonging to an (former) official.

113. In the view of the Constitutional Court, taking the measures for civil forfeiture of illegal assets, provided for by the Law, belonging to officials (both those holding office and those who have retired) is a highly impactful preventive message to persons holding relevant public service positions to the effect that their failure to comply with property integrity requirements will inevitably lead to liability provided for by law. Conversely, abstaining from drastically reducing the attractiveness of state corruption through the civil forfeiture of previously acquired illegal assets will, on the one hand, leave a deep perception of injustice and inequality among the public — conditioned by the circumstance of continuing to enjoy the goods of a past corrupt environment — and, on the other hand, will have a dangerous impact on the future sobering influence directed at the public service by the Law, due to forming hope that property integrity requirements will not be pursued in the future in the conditions of existence thereof and due to a documented background of irresponsibility.

114. The Constitutional Court also observes that an important condition for the trust in public authority is maintaining the discipline of property integrity by persons involved therein, and, in particular, that an official does not experience — during or after his or her term of office — a drastic increase of assets in a significant volume or in such a way that he or she is unable to justify the legality of its acquisition. On the contrary, the absence of such justifications may serve as a reasonable explanation for the formation of a conviction within the society of the direct opposite — regarding a corrupt environment and its patronage.

115. In this regard, the Constitutional Court records that the first programmatic step toward the fight against corruption in public authority in the Republic of Armenia was taken back in the first year following the declaration of independence of the

Republic of Armenia, by Decree NH-151 of 1 September 1992 "On strengthening the fight against abuse of official position and corruption" signed by the President of the Republic of Armenia [12]. In particular, the mentioned Decree of the President of the Republic stated:

"In the current stage of radical systemic transformations in the Republic, when the legislation is still imperfect and new democratic institutions are in the process of formation, and when the entire mindset and psychology of the society are undergoing serious transformations, abuses of official position and corruption become particularly dangerous for the state and the people.

These phenomena hinder the steps aimed at establishing the principles of lawfulness, hamper the progress of economic reforms, and violate the lawful rights and interests of citizens, often creating a negative public opinion regarding the operation of the state apparatus.

In the created conditions, strengthening the fight against the abuses of official position and corruption is an objective necessity. The measures aimed at the implementation of this task, by limiting the scope of subjective motives of *mala fide* officials, are additional guarantees for the protection of the constitutional rights and freedoms of citizens and their lawful interests.

For the purpose of preventing abuses of official position and corruption, strengthening the fight against them, and prior to the adoption of the Law "On public service in the Republic of Armenia", I hereby decide:

(...)

2. Upon joining the public service, citizens shall be obliged to submit a declaration on all types of income, movable and immovable property, securities, bank deposits they have, as well as other obligations of financial

[12] Decree of the President of the Republic of Armenia NH-151 of 1 September 1992 "On Strengthening Fight Against Abuse of Official Position and Corruption", repealed on 12 April 2002.

nature.

Failure to submit such information or the incomplete or distorted submission thereof shall be a ground for refusing the appointment of a person to that position or for the dismissal thereof.

3. To prohibit state servants to:

   (a) engage in entrepreneurial activity;

   (b) to provide any assistance — using the official position — to citizens and legal persons in the field of entrepreneurial activity and receive remuneration or acquire rights or privileges in exchange;

   (c) concurrently engage in activities not envisaged by the official status (except for scientific, medical, pedagogical, and creative activities) and receive additional remuneration, acquire rights or privileges not prescribed by law;

   (d) engage in entrepreneurial activity through intermediaries;

   (e) use information having become known to them by virtue of their service for personal gain;

   (...)

   (g) use service motor vehicles and other technical means for personal use;

   (...).

4. To prohibit state servants and their family members in the Republic of Armenia to take private foreign trips at the expense of an inviting party having had relation by virtue of their official duties, except for cases provided for by international arrangements and trips taken upon invitations of close relatives.

5. State servants shall hand over to the state, as prescribed by the Government of the Republic of Armenia, valuable gifts received thereby *ex officio* from state and non-state enterprises, institutions and organisations, as well as from foreign states, organisations and firms.

6. State servants having committed a violation of the requirements provided for by points 3, 4 and 5 of this Decree shall be subject to dismissal from office, and other liability provided for by the legislation of the Republic of Armenia.

(...)".

116. Prior to the repeal of the mentioned Decree and thereafter the Constitution had entered into force, a number of laws and secondary legislative acts had been adopted, which prescribed regulations regarding non-use by persons involved in public authorities of their official powers for purposes other than the legitimate ones, prevention of conflict of interests, property integrity, obtaining and using income only from permitted sources, and declaration of property and income[13]. That is, both the scope of the limitations due to the office they held and the liability for violating those limitations were defined more than clearly for all high-ranking officials in the system of public authority.

117. In any case, within the meaning of the Law, the observance by a public official of the requirements of property integrity throughout the entire exercise of his or her official powers and the obligation to refrain from pursuing or obtaining material benefit through corrupt practices are themselves such inseparable components of the responsibility and duties inherent to a public service position

[13] See, namely, the 1995 Constitution, which established incompatibility requirements for members of the National Assembly, members of the Government, and judges; Law of the Republic of Armenia N-0367-I of 1 August 1991 "On the President of the Republic of Armenia"; the Law of the Republic of Armenia HO-75 of 30 June 1996 "On Local Self-Governance"; the Law of the Republic of Armenia HO-212 of 27 July 2001 "On Declaration of Property and Income of Senior Officials of the State Authorities of the Republic of Armenia"; the Law of the Republic of Armenia HO-272 of 4 December 2001 "On Civil Service"; the Law of the Republic of Armenia HO-172-N of 26 May 2011 "On Public Service", etc.

that even the absence of an explicit prohibition provided by a law or a secondary regulatory legal act, on the unlawful acquisition of assets may not be considered or interpreted, in any case, as a justification for the protection of assets acquired by an official contrary to the limitations of the service. Regardless of everything, the Constitutional Court emphasises that the legal system of the Republic of Armenia has never tolerated illegal acquisition of assets by an official nor considered it permissible; the acquisition of such assets may not be included in the scope of the constitutional term *"ownership"* within the meaning of part 1 of Article 60 of the Constitution.

118. Thus, the Constitutional Court concludes that, for the purpose of the fight against corruption in the system of public authority, the prevention of corruption through the civil forfeiture of illegal assets acquired by officials and the recovery of the damage caused thereby within the meaning of the Law shall be classified under *"public interest*" within the meaning of part 3 of Article 60 of the Constitution[14].

3. Objective 2. Fight against crime

119. The position submitted by the Respondent to the effect that the adoption of the Law pursues the aim of preventing crimes by reducing the attractiveness of financially motivated crimes is acceptable for the Constitutional Court. The Constitutional Court generally considers acceptable also the Respondent's claim that various legislative mechanisms may pursue the aim of preventing crimes, including mechanisms that do not presume a person's conviction for a criminally prosecuted act in each case.

120. It is particularly stated in the Rationale for the adoption of the Law that:

"1. The main motive for certain particularly dangerous crimes, including corruption crimes, is financial means generated from them. In such cases,

[14] See also Amicus Curiae Brief, para. 21.

criminals often also try to conceal the real sources of those financial means by "legalising" them, and the generated means are already used for strengthening the political influence or generating new income.

2. Conducting financial examinations and freezing and civil forfeiture of proceeds of crime are effective means for the fight against these crimes, especially money laundering. The effectiveness of civil forfeiture of illegal assets is conditioned by the fact that, by excluding the possibility of unjust enrichment of the given persons, this tool neutralises the main motive for the commission of crime.

3. Application of civil forfeiture of proceeds of crime reiterates a most important principle — no one should generate income criminally. This tool is aimed, on the one hand, at the further prevention of crimes and, on the other hand, at the compensation for damages caused by the unlawful act and restoration of violated rights of other persons.

4. Non-conviction based asset forfeiture is a most important tool for the civil forfeiture of income generated as a result of corruption crimes and crimes of other nature. This legal mechanism allows imposing lien on assets obtained illegally and forfeiting them without rendering a judgment of conviction against a person. This is a particularly important tool for cases when it is impossible to conduct criminal prosecution for objective reasons[15]".

121. Besides the explanations on the pursuit of public interests by the Law submitted in the rationale set forth by the Government in the process of adoption of the Law, the Republic of Armenia has also undertaken, under a number of international treaties and under the general objective of prevention of crime, an

[15] Substantiations on adoption of (draft) laws on making amendments and supplements to the Law "On civil forfeiture of illegal assets" and to the related laws, pages 1-2.

effective procedure for the non-conviction based forfeiture of proceeds of crime.

122. In particular, the Convention against Corruption adopted by the United Nations in 2003 (hereinafter also referred to as "the UN Convention against Corruption), which was ratified by the Republic of Armenia on 8 March 2007 without any reservations, was "*adopted (...) to promote and strengthen measures to prevent and combat corruption more efficiently and effectively; to promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption; to promote integrity, accountability and proper management of public affairs and public property*"[16].

Points 1-2 and 7-8 of the Preamble of the UN Convention against Corruption, cited in point 105 of this Decision, are also directly relevant to the public interest pursued by the Law for interfering with the right of ownership with a view to combating crime[17].

123. Paragraph "c" of point 1 of Article 54 of the same Convention prescribes:

"[E]ach State Party, in order to provide mutual legal assistance pursuant to article 55 of this Convention with respect to property acquired through or involved in the commission of an offence established in accordance with this Convention, shall, in accordance with its domestic law (...):

(c) Consider taking such measures as may be necessary to allow confiscation of such property without a criminal conviction in cases in which the offender cannot be prosecuted by reason of death, flight or absence or in other appropriate cases".

124. The Constitutional Court verified the compliance of the obligations enshrined in the UN Convention against Corruption with the Constitution by Decision DCC-

[16] See Decision DCC-641 of 30 June 2006, point 1.

[17] Convention against Corruption, adopted on 31 October 2003 in New York, for the Republic of Armenia entered into force on 7 April 2007.

641 of 30 June 2006, declaring them fully compliant with the Constitution. At the time this Decision was rendered by the Constitutional Court, the UN Convention against Corruption had been ratified by 191 States[18]; therefore, the obligations undertaken under the UN Convention against Corruption strain after international obligations of universal nature.

125. In addition, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted by the Council of Europe in 2005, prescribes that "[E]ach Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds and laundered property" (point 1 of Article 3). The constitutionality of the obligations undertaken by the Republic of Armenia under this international treaty was verified by the Constitutional Court in Decision DCC-730[19], and the treaty entered into force for the Republic of Armenia on 1 October 2008.

126. Similarly, as noted by the Venice Commission in its *Amicus Curiae*, the aim of non-conviction based forfeiture of funds — namely reducing the economic attractiveness of criminal activity by forfeiting illegally acquired assets — has been directly pointed out in a number of other guiding international documents in the fields of anti-corruption and anti-crime practice[20]. In particular, the Recommendations of the Financial Action Task Force (FATF) entitled "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation" include, *inter alia*, Recommendation 4, which defines that countries should consider adopting measures that allow confiscation without requiring a criminal conviction (non-conviction based confiscation) to the extent that such a requirement is consistent with the principles of their domestic law,

[18] Information on the States having signed and ratified the United Nations Convention against Corruption is available here.
[19] Decision of the Constitutional Court DCC-730 of 22 January 2008.
[20] See also Amicus Curiae Brief, paragraphs 14-17.

and Recommendation 38, which calls on states to have the authority to be able to respond to requests made on the basis of non-conviction based confiscation proceedings and related provisional measures, unless this is inconsistent with fundamental principles of their domestic law[21].

127. In the practice of the ECtHR, the forfeiture of criminally acquired assets has been considered under the public interest, as a preventive warning to those with criminal intent, as well as a guarantee that no one will enjoy the fruits of criminal activity[22]. The European Commission for Democracy through Law expressed a position of similar content[23].

128. Therefore, the Constitutional Court concludes that the civil forfeiture of illegal assets pursued by the Law falls under the concept of *"public interest"* within the meaning of part 3 of Article 60 of the Constitution[24].

4. Certainty of the Law

129. The Constitutional Court will address the questions posed by the Applicant regarding the certainty of the provisions serving as a ground for the limitations and interferences provided for by the Law below, according to the order of their submission by the Applicant, in Section 7 of this Decision.

5. Proportionality within the scope of Objective 1

130. Before analysing the elements and components of proportionality, the Constitutional Court considers it necessary to address an important feature of the right of ownership provided for by the Constitution, which has its impact for

[21] See FATF Recommendations "International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation" February 2012 (with Armenian translation), Recommendations 4, 38.

[22] Yordanov and others v. Bulgaria, nos. 265/17, 26473/18, § 110, 26 September 2023, Todorov and others v. Bulgaria, nos. 50705/11 and six others, § 186, 13 July 2021.

[23] Venice Commission, CDL-AD(2010)010, Interim Opinion on the Draft Act of the Republic of Bulgaria "On Forfeiture in favour of the State of Illegally acquired Assets", paragraphs 16, 22; Venice Commission, CDL-AD(2022)014, Kosovo Opinion on the Draft Law No 08/L-121 "On the State Bureau for Verification and Confiscation of Unjustified Assets", 20 June 2022, para. 18.

[24] See also Amicus Curiae Brief, para. 21.

resolving this constitutional dispute, with respect to various questions raised by the Applicant regarding the prohibition of retroactive effect of norms deteriorating the status of a person and regarding the right to fair trial.

131. Pursuant to part 1 of Article 60 of the Constitution, "[E)veryone shall have the right to possess, use and dispose of legally acquired property at his or her discretion". This constitutional provision was provided for by the Constitution with the amendments of 2015 and was absent in the 1995 Constitution, in Article 28 on the fundamental individual right of ownership, which prescribed that "[E)veryone is entitled to private property and inheritance. (...)" and in Article 31 of the Constitution with the amendments of 2005, in Article 31 on the protection of the fundamental individual fundamental right of ownership, which prescribed that "[E]veryone shall have the right to possess, use, dispose of, and bequeath his or her property at his or her discretion. (...)".

132. The main legal acts for regulating legal relations pertaining to the right of ownership from the maximum possible starting point of the chronological scope of the effect of the Law contested within the framework of this constitutional dispute until the entry into force of the Constitution, *i.e.* from 21 September 1991 to 13 July 1995, was Law N-0178-1 "On ownership in the Republic of Armenia" adopted by the Supreme Council of the Republic of Armenia on 31 October 1990, pursuant to Article 8 of which "[T]he property of citizens is created and multiplied at the expense of the labour income they receive from participation in public production, entrepreneurial activity, conducting own or collective farming, and from income received from funds invested in credit institutions, stocks, and other securities, as well as acquiring assets by inheritance and other grounds permitted by law."

133. The Constitutional Court records that although the provisions of the Constitution adopted in 1995 or the Constitution with the amendments of 2005 on the fundamental right of ownership did not contain a direct indication on the quality

of legality of acquisition of property subject to protection under the Constitution, no acceptable method of interpreting the relevant provisions of the Constitution allows for any other conclusion, except that exclusively ownership acquired on a legal ground was under legal protection since the moment of the declaration of independence, and under the protection by the Constitution after 13 July 1995 in the Republic of Armenia.

134. Thus, the right of ownership acquired illegally was never recognized by the Constitution before the 2015 amendments as well, and therefore, it lacked the protection by the Constitution. In such conditions, the Constitutional Court excludes the extension of constitutional protection to ownership acquired on a non-legal ground. In essence, from the moment of declaring the independence of the Republic of Armenia, the property acquired on a non-legal ground has never been under legal protection.

135. The Constitutional Court has noted particularly the following with regard to the constitutional legal content of the principle of proportionality provided for by Article 78 of the Constitution upon its Decision DCC-1546 of 18 June 2020:

"(...) conditioned by the principle of proportionality, the [remaining] requirements on the limitations of a fundamental right by law are the following:

(...)

(2) for measures chosen for the limitation:

(a) **suitability** to achieve the aim prescribed by the Constitution; (b) **necessity** to achieve the aim prescribed by the Constitution; (c) **proportionality** to the significance of the fundamental right and freedom being limited.

(...)

Having ascertained of the existence of the constitutional aim established thereby,

the legislator should then choose the measures to achieve it. Therefore, *the constitutionality of the chosen measures is pre-determined firstly by the aim pursued by them*.

As for the choice of measures by the legislator to achieve the constitutionally justified aim, first of all, they must be suitable for achieving the mentioned constitutional aim. That is, such legislative measures are suitable *by which the legislator is able to achieve the aim pursued*; in other words, when the probability is ensured that the result that the legislator strives for, will emerge.

The next element of the principle of proportionality is *the necessity* of the measure chosen by the legislator, that is, that this remedy must presume the mildest interference with any fundamental right or freedom as compared to other measures. From among all the measures suitable for achieving the aim prescribed by the Constitution, the legislative measure should be chosen which limits any fundamental right or freedom with the same probability of achieving the aim, that is, with the same effectiveness but more mildly.

The fourth and last element of the principle of proportionality requires the legislator to compare the *suitable and necessary measure* chosen thereby with the *constitutional significance* of the limited fundamental right or freedom to establish whether the State actually achieves the pursued aim as a result of those measures, and the limited fundamental right or freedom *does not uphold its supremacy over the public* interests by its significance, and for the purpose of the upholding whereof the legislator resorts to the limitation of the fundamental right or freedom. Ultimately, this means that not to interfere with a fundamental right or freedom or guarantee it, depending on their essence, is a rule and its limitation is an exception which must be justified in each case of limitation. With that, the more intensive the limitation is, the greater the burden of justifying the limitation becomes.

(...)

As to the choice of the measures, the measure chosen by the legislator must firstly be suitable to achieve that aim.

Given the circumstance that it is about the suitability of a measure chosen by the law limiting a fundamental right, it depends, first and foremost, on other requirements of the Constitution relating to the limitation of fundamental rights and freedoms, especially on the circumstance of compliance with the constitutional principle of certainty[25]**".**

136. Before addressing the issue of proportionality of measures chosen for fighting against corruption, the Constitutional Court *firstly* wishes to clarify that according to point 11 of part 1 of Article 3 of the Law, the provisions provided for by points 5 and 6 of part 1 of Article 5 of the Law concern the person who, by virtue of the position he or she holds at the time of launching examination, is a person having the obligation to submit a declaration or a person who has held such a position, or a person who has held a position equivalent to that position within the meaning of the Law "On public service" in the edition in effect at the moment of rendering this Decision. The person is considered as having held an equivalent position, if a person performing functions identical or similar to the functions performed thereby is a person having the obligation to submit a declaration within the meaning of the Law "On public service" in the edition in effect at the moment of launching examination.

137. Persons having the obligation to submit a declaration are listed in Article 34 of the Law "On public service", under which the mandatory status component of an official, whose assets may be subject to the regulations provided for by the Law, is holding of a position classified under a specified group, rather than simply holding or having held a public or public service position in general. This group

[25] Decision of the Constitutional Court DCC-1546 of 18 June 2020, point 4.4.

of officials primarily includes state positions and a number of community positions, as well as persons holding specific types of highest (managerial) and chief positions of state service, that is, the management staff of the public service whereby the scope of officials who may appear within the domain of the operation of the Law within the scope of Objective 1 is limited.

138. *Secondly*, in order to give an assessment to meeting the constitutional requirement of proportionality of the interference provided for by the Law, the Constitutional Court also notes that exclusively property the market value whereof has exceeded 50 million Armenian drams at the moment of filing the action is subject to forfeiture under the Law (part 1 of Article 24 of the Law). This circumstance excludes the application of the Law to persons the relevant value of property whereof does not exceed the indicated threshold, by which the impact of the Law is significantly reduced with respect to the scope of related entities, being limited to the enforcement of the mechanisms provided for by the Law only to property having a high monetary value[26].

139. In order to assess the value of the amount of 50 million Armenian drams in the conditions of the social and economic situation existing in the Republic of Armenia, the Constitutional Court only records that this amount exceeds almost 38-fold of the monthly salary (free of taxes) of the President of the Republic (the highest-ranking state official of the Republic), more than 43-fold of the monthly salary (free of taxes) of the Prime Minister of the Republic (as the highest official of the executive power), more than 45-fold of the monthly salary (free of taxes) of the President of the National Assembly of the Republic (as the highest-paid official of the legislative power), and more than 27-fold of the monthly salary (free of taxes) of the President of the Constitutional Court (as the highest-paid

[26] See Amicus Curiae Brief, para. 40.

judge) at the moment of rendering this Decision[27].

140. Within the meaning of point 11 of part 1 of Article 3 of the Law, the remuneration of the vast majority of officials is lower than that of the above-mentioned officials, in which case, the civil forfeiture of assets not justified by lawful income, with a value exceeding the amount of the remuneration for more than 3 years of the principal source of income of the highest-ranking official, namely the salary, is an important balancing factor in terms of proportionality for the implementation of the above-mentioned objectives.

141. *Thirdly*, as already noted in points 115-116 of this Decision, the fight against abuse of official position, conflicts of interest, and the prevention of corruption in Armenia commenced immediately after the declaration of independence, and all the limitations that might be applicable to matters concerning the acquisition of assets by officials and the management of their assets within the meaning of the Law were prescribed not upon the adoption of the Law. The Law itself regulates only matters concerning the asset-related consequences arising from a potential violation of the above-mentioned limitations and the procedures for their application[28].

142. In any event, the Constitutional Court stresses again that neither the Constitution of the Republic of Armenia nor any other legal act may be interpreted in a manner whereby, conditioned by the absence of an explicit provision prohibiting the acquisition of assets from unlawful sources, the acquisition of such assets is deemed permissible and the assets are regarded as lawfully acquired, when, in circumstances of ensuring the sufficient procedural guarantees to justify the lawful origin of assets of such significant value (see points 139 and 156 of this

[27] See Law HO-157-N "On [remuneration for] persons holding state positions", entered into force from 1 July 2014.

[28] See, in this regard, mutatis mutandis, Gogitidze and others v. Georgia, no. 36862/05, §99, 12 May 2015.

Decision), an official is unable to justify its acquisition through reference to lawful income.

143. *Fourthly*, the cumulative effect of all the above-mentioned factors must also be accompanied by procedural guarantees provided through the procedure of civil proceedings, in order to ensure compliance with the constitutional requirement of proportionality.

144. In this regard, the Constitutional Court observes that, pursuant to Article 2 of the Law, the Civil Procedure Code shall apply to legal relations pertaining to the civil forfeiture of illegal assets, unless the Law provides for specific regulations governing an issue. Therefore, in addition to the procedural guarantees provided for by the Law, the general guarantees prescribed by the Civil Procedure Code shall also apply, and the Respondent must be afforded the opportunity to fully exercise the rights of a party to the proceedings, including effective participation in court sessions and the right to appeal judicial acts.

145. Taking into account the circumstance that the questions raised by the Applicant regarding the rights to judicial protection and to fair trial deserve a separate addressing by the Constitutional Court, they are considered below in parts 4 and 5 of this Decision, in the order stated in the Application.

146. However, the above-mentioned factors may not ensure, even in their entirety, the proportionality of the limitation provided for by the Law for the purpose of fighting against corruption, if the interpretation given to points 5 and 6 of part 1 of Article 5 of the Law, in conjunction with part 1 of Article 24, does not condition the scope of illegal assets subject to civil forfeiture by the relation of the acquisition of such assets with the person's holding of office. In particular, as the Constitutional Court has noted in points 104–118 of this Decision, the objective of the Law to fight against corruption has a sector-specific targeting, that is the fight against corruption in public service, which also conditions the scope of officials provided for by points 5 and 6 of part 1 of Article 5 of the Law.

Therefore, when determining the composition of assets subject to civil forfeiture for the objective provided for by the Law, it is essential whether such assets were acquired before or after assuming the relevant office.

147. Through the concealment of corrupt practices and the criminal justice tool-kit, without the application of accompanying civil forfeiture mechanisms, and in conditions of not high effectiveness of the fight against them (see point 111 of this Decision), the Law may pursue — within the framework of the objective of the fight against corruption in the public service sector — the task of identifying and forfeiting such assets that were acquired after the commencement of the term of office, including those acquired after the end of the term of office, and is not justified by lawful income. But where assets were acquired prior to the assumption of official powers, their forfeiture exceeds the scope of the objective of the fight against corruption in the public service sector and, therefore, may not be deemed as compatible with the principle of proportionality.

148. In this sense, the Constitutional Court finds it necessary to clarify that the failure to meet the objective of the fight against corruption arises not from the examination of assets and funds acquired prior to the commencement of the term of office, but rather in case of the civil forfeiture of those assets, since the primary purpose of the examination provided for by the Law is cognitive in the sense that, without adequate information concerning the circumstances of acquisition of the relevant assets, the competent body would not be able to effectively render the decisions provided for by parts 1-2 of Article 13 of the Law, and further undertake the actions provided for by Articles 18–20 of the Law. Therefore, the examination — by the competent body — of the time period preceding the commencement of the term of office is not problematic itself, where its purpose is to verify the person's property status, for example, to establish whether the person had sufficient funds to acquire assets with the lawful income thereof already after the commencement of the term of office, or

to establish any other circumstances in line with the objective of the Law. But where the selected time limit precedes the moment of commencement of the term of office of the person, the discovery during that period (*i.e.*, the time period for examination that precedes the commencement of the term of office) of assets not justified by lawful income within the meaning of the Law, the presumption that the assets are illegal, provided for by part 1 of Article 22 of the Law, may not arise in relation thereto with the reasoning that the public interest pursued by the Law is the fight against corruption in the public service system through its prevention. Therefore, exceptionally assets acquired after the moment of assuming the term of office within the meaning of point 11 of part 1 of Article 3 of the Law must be considered as assets subject to civil forfeiture within the meaning of point 2 of part 1 of Article 3 of the Law, as the civil forfeiture of assets acquired prior to that moment falls outside the objective of the fight against corruption in the public authority system.

149. Therefore, the Constitutional Court considers the version of the interpretation of the above-mentioned provisions of the Law, provided for by the previous point, as a mandatory condition for meeting the requirement of proportionality within the scope of the objective of the fight against corruption, provided for by the Law.

150. Thus, the Constitutional Court finds that, in case of pursuit of the public interest in the fight against corruption by the Law, the civil forfeiture of the assets of (**1**) an official within the meaning of point 11 of part 1 of Article 3 of the Law, (**2**) which exceeds the value of 50 million Armenian drams as of the moment of filing the action and (**3**) not justified by lawful income, which were acquired by the respondent after assuming his or her office, and (**4**) in the conditions the right to fair trial is ensured for the respondent for justifying the lawfulness of the acquisition of the given assets and the respondent fails to justify the lawfulness of acquisition of the assets thereof, is not problematic from the perspective of the constitutional principle of proportionality under parts 3 and 4 of Article 60 of the

Constitution.

151. Therefore, in the interpretation of points 5 and 6 of part 1 of Article 5 and part 1 of Article 24 of the Law, given in points 146-149 of this Decision, the requirement of proportionality provided for by Article 78 of the Constitution is observed within the scope of the 1st legitimate objective pursued by the Law.

6. Proportionality within the scope of Objective 2

152. Before addressing the issue of proportionality of the measures provided by the Law to pursue the objective of fighting against crime, the Constitutional Court deems it necessary to reaffirm the positions indicated in points 131-134 of this Decision as positions relevant to this issue, which should be considered in the subsequent analysis in regard thereto.

153. *Firstly*, the grounds for the examination of assets in connection with a crime, prescribed by the Law are provided for in points 1-4 of part 1 of Article 5 of the Law, in case of all of which the suspicion that a person possesses illegal assets is conditioned by the person's relation to the crime. In particular, the competent body may launch an examination of the grounds for lodging an action:

(1) pursuant to point 1 of part 1 of Article 5 of the Law, where there is a judicial act of conviction having entered into legal force whereby the commission of any one of the crimes provided for by this Law is established, and there are sufficient grounds in the materials of the criminal case to suspect that the convicted person or the person affiliated thereto possesses unlawful assets which have not been forfeited upon a criminal judgment;

(2) pursuant to point 2 of part 1 of Article 5 of the Law, where, within the framework of the initiated criminal case, criminal prosecution has been instituted against the person for the commission of any of the crimes provided for by this Law, and there are sufficient grounds to suspect that the accused or the person affiliated thereto possesses unlawful assets;

(3) pursuant to point 3 of part 1 of Article 5 of the Law, where there are sufficient grounds to suspect that the relevant person or the person affiliated thereto possesses illegal assets but the criminal prosecution with regard to commission of one of the crimes provided for by this Law is impossible on one of the following grounds:

a. the person is subject to release from criminal liability through amnesty;

b. the person is subject to release from criminal liability by virtue of provisions of the General Part or Special Part of the Criminal Code of the Republic of Armenia;

c. the person has died;

d. at the time of committing the act, the person has not attained the age of criminal liability;

(4) pursuant to point 4 of part 1 of Article 5 of the Law, there are sufficient grounds to suspect that the relevant person or the person affiliated thereto possesses illegal assets, but the criminal case instituted with regard to commission of one of the crimes provided for by this Law has been suspended on one of the grounds provided for by part 2 or part 3 of Article 193 of the Criminal Procedure Code of the Republic of Armenia.

154. The grounds for the examination of assets in connection with a crime, provided for by the Law, are provided for in points 1-4 of part 1 of Article 5 of the Law, in case of all of which the suspicion that a person possesses illegal assets is conditioned by the person's relation to the crime. In particular, the competent body may launch an examination into the grounds for lodging an action: where, within the meaning of the Law, a *"crime"* is defined as one of the acts provided for by the Criminal Code, prohibited by the threat of punishment provided for exclusively by the Criminal Code, committed by the subject of the crime with guilt, and the list thereof is strictly specifically prescribed in point 4 of part 1 of Article 3 of the Law.

155. The combined analysis of the Criminal Code, the UN Convention against Corruption, and the Convention against Transnational [Organised] Crime and the protocols attached thereto enables to record that the crimes enumerated in the Law are crimes that: (1) afford the opportunity to generate property benefit and/or (2) have a criminal manifestation deemed internationally prosecutable; and/or (3) of corrupt nature, which are predominantly particularly grave[29] or grave crimes[30].

156. *Secondly*, the Constitutional Court also underscores the important factor in assessing the proportionality of the interference with the right of ownership provided for by the Law, described in point 139 above, to the effect that, under the Law, exceptionally assets the market value whereof at the time of filing the action exceeds 50 million Armenian drams (part 1 of Article 24 of the Law) are subject to civil forfeiture. Meeting the same threshold is also a pre-condition for undertaking measures for lodging an action for civil forfeiture of assets following both the preliminary and final summarisation of the results of the examination within the meaning of the Law (part 2 of Article 13 and part 2 of Article 18 of the Law). As previously noted, this circumstance excludes the impact of the Law on the scope of persons the value of assets whereof does not exceed the specified threshold, and this significantly reduces the impact of the Law in terms of the inclusion of subjects, ensuring the application of the legal instruments provided for by the Law only to property with a high monetary value[31]. In addition to the comparative data brought

[29] For example, establishing or leading a criminal organisation, committed through the use of official or official powers or the influence arising therefrom (Article 318, part 2), human trafficking or exploitation, committed by transferring to another State (Article 188, part 2), receiving of a bribe by a judge, prosecutor, investigator or an investigative body, or in an especially large amount (Article 435, part 3).

[30] For example, establishing or leading a group promoting a criminal subculture (Article 323, part 1); illegal trafficking in firearms, their main component parts, ammunition and other substances, devices or objects, committed by a group of persons by prior agreement (Article 335, part 3); illegal trafficking in a human embryo or fetus, human or corpse cells, tissues, organs, or biological materials or fluids (Article 183, part 1).

[31] See Amicus Curiae Brief, para. 40.

by the Constitutional Court in point 139 of this Decision, it should be noted that, according to the data available at the time of rendering this Decision, the sum of 50 million Armenian drams exceeds the entire volume of the annual net national income per capita in Armenia for 2021 by 33 times[3233].

157. *Thirdly*, as noted in points 143-144 of this Decision, in order to meet the constitutional requirement of proportionality, the combined effect of the above-mentioned factors must be accompanied by procedural guarantees afforded to the person through the procedure of civil proceedings for the purpose of demonstrating the lawfulness of the acquisition of the assets thereof. The same provision of this Decision is equally relevant to the assessment of the proportionality of interference with the right of ownership within the scope of the objective of the fight against crime.

158. Upon the development of the law relating to the context of mechanisms for civil forfeiture of assets through the procedure of civil proceeding introduced for the purpose of the fight against crime, the case-law of the European Court of Human Rights has identified, as a component of the requirement of proportionality of the interference, in particular, the existence of a link between the assets subject to civil forfeiture and the offence underlying the civil forfeiture proceedings, in regard whereto the Court has held, in particular in *Yordanov v. Bulgaria*, that for any interference with the right to peaceful enjoyment of possessions to be in conformity with the requirements of Article 1 of Protocol No. 1, the national courts are expected to provide some particulars as to the offense or misdemeanour as a result of commission whereof the assets to be forfeited were allegedly acquired, and show that there might reasonably be a connection

[32] The latest data available to the World Bank at the time of rendering of this Decision.
[33] For statistical data of the World Bank on the World Bank's net national income per capita in Armenia, see here.

between that offense and the assets in question[34].

159. In this regard, the Constitutional Court recalls that it noted in its Decision DCC-1769 of 11 February 2025 with regard to the provision of part 2 of Article 81 of the Constitution that:

"The fundamental rule of "limitation" of a fundamental constitutional right or freedom provided for by part 2 of Article 81 of the Constitution provides for the scope of limitation of a fundamental constitutional right or freedom by recording as its maximum limit the extent of the limitation provided for by the international treaties of the Republic of Armenia. This constitutional rule extends to each fundamental constitutional right or freedom and does not provide for any exception to the list of fundamental rights and freedoms, whereby it clearly delimits the maximum permissible limit of limitation of any constitutional right or freedom or interference therewith by public authorities. Consequently, by virtue of this fundamental constitutional rule of the relationship between the Constitution and international law in the protection of fundamental constitutional human rights or freedoms, a violation of a fundamental right prescribed by an international treaty ratified by the Republic of Armenia is automatically a violation of the maximum permissible limit of limitation of the relevant fundamental right or freedom or any other interference therewith. That is, the limit of protection of a right or freedom provided for by the international treaty of the Republic of Armenia constitutes the "minimum threshold" of protection of the relevant fundamental constitutional right or freedom, the violation whereof is a violation of not only of the relevant international treaty of the Republic of Armenia, but of the Constitution as well"[35].

160. Consequently, in the conditions where the *"minimum threshold"* for limiting the fundamental right of ownership is defined by the ECtHR judgment, the above-

[34] Yordanov and others v. Bulgaria, nos. 265/17, 26473/18, § 124, 26 September 2023.
[35] Decision of the Constitutional Court DCC-1769 of 11 February 2025, point 58.

mentioned factors, even in their entirety, are nevertheless unable to ensure the proportionality of the interference provided for by the Law for the purpose of fighting against crime pursued by the Law, where the interpretation of points 1-4 of part 1 of Article 5 of the Law, in conjunction with part 1 of Article 24, does not contain a requirement of justifying the link between the asset subject to civil forfeiture and the relevant offence, which includes the possibility that the offence attributed to the person concerned generates an economic benefit for that person.

161. The possibility that the offence attributed to a person generates an economic benefit for that person is the possibility to obtain economic benefit as a result of the offence underlying any one of points 1-4 of part 1 of Article 5 of the Law. Moreover, having regard to the rationale for the need to introduce the procedure for civil forfeiture of assets provided for by the Law, particularly the difficulties in achieving the objectives of removing assets being obtained through a crime from circulation and therefore reducing the economic attractiveness of crime, conditioned by the high evidentiary threshold required in criminal procedure for the forfeiture of assets being obtained through criminal activity[36], the Constitutional Court finds that the evidentiary threshold applied in criminal procedure for justifying the circumstance of obtaining an economic benefit from an offence for the purpose of civil forfeiture of assets is not applicable to civil forfeiture of assets through the procedures provided for by the Law. That is, for the conclusion on the civil forfeiture of assets of the respondent pursuant to the Law, it is not necessary that it is based on such a causal link to the offence, the existence of which must be established by meeting the evidentiary threshold of *"beyond reasonable doubt"*, because the purpose of the procedure provided for by the Law is not establish the ascertain criminal conduct for criminal law purposes, but rather to demonstrate, with certainty accuracy, that the assets

[36] See Amicus Curiae Brief, para. 35.

subject to civil forfeiture might not have been generated as a result of criminal conduct[37]. Under such circumstances, the Constitutional Court concludes that the link of the assets subject to civil forfeiture by applying the mechanism provided for by the Law with the offence is the probability that the assets in question were acquired as a result of an offence with reasonable accuracy in the conditions of the conduct displayed by the person. That is, the possibility of deriving economic benefit from the relevant offence in the conditions that (1) all procedural guarantees for justifying the acquisition of a person's assets by lawful income, provided for by part 1 of Article 63 of the Constitution, and (2) the minimum value threshold set for the assets by the Law is satisfied, is the circumstance that reinforces the presumption that the assets are illegal, increasing the likelihood, in the view of an impartial and informed observer, that the assets the lawfulness of acquisition whereof has not been justified by lawful income, are rather illegal than legal. As a result, the bearing of the adverse consequences — by the respondent — of the failure to justify the lawfulness of acquisition of the assets thereof would be proportionate within the meaning of Article 78 of the Constitution, in case the other conditions provided for by the Law are met.

162. Having regard to the above-stated factors, the procedure for the forfeiture of illegal assets through the procedure of civil proceedings, provided for by the Law, is suitable for the objective of fighting against crime in the assessment of the Constitutional Court, since it substantially decreases the economic attractiveness of the offences enumerated in point 4 of part 1 of Article 3 of the Law and contains a strong message for persons with a criminal intent that the enjoyment of assets obtained through a crime will be ceased even years after.

163. The procedure for forfeiture of illegal assets through the procedure of civil

[37] See, for comparison, Mandev and others v. Bulgaria, nos. 57002/11 and 4 others, § 108, 21 May 2024.

proceedings, provided for by the Law, is concurrently also a necessary tool-kit for removing such assets from economic circulation. In parallel, the tool-kits for confiscating or otherwise forfeiting assets through the procedure of criminal proceedings, as already noted in point 111 of this Decision, do not reach the level of effectiveness that the best international practice ascribes to the mechanisms for civil forfeiture of illegal assets.

164. At the same time, the mechanism for the civil forfeiture of illegal assets and the relevant procedure envisaged for its implementation are directly viewed, within the meaning of the obligations assumed under the international treaties ratified by the Republic of Armenia (see points 124-125 of this Decision), as a suitable and necessary tool-kit for fulfilling the obligations within the framework of international co-operation with the participation of the Republic of Armenia in preventing the circulation of assets obtained through crime and civil forfeiture thereof.

165. Finally, the Constitutional Court finds that, within the scope of the objective of the fight against crime pursued by the Law, the civil forfeiture of assets from (**1**) a person having relation to any one of the offences provided for by point 4 of part 1 of Article 3 of the Law within the meaning of the Law, (**2**) exceeding the value of 50 million Armenian drams at the moment of filing the action and (**3**) not justified by lawful income, related to an offence attributed to the respondent, in the conditions where the respondent's right to fair trial is ensured for justifying the lawfulness of acquisition thereof the latter fails to justify the lawfulness of acquisition of the assets thereof, is not problematic from the perspective of the principle of proportionality provided for by parts 3 and 4 of Article 60 and Article 78 of the Constitution.

166. Consequently, with the combined interpretation of points 1-4 of part 1 of Article 5 and part 1 of Article 24 of the Law, provided for by points 160-161 of this

Decision, the requirement of proportionality is observed within the scope of the 2nd objective.

7. Other matters under the right of ownership

167. The Constitutional Court observes with regard to the proportionality of interference with the right of ownership for the purpose of the fight against corruption that the Law does not prescribe a time limit for the admissibility of civil forfeiture of assets. In this sense, it is understandable itself that providing for such time limitations for the purpose of pursuing the public interest described in points 104-118 of this Decision would mean in the civil forfeiture of assets acquired prior to the entry into force of the Law not to extend the Law in general to assets acquired before the entry into force of the Law. However, it should also be noted that no such statute of limitation is provided for, which is calculated from the starting point of entry into force of the Law or from any subsequent moment.

168. Although the Applicant has not raised this issue in the justifications thereof, it is directly connected to the discretionary power of the Prosecutor's Office to extend the examination period back to 21 September 1991, set forth by the Applicant, in the sense that, in the absence of any statute of limitations for launching examination under the Law, the time period between the acquisition of assets subject to civil forfeiture and the legal proceedings provided for by the Law in relation thereto will continuously lengthen throughout the effect of the Law[38]. In this regard, the Constitutional Court deems it necessary to record that the objective criterion set forth in point 147 of this Decision, *i.e.*, execute civil forfeiture only on relevant assets acquired after assuming office, itself closes the "window" of potential arbitrariness to the effect that the scope of an official's assets subject to civil forfeiture may be delimited at the discretion of the

[38] See also the Advisory Opinion regarding the same concern, para. 53.

prosecutor, depending on the latter's decision regarding the time period under examination.

169. Nevertheless, this does not resolve the issue of after how much time an official's assets may still be subject to civil forfeiture within the meaning of the Law since the moment of the entry into force of the Law. The absence of such a statute of limitations following the entry into force of the Law, parallel with the passage of time, is fraught with the threat of formation of uncertainty for a specific person regarding the composition of the assets thereof, which, even though may not be considered by the Constitutional Court within the framework of an abstract review due to the lack of interpretation given to specific factual circumstances during the application of the norms of the Law thereto, the longer a period of time elapses, the more substantive the consequences arising from the uncertainty regarding the assets thereof will become for the person. Therefore, this is a circumstance which itself is insufficient to conclude that the relevant provision of the Law contradicts the Constitution, but which must immediately appear in the centre of attention of the legislator.

170. In this respect, the Constitutional Court finds that the legislator is obliged to ascertain the time period provided for by the Law through proportionate and predictable regulations, with a view to prescribing a statute of limitations for the application of the procedures of the Law, bearing in mind the two conditional temporal regimes: **(1)** prior to the entry into force of the Law, and **(2)** following the entry into force of the Law. With regard to assets acquired prior to the entry into force of the Law, it is about such regulations that are necessary to define a reasonable maximum time limit (starting from the moment of entry into force of the Law) for initiating proceedings for the civil forfeiture of such assets. In the other case, regulations need to be provided for in relation to assets acquired following the entry into force of the Law which would define the maximum possible and reasonable time limit (calculated, for example, from the moment of

acquisition of asset and/or termination of the official's term of office) after the expiration of which a statute of limitations for applying the procedures provided for by the Law to the given assets would have effect.

171. As regards the Applicant's question that it is unclear in what time period following the entry into force of the Law an examination may be launched upon the ground of point 1 of part 1 of Article 5 of the Law, the Constitutional Court observes that the issue posed by the Applicant is resolved by a combined study of part 1 of Article 4, point 1 of part 1 of Article 5, and part 3 of Article 34 of the Law, as a result of which it becomes obvious that the relevant sub-division of the Prosecutor's Office may launch an examination upon the ground of point 1 of part 1 of Article 5 of the Law only from the moment of receiving a notification from the prosecutor exercising oversight of the lawfulness of pre-trial criminal proceedings and the corresponding documentation. In turn, such an obligation arises for the prosecutor exercising oversight of the lawfulness of pre-trial criminal proceedings upon the ground of part 3 of Article 34 of the Law, where the ground provided for by Article 5 of the Law exists in a case pending in pre-trial or judicial proceedings as of the entry into force of Article 4 of the Law or has arisen following the entry into force of Article 4 of the same Law. That is, the competent body renders — within 10 days from the moment of entry into legal force of a judicial act of conviction in a case pending in pre-trial or judicial proceedings as of the entry into force of Article 4 of the Law — a decision on launching an examination or not initiating an examination, based on the materials submitted within 10-day period by the prosecutor exercising oversight of the pre-trial criminal proceedings.

172. As regard the Applicant's argument that the Law prescribes an excessively broad scope of affiliated persons, thereby creating an opportunity for intense interference with the fundamental rights of a wide scope of persons even in the event of their distant connection to any official or transaction, the Constitutional

Court may not consider — in the absence of circumstances arising from the application of the legal provision in a specific case — the Applicant's mere statement concerning the scope of persons listed in points 9-10 of part 1 of Article 3 of the Law to be sufficient to come to a conclusion on the incompliance of the legal provision with the Constitution.

III. REGARDING THE COMPLIANCE OF THE LAW WITH THE PROHIBITION ON RETROACTIVE EFFECT PROVIDED FOR BY THE CONSTITUTION

A. Positions of the Parties

1. The Applicant

173. The Applicant notes that the Law places such an obligation on a person to justify the acquisition of assets thereof by data on the sources of lawful income, which did not exist before, until the adoption of the disputed Law. Since new legal consequences extend to the body of facts (acquisition of assets) that ended prior to the adoption of the Law, there is an actual (genuine) application of retroactive effect of the Law. In the Applicant's conviction, in order for a person to be able to justify the income thereof taking into account the requirements provided for by the Law, they must have retained documents or other supporting information regarding thereto, which was not required previously by any regulatory legal act.

174. The Applicant notes in the supplementary explanations thereof that a clear issue is raised thereby on the retroactive effect of the Law, which pertains not to the retroactive application of the Law to allegedly illegal assets, but rather to the circumstance that the obligation to prove the lawfulness of the acquisition of assets is placed on a person by the Law, which the person did not have previously under any legal act. Summing up, the Applicant finds that the Law not only has a retroactive effect, but also places new obligations on the person with

respect to a previously ended body of facts and deteriorates the legal condition thereof.

2. The Respondent

175. The Respondent believes that the Law has not created itself a new form of liability for the unlawful acquisition of assets by a person and therefore has not deteriorated the legal condition of the person, but has solely modified the procedural tools for the civil forfeiture of assets. That is, in the given instance, according to the Respondent, the introduction of the institute of non-conviction based asset forfeiture is rather a judicial, procedural than a substantive change.

176. Summing up its positions on the above-stated, the Respondent finds that the application of the Law in time complies with the international standards, and that its provisions do not have retroactive effect within the meaning of Article 73 of the Constitution and pertain to legal relations that although arose prior to, but continue exclusively at the time of the adoption of the Law.

B. The law applicable to the resolution of the dispute

177. Arguments on the incompliance of the provisions of the Law with the Constitution, referred to by the Applicant, are submitted under the prohibition on the retroactive effect of laws and other legal acts, provided for by Article 73 of the Constitution, pursuant to which:

"1. Laws and other legal acts deteriorating the legal condition of a person shall not have retroactive effect.

2. Laws and other legal acts improving the legal condition of a person shall have retroactive effect where these acts so provide for".

C. Position of the Constitutional Court

178. The Constitutional Court commences the analysis of the issue of applicability of

the prohibition on the retroactive effect of legal acts deteriorating the legal condition of a person prescribed by the Constitution to the provisions of the Law, from the positions expressed in points 131-134 of this Decision, which are equally relevant to the justifications submitted by the Applicant under Article 73 of the Constitution.

179. The purpose of the prohibition provided for by part 1 of Article 73 of the Constitution is to prevent the retroactive effect of a law deteriorating the legal condition of a person. The mechanisms and procedures prescribed by the disputed Law are to the effect that illegal assets shall be forfeited in favour of the Republic of Armenia, that is, the interference provided for thereby is made in assets the right of ownership to which has not arisen upon legal grounds, which in turn does not eliminate the constitutional protection of such assets retroactively, since, as noted above, illegal assets have never been under protection by the Constitution or another legal protection.

180. The provisions on the burden of proof in proceedings for civil forfeiture of illegal assets, prescribed by the contested Law, have a procedural nature and do not contain a limitation on a substantive right that had constitutional protection prior to the entry into force of the Law. The contested provisions of the Law are targeted at prescribing the rules based on which the law enforcer must conclude, under each case, on the existence or absence of the *"legal"* quality that is a ground for the fundamental right of ownership. In other words, the Constitutional Court records that the Law regulates the procedure for civil forfeiture of illegal assets.

181. Based on the above-stated, the Constitutional Court finds in the context of compliance of the Law with part 1 of Article 73 of the Constitution that the provisions of the Law concerning the burden of proof do not provide for substantive obligations for a person with respect to any time period preceding the adoption of the Law, but rather regulate the rules of establishing the factual

circumstances with which the Law links the issue of the lawfulness of the acquisition of assets.

182. The Venice Commission has noted with regard to the issue of retroactive effect of the Law in its *Amicus Curiae* that:

"It may be recommendable to distinguish between different types of retroactivity: laws that interfere with past events and laws that interfere with continuous situations that started in the past but are still ongoing. While in the first scenario the prohibition of retroactivity is more rigorous, in the second scenario a more flexible approach should be possible as long as the interference is not excessive.

(...) The Law at issue does not interfere exclusively with the past events, but with the on-going facts: the ownership of the unlawful property has started in the past, but it still continues. The expectation to be able to keep illegally acquired assets does not weigh heavily in comparison to the interest of the public to "correct" unjust enrichment."[39]

183. Addressing the issue of extending the legislation on non-conviction based asset forfeiture to assets acquired prior to its adoption, the ECtHR has noted particularly the following in *Gogitidze and others v. Georgia*:

"Article [1] of Protocol No. 1 [to the Convention] cannot normally be construed as preventing the legislature from controlling the use of property or otherwise interfering with pecuniary rights via new retrospective provisions regulating continuing factual situations or legal relations anew."[40]

184. In light of the presented legal analysis, the Constitutional Court finds that, irrespective of the circumstance that the assets were acquired prior to the entry into force of the Law, they will remain assets acquired on an unlawful basis, not justified by lawful income, after the adoption of the Law as much as they did before that. Therefore, the situation of a person possessing assets not justified by

[39] See ibid., p. 11, paragraphs 45, 48.
[40] See *Gogitidze and others v. Georgia*, no. 36862/05, §99, 12 May 2015.

lawful income may start prior to the adoption of the Law but continue after the adoption of the Law as well.

185. Thus, in the assessment of the Constitutional Court, the Law does not interfere with the situation of a person's possession of assets not justified by lawful income taken place in the past, but rather continuing after its adoption as well. In such circumstances, the Constitutional Court concludes that the Law, interfering with a situation that although having originated previously, continues and exists after its adoption, does not have an element of retroactive effect within the meaning of part 1 of Article 73 of the Constitution.

186. The ECtHR has also noted with respect to the issue of extending the legislation on non-conviction based asset forfeiture to assets acquired before its adoption in the above-mentioned *Gogitidze and others v. Georgia* that: "[T]he amendment in question was not the first piece of legislation in the country which required public officials to be held accountable for the unexplained origins of their wealth. Thus, as far back as 1997 the Act (...) had already addressed such issues as corruption offences and the obligation of public officials to declare and justify the origins of their property and that of their close entourage (...). That being so, it is clear that the amendment of 13 February 2004 merely regulated afresh the pecuniary aspects of the existing anti-corruption legal standards."[41]

187. Referring to the analyses of the Constitutional Court in points 115-116 of this Decision and the circumstances underlying them, the Constitutional Court records that, in the Republic of Armenia, officials within the meaning of the Law have always been obliged to refrain from obtaining income on an illegal basis as well as, from a specific point in time, to justify and declare their income and sources thereof. Therefore, it is not with the adoption of the Law that the protection of assets of officials and their close affiliates that are not justified by

[41] See ibid.

lawful income has been limited. The Law has solely introduced procedures aimed at the civil forfeiture of assets acquired on an illegal basis, with the objective of meeting one of the public interests indicated in point 101 of this Decision.

188. Based on the above-stated, the Constitutional Court concludes with respect to the civil forfeiture of illegal assets from officials or persons affiliated thereto that the Law solely regulates the property aspect of legal claims existing in the field of possession thereby of assets of non-legal, envisaging that they are forfeited in favour of the Republic of Armenia.

189. The Constitutional Court stresses that the said is fully extendable to the issue of extending civil forfeiture on assets obtained through a crime by implementing the mechanisms provided for by the Law; it is not by the adoption of the Law that the right to possess assets obtained through a crime is terminated. Such a right has never been recognised and protected in the Republic of Armenia.

190. The Constitutional Court finds with the above-stated reasoning that, within the scope of the justifications submitted by the Applicant, the Law complies with the requirement of part 1 of Article 73 of the Constitution.

IV. REGARDING THE RIGHT TO JUDICIAL PROTECTION

A. Positions of the Parties

1. The Applicant

191. Having conducted an analysis of the disputed regulations, the Applicant finds that the failure to provide for the opportunity to appeal through judicial procedure the competent authority's decision on launching an examination, provided for by part 1 of Article 6 of the Law, and the decision on establishing a new time period for examination, provided for by part 3 of Article 7 of the Law, constitutes a violation of the person's right to effective judicial protection guaranteed by

Article 61 of the Constitution.

192. Addressing the Respondent's statement concerning the legal possibility of challenging the admissibility of evidence before a court, the Applicant notes that the Law does not provide for any regulation that would confirm that, at the stage of judicial examination, the court is competent to address decisions on launching an examination or establishing a new time period for examination and to assess the lawfulness thereof.

193. In the Applicant's conviction, after the expiration of the period established for familiarisation with the case materials, the Law does not provide for any time limitation for the competent body for applying to the court, as a result of which the person is deprived — for two years — of the opportunity to appeal through judicial procedure the lawfulness of the decision on launching an examination and the decision on extending the time period for examination.

2. The Respondent

194. The Respondent notes that in terms of content, the entire course of the examination constitutes the preparation of an action, which process, unlike the processes for preparation of other types of actions, is regulated by law. At the same time, the fact that the process of preparing an action is enshrined by law does not mean that the competent body assumes the function of administering criminal justice or implementing administration.

195. In the Respondent's view, nothing prevents a person having the status of a respondent in civil procedure from challenging the admissibility of any piece of evidence before the court, and therefore, the legislation guarantees for persons sufficient opportunities to appeal through judicial procedure violations of law by a competent body; hence, the provisions of the Law do not contradict the right to effective protection guaranteed by Article 61 of the Constitution.

B. Applicable constitutional law

196. Article 61 of the Constitution: "Right to Judicial Protection and the Right to Apply to International Bodies for the Protection of Human Rights":

"1. Everyone shall have the right to effective judicial protection of his or her rights and freedoms.

(...)."

C. Position of the Constitutional Court

197. Point 13 of part 1 of Article 3 of the Law prescribes the examination of the grounds for bringing an action as "a procedure aimed at obtaining information concerning the existence of illegal assets, the volume thereof and the scope of the interested persons". Point 12 of part 1 of Article 3 of the Law prescribes that "Proceedings for civil forfeiture of illegal assets: (...), which shall start by rendering a decision on launching examination of grounds for bringing an action, shall include bringing an action for civil forfeiture of assets and shall be completed by rendering a final judicial act on the action for civil forfeiture of illegal assets, having entered into legal force, or upon other grounds provided for by this Law". It follows from part 1 of Article 7 of the Law that the examination is limited to obtaining information concerning: (1) assets belonging to the person, the location and the sources of acquisition thereof; (2) the market price of assets as of the moment of acquisition and implementation of examination thereof; (3) alteration of assets into other property and the proceeds received from the use of the asset; (4) the known incomes and expenses of the person acquiring the assets, including the monthly average expenses for subsistence; (5) the transactions concluded in relation to the assets; (6) the encumbrance of assets by the rights of other persons.

198. The Constitutional Court records that the initiation of any civil case may be preceded by preparatory actions which are primarily aimed at the formation of

conviction on the expediency of bringing the action with the plaintiff party, as well as obtaining data/materials necessary for that and to be put at the basis of a subsequent action, and the case of lodging an action for civil forfeiture of assets is no exception in this respect.

199. The Constitutional Court states as a fact that proceedings for civil forfeiture of illegal assets have civil procedure nature, and the Prosecutor's Office, being the plaintiff party, like any other party lodging a civil action, carries out preparatory actions targeted at forming an assessment of the expediency of lodging the action and obtaining evidence necessary to justify the action, which is only followed by the bringing of the action and its defence in court. The Constitutional Court also records that, unlike other actions, the process of preparing an action for the civil forfeiture of illegal assets has received legislative regulation, that is, the procedure for preparing the action has been defined.

200. The Constitutional Court observes that the legal regulation of the examination of the grounds for bringing an action for the civil forfeiture of illegal assets and thereby conferring legal formalisation on that process do not alter its character, namely the preparation of a civil action. The Prosecutor’s Office, by exclusively collecting the information provided for by part 1 of Article 7 of the Law within the scope of the examination, prepares an action for the civil forfeiture of illegal assets for filing it with and defending at court. In this regard, the Constitutional Court finds that giving procedural regulation to the preparation of an action for the civil forfeiture of illegal assets, taking into account the circumstance that the plaintiff party is a state body, is targeted, on the one hand, at regulating the activities of the state body and, on the other hand, at ensuring the predictability of the process for interested persons and facilitation of the consideration of their interests worth attention in this context. However, in all cases, as already noted, the Prosecutor’s Office, like any other entity bringing a civil action, carries out preparation for lodging the action through an examination.

201. Addressing the Applicant's statement to the effect that the Law does not provide for an opportunity to appeal through judicial procedure the decision on launching an examination, the Constitutional Court deems it necessary to note that the decision on launching an examination itself does not have an impact of interference with any individual right or freedom. Upon rendering this decision, the examination of the grounds for bringing an action (in other words, preparation for bringing an action) is launched, which may be completed both with lodging an action and refusing to lodge the action. Taking into account the circumstance that the decision on launching an examination itself does not interfere with the rights or freedoms of the interested persons, the lack of the opportunity to appeal that decision through judicial procedure within the scope of proceedings examined on the basis of the Law may not lead to a violation of a person's right to effective judicial protection of the rights and freedoms thereof.

202. The Constitutional Court considers it necessary to also address the mechanisms for judicial protection of rights of persons after launching an examination. In this regard, the Constitutional Court firstly notes that the purpose of the proceedings provided for by the Law is the civil forfeiture of illegal assets, and the Constitutional Court has already addressed the issue of lawfulness of such an interference above (see Section 2 of this Decision). The Constitutional Court observes that the full-scale verification of conditions of lawfulness of the civil forfeiture of assets provided for by the Law is an object of judicial examination, and only in the existence of these conditions does the court, administering justice solely pursuant to the Constitution and laws pursuant to Article 162 of the Constitution, rules to grant the action. In this regard, the Constitutional Court emphasises that part 4 of Article 60 of the Constitution provides that: *"No one may be deprived of ownership except through judicial procedure, in the cases prescribed by law"*, and the existence of the cases prescribed by law is verified by the court.

203. Next, the Constitutional Court records that as indicated above, the conduct of the examination is aimed exclusively at obtaining materials (evidence) relating to the matters provided for by part 1 of Article 7 of the Law and drawing a conclusion regarding the issue of filing an action based thereon (see points 198-201 of this Decision). In turn, part 3 of Article 63 of the Constitution provides for a constitutional requirement on the prohibition of the use of evidence in a case, namely, the use of evidence obtained in violation of fundamental rights or that undermining the right to fair trial shall be prohibited; the indicated constitutional prohibition has also been reflected identically in part 2 of Article 59 of the Civil Procedure Code. In these circumstances, the Constitutional Court finds that the Law guarantees the level of protection provided for by the Constitution in the sense that evidence obtained during the examination in violation of fundamental rights by the competent body will be assessed as inadmissible in court and may not be put at the basis of a judgment on civil forfeiture of assets.

204. At the same time, the Constitutional Court records that providing for a level of protection higher than that indicated in part 3 of Article 63 of the Constitution falls within the domain of discretion of the legislator, and part 4 of Article 6 of the Law prescribes in this regard that *"Violations of the procedural requirements provided for by this Law regulating the launch of examination and carrying out thereof shall cause only consequence expressly provided for by this Law, the Civil Procedure Code of the Republic of Armenia or other laws."*

205. In this regard, the Constitutional Court observes that in the cases when evidence is required under the relevant law based on a court decision in the cases provided for by part 3 of Article 12 of the Law, the competent body submits an application to the court, and applies to and obtains such evidence from the person in possession only based on a court decision on requesting it. At the same time, pursuant to part 8 of the same Article, the decision on requesting evidence may be appealed to the court of appeal and then to the Court of Cassation by the

person in respect to the data whereof the court decision has been rendered. It follows from the indicated that the obtaining of certain evidence provided for by the Law is also a subject of judicial oversight.

206. The Constitutional Court also considers it necessary to address the Applicant's statement that the opportunity to appeal through judicial procedure the decision on establishing a new time period for examination provided for by part 3 of Article 7 is missing under the Law. Part 3 of the above-mentioned Article 7 of the Law prescribes that "where, based on the materials of the examination, suspicions over illegal assets acquired earlier than the period provided for by part 2 of this Article emerge, and evidence related to the acquisition of such assets are available, the competent body shall render a decision establishing a new time period for examination, which may include only the time period after 21 September 1991." In this regard, the Constitutional Court stresses again that the lawfulness of the claim for the civil forfeiture of any asset is a subject of judicial examination in each case (see point 202 of this Decision), in which circumstances the absence of the opportunity to appeal through judicial procedure the decision on establishing a new time period for examination does not itself violate a person's right to effective judicial protection of the rights and freedoms thereof.

207. As for the Applicant's statement that the Law does not provide for any time limitation for the competent body to apply to court, the Constitutional Court records that the issue of uncertainty of an individual's legal condition due to the absence of any time limitations may be reasonably assessed by taking into account the circumstances of a specific case. Therefore, without the interpretation and application of the provisions of the Law applicable to the issue raised by the Applicant by the three-tier judicial system, the mere raising of the relevant concern by the Applicant is not sufficient to consider the degree of certainty typical to a constitutional dispute to be satisfied. In this sense, the Constitutional Court finds that the issue raised by the Applicant has not yet

attained the level of a constitutional dispute and, therefore, is not included in the scope of this constitutional dispute.

V. REGARDING THE RIGHT TO FAIR TRIAL

A. Positions of the Parties

1. The Applicant

208. In the assessment of the Applicant, the regulations provided for by the Law for conducting proceedings and judicial protection impose a disproportionate burden of proof on the person, which results in the violation of the person's right to a fair examination of the case, which constitutes an integral part of the right to a fair trial guaranteed by Article 63 of the Constitution.

209. According to the Applicant, the current regulations of the Law regarding the disproportionate allocation of the burden of proof, unequal competitive procedural rules, and limited terms for familiarising oneself with the case materials are problematic from the standpoint of the exercise of the right to a fair trial.

210. The Applicant notes that the period under examination may extend as far back as 21 September 1991, thereby requiring a person to prove the lawfulness of assets acquired up to thirty years prior to the adoption of the Law.

211. According to the Applicant, the Law likewise fails to take due account of the economic transformations that have occurred in the Republic of Armenia since 1991, which were of a large-scale nature, including the extensive privatisation process, the legal form of transactions, and the specific features relating to their documentation.

212. The Applicant notes that, by virtue of part 1 of Article 22 of the Law, a presumption that assets are illegal applies, which means that the competent body

may rely solely on the discrepancy between the assets and the lawful income, even without presenting any evidence of the person's direct or indirect involvement in the commission of any crime.

213. The Applicant finds that part 4 of Article 22 of the Law directly deteriorates the legal condition of a person by retrospectively imposing an obligation to retain evidence, and in the event of a failure to do so, subjecting the person to negative consequences. At the same time, it is noted that even in cases where, prior to the specific fact or event, the law did not require that the fact must be established "only by certain evidence," the person still bears the burden of proof.

214. The Applicant notes that under the Law, the court proceedings are conducted through civil procedure, whereas both prior to and during the trial itself, the competent body vested with governmental powers (the Prosecutor's Office) participates as a party, which is also provided for with a number of advantages by the Law. Consequently, the Law contains numerous provisions that place the parties to proceedings considered "civil" in a clearly anti-competitive position.

215. The Applicant notes that, given that the process provided for by the Law is civil in nature and is conducted within the framework of civil procedure, the proceedings must guarantee equality of arms and competition between the parties. Accordingly, a person must have the tools to defend themselves against the examination and any resulting action, which will enable them to counter the state body. According to the Applicant, in this context, the prohibition on disclosing information regarding the results of the examination constitutes a disproportionate limitation of the right of a person to effective judicial protection.

216. The Applicant notes that the Law does not provide a person with the opportunity to apply to the court to obtain information containing a secret, as provided for by part 3 of Article 12 thereof. The Prosecutor's Office is entitled to employ a broader range of evidentiary tools, may acquire evidence by such means as

requesting and obtaining information (legal acts, documents, and other information) from state or local self-government bodies, natural and legal persons, and engaging a specialist or expert at the expense of funds allocated from the state budget, whereas the opposing party to the proceedings is deprived of such opportunities.

217. According to the Applicant, the counter-security mechanism provided for by Article 135 of the Civil Procedure Code does not apply in the proceedings provided for by the Law, which provides the opposing party to the proceedings with safeguards enabling them to seek compensation for damages arising from the securing of the action, while simultaneously having a deterrent effect on the party requesting security for the action, from the perspective of abuse of rights.

218. The Applicant notes that the Law affords a person only one month to familiarise themselves with the materials collected for the examination and to present their position, whereas the competent body may collect such materials over a period of two, and in certain cases three, years.

219. The Applicant finds that the process implemented based on the Law is "quasi-criminal"; accordingly, in this case, the person should have the right to full protection against the charges brought against them, equivalent to part 3 of Article 67 of the Constitution.

220. The Applicant finds that a person subject to the procedures provided for by the Law should be afforded a reasonable period of time, so that the latter has sufficient time and opportunity to defend themselves against the “action” of the Prosecutor’s Office, further noting that the regulation provided for by the Law, apart from violating the right to a fair trial, imposes a disproportionate limitation on the right to legal aid prescribed by Article 64 of the Constitution.

221. The Applicant further notes that a person may appeal judicial acts issued regarding the obtaining of data concerning them through appellate procedure

within the seven-day period included in the aforementioned one-month period, and through a cassation procedure — within the fifteen-day period from the date of receipt of the decision of the court of appeal. As a result, a situation arises in which a person is granted only one month to familiarise themselves with all information collected by the competent body over a period of two (in some cases, three) years, and within that timeframe, is afforded merely seven days (counted within the same one-month period) to appeal those decisions through both appellate and cassation procedures.

222. In their objections to the explanation submitted by the Respondent, the Applicant notes that the violation of the fundamental right to a fair trial is disputed from the standpoint of the disproportionate distribution of the burden of proof, unequal competitive procedural rules, and the limited time period for familiarising themselves with the case materials, further noting that their assertions regarding the access to materials collected during the preparatory stage of the action do not pertain to the obligation on the part of the competent body to make such materials accessible to all interested persons, but rather to the requirement for the prohibition of disclosure thereof by the person. Thus, according to the Applicant, the person is deprived of the opportunity to disclose the data on the examination, and which is not only foreign to civil procedure but may also adversely affect the person’s defence strategy.

223. Referring to the Respondent's positions regarding reserving the Prosecutor's Office the authority to obtain evidence prior to bringing an action, the Applicant finds that by granting such an opportunity to the Prosecutor's Office, the Law fails to afford the opposing party to the proceedings any comparable opportunity, which is typical of civil proceedings. According to the Applicant, this constitutes a direct violation of the principle of competition, which is fundamental to civil procedure.

224. Referring to the Respondent's position regarding the short time limits for familiarising themselves with the materials, the Applicant notes that the institute of civil forfeiture of assets provided for by the Law does not constitute an ordinary proceedings carried out through civil procedure, but rather a special procedure designed for exceptional cases, therefore, the time limits for familiarising themselves with the case materials under such conditions cannot be comparable with time limits applicable in classic civil procedure.

2. The Respondent

225. The Respondent finds that the Law imposes a requirement on the competent body to overcome a high threshold of suspicion in order to apply the presumption that assets are illegal, in which case the person will only need to rebut the presumption that assets are illegal, in accordance with the procedure provided for by civil procedure.

226. The Respondent notes that, in order to extend the examination period provided for by the Law to a period of more than ten years preceding the examination, it is necessary to establish both the existence of reasonable suspicions regarding previously acquired illegal assets and the confirmation of preserved evidence concerning the acquisition of those assets. The latter precondition is intended to ensure that persons are not subjected to an excessive burden regarding the preservation of documents.

227. The Respondent finds that the relevant provision of the Law does not restrict the circumstances under which the court may record that the loss or destruction of the documents occurred through no fault of the person. In this regard, according to the Respondent the interpretation acceptable to the Applicant— namely, that in the event of the loss or destruction of documents, it should be sufficient for the person to provide the court with reasonable grounds for their unavailability — can also be developed through judicial practice, and that the

norm itself does not preclude a reasonable and just assessment of the facts by the court.

228. The Respondent notes that the examination, as a process, constitutes a preparation of an action, and as such, the failure of both private individuals and state bodies to provide the potential respondent with the action materials in advance during the preparation of a civil action does not and may not violate the right to a fair trial, since in the framework of civil procedure, making the action materials available to the respondent prior to bringing the action is not recognised as a component of the right to a fair trial.

229. Referring to the Prosecutor's Office's opportunity to obtain evidence based on a court decision prior to bringing an action, the Respondent emphasises that the Prosecutor's Office has not been substantively afforded any other or new procedural opportunities beyond those available to other parties to the proceedings. Article 64 of the Civil Procedure Code permits each party to file a motion to the court to request and obtain evidence having essential significance for the case.

230. The Respondent notes that the Law does not aim to establish the commission of crimes and does not employ any instruments characteristic of criminal prosecution. During court proceedings, a person enjoys all the guarantees of a fair trial as provided for by the Civil Procedure Code.

231. In summary, the Respondent concludes that the regulations of the Law are consistent with the right to a fair trial as guaranteed by Article 63 of the Constitution.

B. Position of the Constitutional Court

232. In the section dedicated to the issue of the compliance of the Law with the constitutional prohibition on retroactive effect, the Constitutional Court has

already recorded that the established rules of proof constitute the elements of procedural aspect of the civil forfeiture mechanism provided for by the Law and prescribe the procedure in which the court is to proceed when establishing the circumstances of essential significance for the case. Moreover, the possibility of acquiring and owning assets not justified by lawful income has never been recognised in the Republic of Armenia: it is not the adoption of the Law that creates a situation in which persons no longer have a legitimate expectation of protection over ownership of such assets (see points 115-116 and 187-189 of this Decision). Accordingly, the Constitutional Court notes that, within the framework of proceedings for the civil forfeiture of illegal assets, the establishment of procedural, i.e., the definition of evidentiary rules does not, in itself, constitute substantive legal content.

233. The Constitutional Court further emphasises that, in light of the positions presented in points 146-149 and 160-161 of this Decision, the application of the civil forfeiture mechanism provided for by the Law must be connected to a specific crime or to the process of a person holding a particular position; such a requirement provides an objective criterion for ascertaining the examination period extending back to 21 September 1991.

234. The Constitutional Court notes that the evidentiary rules provided for by Article 22 of the Law effectively lead to the following:

1. The competent authority should, first, prove that the assets belonging the person are not justified by data on sources of lawful income.

2. A failure to justify the acquisition of assets with data on sources of lawful income gives rise to a presumption that the assets are illegal, which, if not rebutted, empowers the court to deliver a judgement on civil forfeiture of the assets.

3. The person has the opportunity to rebut the presumption that the assets

are illegal, by presenting evidence justifying the acquisition of assets by lawful incomes.

4. Where facts, in accordance with the law or regulatory legal acts, must be established solely by specific evidence, a person shall not bear the adverse consequences of the fact subject to proof by him or her remaining disputed, if he or she proves that this evidence was destroyed or lost through no fault of his or her own.

235. The ECtHR has noted that "[E]very legal system recognises presumptions of fact or law, and the Convention does not, in principle, prohibit them"[42]. In other words, the mere establishment of presumptions of fact or law does not, in itself, lead to a violation of any right provided by the ECHR, including the right to a fair trial.

236. The Constitutional Court records that the Law does not automatically establish the presumption that the assets are illegal; such a presumption forms when the competent body proves that the assets are not justified by evidence on lawful sources of income. In this regard, the Constitutional Court states that, within the context of the aforementioned measures undertaken in the pursuit of public interests, the failure to justify the assets with evidence of lawful sources of income constitutes a significant factor in forming a presumption that assets are illegal.

237. Once the required threshold for forming a presumption that assets are illegal has been met, the Law nonetheless affords the Respondent the opportunity to present evidence justifying that the assets were acquired through lawful income, thereby rebutting the presumption. With regard to this, the Constitutional Court also highlights the regulation of part 4 of Article 22 of the Law, according to which, where fact must be established only by specific evidence, a person shall

[42] Yordanov and others v. Bulgaria, nos. 265/17, 26473/18, § 118, 26 September 2023.

not bear the adverse consequences of failing to prove a fact to be proved by himself or herself, if he or she proves that the corresponding evidence was destroyed or lost through no fault of his or her own. This means that if the alleged fact refuting the presumption that the assets are illegal, could, under the law or a regulatory legal act, be proven only by evidence that was lost or destroyed through no fault of the person, then the adverse consequence of failing to prove the relevant circumstance cannot be imposed on the Respondent.

238. In such circumstances, the Constitutional Court records that, on the one hand, the Law provides for requirements to be met by the competent body in order to establish a presumption that the assets are illegal, and on the other hand, it affords the person the opportunity to rebut that presumption. In parallel, where the fact cited by the Respondent may be confirmed only by specific evidence, the person shall not bear the adverse consequences of failing to prove a fact to be proved by him or her, if he or she proves that this evidence was destroyed or lost through no fault of his or her own.

239. Based on the foregoing, the Constitutional Court finds that the definition of the presumption provided for by the Law is not, in itself, problematic under the right to a fair trial, provided that the Respondent is afforded the guarantees arising from the right to a fair trial provided for by the Constitution, applicable to civil procedure to rebut that presumption.

240. The Applicant notes that the Law fails to take into account the "economic transformations" that have taken place in the Republic of Armenia since 1991. In this regard, the Constitutional Court records that the Applicant merely expresses an uncertain concern that persons may encounter certain difficulties in proving that assets are legal, without identifying any material manifestation of such difficulties. The Constitutional Court finds that the concerns raised by the Applicant within the framework of an abstract review of the Law, which are

presented without reference to specific circumstances, cannot become the subject of an effective examination. Otherwise, the Constitutional Court would be compelled to advance claims based on uncertain concerns and then attempt to subsequently refute or confirm them.

241. With respect to the Applicant's concern that the Law does not take into account the situations in which, at the time of acquiring assets, the law or a regulatory legal act did not require that a particular fact be confirmed only by specific evidence — but such a requirement now exists — the Constitutional Court records that matters concerning the distribution of the burden of proof, standards, and assessment are not governed solely by the Law, but also by the Civil Procedure Code and the interpretations of its provisions developed within the three-tier judicial system. The absence of regulation of any relationship, especially in matters pertaining to evidentiary issues, does not necessarily or inevitably preclude the possibility of addressing the consequences arising from such lack of regulation. Moreover, within the framework of an abstract review of legal provisions, in the absence of a final judicial interpretation of the matter by the three-tier judicial system, the Constitutional Court may not regard such concerns as sufficient to conclude that a legal provision is inconsistent with the Constitution.

242. The Constitutional Court, in the relevant sections of this Decision, addresses the role of the Prosecutor's Office within the framework of the proceedings for the civil forfeiture of illegal assets (points 387-398 of this Decision), as well as the purposes of the examination stage that precedes bringing of an action for the civil forfeiture of assets (points 198-201 of this Decision). The Constitutional Court records that the Prosecutor's Office, acting in this instance as an entity filing an action through procedure of civil proceedings for the protection of state interests, during the procedure exclusively enjoys all the rights and bears the obligations reserved for the plaintiff, and the fact that the Prosecutor's Office is a

public authority does not, in itself, affect its procedural status in civil procedure. Accordingly, the Constitutional Court sees no reason to conclude that the Prosecutor's Office, acting as the plaintiff through general procedure, possesses any competitive advantage over the Respondent during the examination of the case in court.

243. As previously presented, the purpose of the examination stage is to obtain the information provided for by part 1 of Article 7 of the Law and, based on that, to determine the grounds for filing an action and to prepare the action (points 198-201 of this Decision). The powers of the Prosecutor's Office during the examination are defined by Articles 11 and 12 of the Law, which are intended to clarify matters concerning the lawfulness of asset acquisition. In this regard, the Constitutional Court also deems it necessary to compare the powers of the Prosecutor's Office with the rights granted to an advocate under the Law "On the profession of advocate":

(1) except for the provision of information containing a secret, the right of an advocate to receive necessary documents (information) from state, local self-government bodies, individual entrepreneurs and legal entities, as provided for by point 3 Article 18 of the Law "On the profession of advocate" corresponds to the power of the competent body to request and receive information from state or local self-government bodies, organisations, natural and legal persons, and to use the information database used for official purposes free of charge, as provided for by points 1-3 of part 1 of Article 11 of the Law;

(2) the right of an advocate — provided for by point 5 of Article 18 of the Law "On the profession of advocate" — to engage a specialist or translator on a contractual basis to provide clarification on issues requiring other professional knowledge with regard to legal aid or to provide translation

service corresponds to the power to engage, where necessary, a relevant specialist or expert (specialised expert institution) at the expense of funds provided for by the State Budget, provided for by point 4 of part 1 of Article 11 of the Law;

(3) the right to, if agreed, question those persons who possess information related to the case or the proceedings, provided for by point 4 of Article 18 of the Law "On the profession of advocate" corresponds to the power of the competent body to question persons having information with regard to the case in order to obtain necessary information, provided for by point 2 of part 1 of Article 11 of the Law. It should also be noted that the Law does not provide for any mechanisms for forcibly questioning a person.

244. The Constitutional Court further notes that the evidence which cannot be obtained based on the Law "On the profession of advocate" may be obtained during the judicial examination of the case by applying the mechanisms for requesting evidence provided for by the Civil Procedure Code, through filing of an appropriate motion to the court. In this respect, the Constitutional Court notes that Article 64 of the Civil Procedure Code, in particular, prescribes the following:

"1. The person participating in the case may apply to the Court of First Instance examining the case with a motion to request evidence from another person participating in the case.

2. The person participating in the case who has not been provided with the relevant evidence within the time limit prescribed by law, or the provision of the evidence without the decision of the court is prohibited by law, may apply to the Court of First Instance with a motion to request that evidence from a person not participating in the case.

(...)".

245. Point 5 of Article 11 of the Law provides for the power of the competent body to assign the implementation of operational intelligence measures envisaged by the Law "On operational intelligence activity" (except for those specified in points 8, 11, 12, 13, 15 and 16 of part 1 of Article 14 of the same Law) for the purpose of determining the scope of beneficial owners, affiliated persons, and ascertaining the volume of assets. Point 6 of Article 11 of the Law provides for the power of the competent body to use online databases containing the data required for obtaining information regarding the assets located beyond the borders of the Republic of Armenia, as well as to submit requests to the competent bodies of a foreign state for provision of information.

246. The Constitutional Court records that the powers envisaged by points 5 and 6 of Article 11 of the Law regarding the volume of assets, beneficial owners, and affiliated persons thereof are aimed at acquiring the information specified therein, which the interested persons are, with a high degree of probability, already in possession of from the outset.

247. Based on all of the foregoing, the Constitutional Court records that, in the civil case instituted pursuant to the Law, the Prosecutor's Office acts as a plaintiff on a general basis, and that the examination is directed toward the clarification and preparation of the grounds for the action, within the framework of which the exercise of the Prosecutor's Office's powers does not result in a violation of competition in civil procedure.

248. Taking into account that the examination provided for by the Law constitutes a procedure aimed at acquiring data concerning the existence of illegal assets, its volumes and the circle of interested persons, and that only upon the completion of such examination the competent body, upon finding the existence of appropriate grounds, files an action, the Constitutional Court notes that not every issue arising in connection with the examination may, in itself, be assessed

in the context of the right to a fair trial. Accordingly, the limitation whereby the examination materials may be made available to other persons (other than the interested persons) solely with the consent of the competent body does not, in itself, conflict with the constitutional right to a fair trial.

249. With regard to the Applicant's claim that a person is deprived of the opportunity to disclose the data regarding the examination, the Constitutional Court also deems it necessary to record that the reference to this issue falls within the scope of the issues raised by the Applicant in connection with the right to receive legal aid and, accordingly, will be examined in the relevant part of this Decision.

250. The Applicant notes that a person is afforded a period of one month to familiarise themselves with the examination materials, whereas the competent body may collect these materials for a period of two, and in certain cases, three years. In this regard, the Constitutional Court records that, unlike the competent body, persons typically already possess substantial prior knowledge of the information that the competent body is required to obtain and analyse in the course of the examination.

Under such circumstances, in the assessment of the Constitutional Court, the identification of a substantial disparity between the period afforded for familiarisation with the examination materials and the period provided for submitting a position, as a result of a direct comparison with the periods of the examination, cannot, in itself, be deemed problematic from the standpoint of ensuring equality of the parties, provided that, in light of the specific circumstances of each case, such disparity does not result in an impediment to the Respondent’s ability to present their case that would call into question the compliance with the principles of equality of the parties and competition in civil procedure. Based on the foregoing, the Constitutional Court, in the exercise of abstract review, finds no reason to regard the substantial disparity between the

period of the examination and the period afforded to persons for familiarisation with the examination materials and submission of their position as, in itself, constituting a violation of the right to a fair trial.

251. The Applicant further notes that the one-month time limit envisaged for familiarisation with the examination materials and the submission of a position, as well as the seven-day time limit included within that month for appealing the judicial acts issued in connection with obtaining data relating to the person both through the appellate and cassation procedures, are insufficient for the proper exercise of the aforementioned rights. The Constitutional Court records that, within the framework of the abstract review of the Law, as well as under the conditions when the Applicant fails to present specific circumstances regarding the aforementioned issue raised by the latter, the Constitutional Court is unable to make judgments on the reasonableness and adequacy of the time periods established by the legislator for familiarisation with the examination materials and submission of a position, as well as for appealing the relevant judicial acts. Under such circumstances, the Constitutional Court concludes that there are no grounds to consider the time limits established by the Law for familiarisation with the examination materials, submission of a position, or appeal of judicial acts issued in connection with obtaining data relating to the person as inconsistent with the Constitution.

VI. REGARDING THE RIGHT TO RECEIVE LEGAL AID

A. Positions of the Parties

1. The Applicant

252. The Applicant observes that, at the stage of familiarisation with the materials collected as a result of the examination and the submission of a position concerning the data obtained (following the notification stipulated in Article 16 of

the Law), the Law does not envisage any regulation on the possibility of protecting a person's interests through a lawyer.

253. In their supplementary explanations, the Applicant notes that the matter to which they have drawn attention concerns the absence of any provision in the Law regulating the possibility of protecting a person's interests through a lawyer at the stage of familiarisation with the materials collected as a result of the examination and the submission of a position regarding the data obtained.

254. In the Applicant's view, the possibility of free legal aid, as provided for by Article 41 of the Law "On the profession of advocate" invoked by the Respondent, pertains solely to the stage of judicial examination of the claim for the civil forfeiture of illegal assets, whereas the stage of familiarisation with the case materials remains unregulated. According to the Applicant, the problem pertains not only to accessibility to free legal aid, but more generally to the absence of any opportunity for a person to protect their interests through a lawyer of their own choosing.

2. The Respondent

255. In the Respondent's view, a person who has the status of a respondent in civil procedure may challenge the admissibility of any evidence before the court, accordingly, the legislation affords persons adequate opportunities to challenge violations of the law by a competent body through judicial procedure, therefore, the provisions of the Law do not contradict the right to effective protection guaranteed by Article 61 of the Constitution.

256. The Respondent finds that the right to receive legal aid is guaranteed under Article 64 of the Constitution, and its exercise does not require that each legal act provide for the right of persons to receive legal aid in relation to the relations regulated thereby, given that the norms of the Constitution are directly applicable.

257. The Respondent notes that, by virtue of a number of regulations enshrined in the Law, the possibility of a representative's participation in relations with the competent body is already taken into consideration in the Law, and the possibility of the exercise thereof is directly guaranteed by the Constitution. Based on the foregoing, the Respondent finds that a person's rights to receive legal aid and to act through a representative are not, in any respect, limited at any stage of civil forfeiture of illegal assets. According to the Respondent, the absence of an explicit provision in the Law concerning the possibility of exercising the aforementioned right may not be construed as rendering the Law incompatible with the protection of the right provided for by Article 64 of the Constitution.

B. The law applicable to the resolution of the dispute

258. Pursuant to Article 64 of the Constitution:

> "1. Everyone shall have the right to receive legal aid. Legal aid shall be provided at the expense of state funds in the cases prescribed by law".

C. Position of the Constitutional Court

259. Within the context of the constitutional right to receive legal aid, the arguments put forward by the Applicant concerning the unconstitutionality of the Law pertain to a person’s rights to receive legal aid from a lawyer of their own choosing and to receive legal aid at the expense of state funds, as provided for by part 1 of Article 64 of the Constitution. Accordingly, in order to assess the constitutionality of the relevant norms of the Law with regard to ensuring the constitutional right to receive legal aid, the Constitutional Court addresses them by separately analysing the substance of each of the norms contained in the first and second sentences of part 1 of Article 64 of the Constitution.

260. The Constitutional Court addressed the right to receive legal aid, as enshrined by the first sentence of part 1 of Article 64 of the Constitution, in its Decisions DCC-1119 of 8 October 2013 and DCC-1263 of 5 April 2016, noting, in particular, the

following:

"(...) [the right to receive legal aid] implies the **completeness** of legal aid, which is conditioned by the **effectiveness** with which the defence council discharges their obligation to provide legal aid (...). Accordingly, (...) the State's duty, namely to ensure, both at the legislative level and in the practice of law enforcement, the effective fulfilment of the obligation of the defence council to provide legal aid, and, in the event of any impediments, to take measures to eliminate them, corresponds to the right under consideration.

(...) the Constitutional Court finds that certain requirements may be imposed by law on the exercise of the rights to legal protection and legal aid before state bodies, or that the procedures for exercising such rights may contain specific formal conditions, which, however, should not be of such an extent as to render the exercise of those rights ineffective, to distort their essence, or to turn into a limitation of the right that does not serve any legitimate aim"[43].

"(...) by enshrining the legislative requirement for exercising judicial representation only through a lawyer, the legislator not only fulfils its positive obligation to guarantee the right to receive legal aid as enshrined in part 1 of Article 64 of the Constitution, but also ensures the provision of **quality** legal aid (...).

"(...) the State has broadened the scope of its positive obligation to provide quality legal aid, elevating the role of the profession of advocate as an institution responsible for providing quality legal aid to a constitutional level"[44].

[43] Decision of the Constitutional Court DCC-1119 of 8 October 2013, point 5.
[44] Decision of the Constitutional Court DCC-1263 of 5 April 2016, point 6.

261. The Constitutional Court records that a lawyer is a specialist carrying out law protection activities, who provides legal advice to a client, represents the client's interests, and ensures the protection of the client's rights by all means and methods not prohibited by law, thereby furnishing them with the necessary legal aid. In essence, the constituent has vested the role of the principal entity responsible for the practical exercise of the right to receive legal aid guaranteed by the State to the lawyer, the legislative framework and guarantees of activities whereof are prescribed by the Law "On the profession of advocate", procedural codes, and other laws.

262. Within the context of all of the foregoing, the Constitutional Court finds that the legislative guarantees of a person's constitutional right to receive legal aid should be construed based on the principle of completeness of legal aid, taking into consideration that the legal aid is provided in any form and manner not prohibited by law, including, but not limited to, providing legal advice and representation.

263. The Applicant, specifying their arguments concerning the constitutionality of the Law with respect to this constitutional right, confined themselves exclusively to the issue of access to legal aid within the framework of the pre-trial procedure, in relation whereto the Constitutional Court records that no provision of the Law, in itself, limits a person's right to receive legal aid. In general, the Law contains no regulation that would limit a person's right to receive legal aid.

264. In particular, the Constitutional Court records that the mechanisms and procedures for exercising the constitutional right to receive legal aid in proceedings for the civil forfeiture of illegal assets are enshrined in the Law "On the profession of advocate" and, taking into consideration the circumstances of this case, also in the Civil Procedure Code. In particular, part 1 of Article 5 of the Law "On the profession of advocate" defines the concept of the profession of

advocate, according to which:

“Advocacy is a form of law protection activity, which is carried out by an advocate and is aimed at exercising and protecting, through means and ways not prohibited by law, the rights, freedoms and interests of a person receiving legal aid”.

265. Part 2 of the same Article prescribes the following:

"An advocate may carry out the following activities:

(1) advice, including providing advice to clients on their rights and obligations, as well as examination of documents, drawing up other legal documents (hereinafter referred to as "advice");

(2) representation, including representation in court (hereinafter referred to as "court representation");

(3) defence in criminal proceedings;

(4) providing legal assistance to the witness in the cases and as provided for by law”.

266. Article 2 of the Law prescribes the following:

"1. In the Republic of Armenia, the relations pertaining to civil forfeiture of illegal assets shall be regulated by this Law, the Civil Procedure Code of the Republic of Armenia, the Civil Code of the Republic of Armenia and other laws.

2. Where rules other than those prescribed by the Civil Procedure Code of the Republic of Armenia, Civil Code of the Republic of Armenia and other laws are prescribed by this Law, rules prescribed by this Law shall be effective”.

267. In turn, a comprehensive examination of the Law demonstrates that special

regulations concerning legal aid (representation) in proceedings for the civil forfeiture of illegal assets are provided for only by Article 9 of the Law (confidentiality of examination) and part 6 of Article 19 (completing the examination with conciliation agreement). Consequently, the remaining provisions concerning legal aid in proceedings for the civil forfeiture of illegal assets, are prescribed in the Law "On the profession of advocate" and the Civil Procedure Code within the framework of the general regulations applicable to civil procedure. In particular, Chapter 7 of the Civil Procedure Code is entirely dedicated to the institute of representation in civil procedure, including the types of representatives, the powers of the representative, the legal consequences of the representative's actions, etc.

268. The Constitutional Court finds that the provisions of the Civil Procedure Code concerning the exercise of the right to legal aid in proceedings for the civil forfeiture of illegal assets should be interpreted based on parts 1-2 of Article 5 of the Law "On the profession of advocate", as well as the principle of completeness of legal aid established by the Decision of the Constitutional Court No DCC-1119 of 8 October 2013, which, in the opinion of the Constitutional Court, provides sufficient guarantees for the full realisation of a person's right to receive legal aid during proceedings for the civil forfeiture of illegal assets.

269. Consequently, in view of the operation of the aforementioned general rules concerning the right to legal aid and, at the same time, the absence of exceptions thereto, the Constitutional Court finds that, within the framework of abstract review of the constitutionality of the Law, there exists no reason to even theoretically exclude or limit the possibility for an interested person, when familiarising themselves with the examination materials at the stage of examining the grounds for filing an action as provided for by the Law, to use legal aid provided by a lawyer of their own choosing or by any other category of persons specified in part 3 of Article 5 of the Law "On the profession of advocate".

270. As for the Applicant's assertion concerning the absence of the possibility of receiving legal aid at the expense of state funds, as provided for by the second sentence of part 1 of Article 64 of the Constitution, the Constitutional Court records that it falls within the framework of the institute of public defence, which is governed by the rules of Chapter 7 of the Law "On the profession of advocate" and other interconnected provisions of the same Law.

271. The failure to provide the opportunity to receive legal aid through a public defender during the examination stage provided for by the Law is envisaged by part 3 of Article 41 of the Law "On the profession of advocate", pursuant to which, within the meaning of the same Article, the representation or defence shall be exercised during the preliminary investigation in criminal proceedings, in the courts of first instance, courts of appeal and the Court of Cassation of the Republic of Armenia, as well as in the Constitutional Court of the Republic of Armenia.

272. In this regard, the Constitutional Court deems it necessary to address also the admissibility of the Applicant raising, in the context of this case, the issue concerning the absence of the possibility to receive legal aid through the public defender (at the expense of state funds) during the stage of familiarisation with the examination materials, as prescribed by Article 16 of the Law, insofar as the subject matter of the application pertains exclusively to the Law and does not address the issue of the constitutionality of either the Civil Procedure Code or the relevant provision of the Law "On the profession of advocate".

273. The Constitutional Court finds that, in this case, the answer to the aforementioned question is contingent upon revealing the precise relationship between the jurisdiction of the Constitutional Court in determining the scope of the subject matter of the application and the disposition principle of the person entitled to apply to the Constitutional Court in determining their claim.

274. The Constitutional Court has previously addressed its jurisdiction to depart at its discretion *(iura novit curia)* from the scope of the justifications in instances of non-exhaustive or inaccurate justifications presented in an individual application, which stems from the authority to ascertain the circumstances of the case *ex officio*. In particular, in its Procedural Decision No PDCC-76[45] of 13 May 2024, the Constitutional Court noted:

"The Constitutional Court acknowledges that, within the context of law enforcement practice, it may not always be feasible for a person seeking constitutional justice to submit exhaustive and accurate justifications to substantiate the inconsistency of the challenged norm with the Constitution. In any case, this cannot preclude the Constitutional Court from continuing to examine the case in the presence of other justifications for the unconstitutionality of the norm challenged in accordance with the principles of discretion of the Court to depart from the scope *(iura novit curia)* of justifications, even if not referred to in any way by the Applicant, regarding the examination of the case *ex officio* and the law applied by the court administering justice, without constraining justice with formalism incompatible with its essence (...).

The same, however, does not extend to the jurisdiction of the Constitutional Court in determining the scope of the subject matter of the application, when the Constitutional Court, of its own initiative *(proprio motu)*, alters the scope of the subject matter of the application seeking constitutional justice by incorporating provisions other than those challenged therein (except for the case provided for by part 10 of Article 68 of the Constitutional Law, the prerequisites for which, however, are not present in this case). Otherwise, (1) the Constitutional Court would be transformed from a body entrusted with the resolution of constitutional disputes into a party initiating such disputes, which is incompatible with its

[45] Procedural Decision of the Constitutional Court PDCC-76 of 13 May 2024, point 6.1.

constitutional status as an independent and impartial body of constitutional justice, as well as: (2) would contradict the disposition principle of a person entitled to apply to the Constitutional Court in determining their claim or, in the case of a public authority, the discretion vested in it in the exercise of the relevant jurisdiction."

275. The Constitutional Court, reaffirming and developing the position set forth in the aforementioned Procedural Decision, records that its authority to review the constitutionality of legal norms other than those challenged in the application submitted to the Constitutional Court relates exclusively to those legal norms of the challenged regulatory legal act that are systematically interconnected with the legal norms challenged in the application.

276. In the present case, Article 16 of the Law is challenged in the application, whereas the legal issue raised by the Applicant — namely, the exercise of the right of an interested person to receive legal aid when familiarising themselves with the examination materials during the investigation stage of proceedings for the civil forfeiture of illegal assets, as noted above — is governed by the Civil Procedure Code and the Law "On the profession of advocate", based on the blanket legal norm set forth in part 1 of Article 2 of the Law.

277. Accordingly, in order to ascertain the permissibility of raising, in this application, a legal issue regarding the right of an interested person to receive legal aid when familiarising with the examination materials and submitting a position during the stage of familiarisation with the examination materials, as prescribed by Article 16 of the Law, the Constitutional Court deems it necessary to address the substantive essence of the blanket legal norm and blanket legal regulation.

278. The Constitutional Court records that the blanket legal norm does not possess autonomous existence; it cannot be implemented or applied independently. In other words, a blanket legal norm does not constitute an independent regulator

of social relations and functions as a social regulator only in conjunction with the legal norm that is referenced in the blanket legal norm. Accordingly, the constitutionality of a blanket legal norm, as well as other norms of a given regulatory legal act operating within the framework of its statutory regulation (systemically interconnected with the latter), may be determined only through a simultaneous and combined analysis of the legal norms that are referenced in the blanket legal norm.

279. The Constitutional Court emphasises, however, that the legal norms referenced in the blanket legal norm, which are enshrined in other regulatory legal acts, are neither indicated in the application nor challenged by the Applicant as such, do not fall within the scope of review of the constitutionality by the Constitutional Court. Simultaneously, where, by virtue of blanket legal regulation, the constitutional content of the legal norm challenged by the Applicant may be identified only through the analysis of a provision enshrined in another regulatory legal act (to which the blanket norm refers), such provision shall be analysed by the Constitutional Court only to the extent necessary to determine the constitutionality of the provision challenged by the Applicant, having regard exclusively to the content of the challenged provision and its regulatory context, which must be clarified through its interpretation.

280. In other words, the Constitutional Court's reference to and analysis of, to the necessary extent, provisions enshrined in another regulatory legal act — which are not challenged in the submitted application but are implicated by blanket legal regulation — does not, in any respect, constitute a legal assessment of the constitutionality of those legal norms. Otherwise, the regulatory framework of the specific and abstract constitutional review mechanisms, and consequently the substantive scope of the examination of the case based on the application submitted to the Constitutional Court, as determined by the Constitutional Law "On the Constitutional Court", will be violated.

281. In the given case, part 1 of Article 2 of the Law prescribes that the proceedings for the civil forfeiture of illegal assets shall be conducted in accordance with the Law, the Civil Procedure Code, the Civil Code and other laws. Thus, by virtue of the mentioned provision, the entire regulatory mechanism of the Law functions in conjunction with the aforementioned and other laws, provided that, where the Law establishes special rules, such rules shall prevail (part 2 of Article 2 of the Law). Accordingly, Article 16 of the Law does not independently enshrine regulations regarding the receipt of legal aid, insofar as, deriving from part 1 of Article 2 of the Law; such regulations are enshrined by the Civil Procedure Code and the Law "On the profession of advocate".

282. Consequently, the question raised by the Applicant regarding the fact that Article 16 of the Law does not provide for the right of an interested person to receive legal aid through a public defender (at the expense of state funds) when familiarising themselves with the examination materials and submitting a position during the investigation stage of proceedings for the civil forfeiture of illegal assets, can be fully and comprehensively examined only if the constitutionality of the Civil Procedure Code and the Law "On the profession of advocate" is addressed within the framework of the raised question, which, based on the positions presented above, is beyond the scope of the examination of this application.

VII. REGARDING THE PRINCIPLE OF CERTAINTY

A. Positions of the Parties

1. The Applicant

283. The Applicant notes that the Law contains a number of uncertain regulations, some of which are problematic from the standpoint of the principle of certainty

applicable to the law when limiting the fundamental rights and freedoms prescribed by Article 79 of the Constitution, while others — from the standpoint of the requirement of certainty applicable to laws stemming from the principle of a state governed by the rule of law prescribed by Article 1 of the Constitution.

284. In the Applicant's view, it is unclear how intellectual property may be regarded as illegal within the meaning of the Law and be forfeited. Under point 1 of part 1 of Article 3 of the Law, cryptocurrency is also classified as assets within the meaning of the Law; however, no regulatory legal act of the Republic of Armenia prescribes a definition of the term "cryptocurrency".

285. In the Applicant's view, the content of the concept of "lawful income" is not clearly defined by the regulation of the Law, since, where the regulation on Article 1277 of the Civil Code is set aside from point 3 of part 1 of Article 3 of the Law, which constitutes a collision norm, "lawful income" would be understood merely as income expressed in AMD, foreign currency, cryptocurrency, or income received in kind (non-monetary form). Since the defining concept explicitly repeats the concept being defined, and according to the Applicant we are dealing with tautology.

286. The Applicant further notes that, following the wording "including" used in the Law, separate types of lawful income are listed in a non-exhaustive manner; in particular, (c) received borrowings and (h) the assets received through gifting or aid, are presented as such. It is unclear to the Applicant whether the relevant provisions provided for by the Civil Code, including the requirements as to the form of the transaction, will serve as the basis for assessing the fact of existence or absence of a legal relationship of "borrowing" or "gifting" or whether the terms "borrowing" and "gifting" are accorded a different meaning for the purposes of the Law.

287. The Applicant finds that, from the standpoint of the requirement of certainty

applicable to the law interfering with the right of ownership, it is problematic that no regulatory legal act defines the form or methodology of calculation through which the competent body determines the known income and expenses of the person acquiring the assets prescribed by point 4 of part 1 of Article 7 of the Law, including the average monthly living expenses, and by comparing the result whereof with the value of the assets comes to a conclusion regarding the lawfulness of their origin. Given the broad scope of application of the Law, the calculation of income and expenses in the absence of a defined form and methodology may result in its non-uniform application, which, according to the Applicant, raises concerns from the standpoint of the constitutional principle of general equality before the law.

288. The Applicant notes that the mere suspicion on the part of the competent body, coupled with the existence of certain evidence regarding thereto, is sufficient to extend the examination period back to 21 September 1991. Both of the mentioned prerequisites, however, are, according to the Applicant, inherently evaluative, and the Law does not establish any objective criteria nor provide for the possibility of review of the mentioned decision of the competent body through judicial appeal, vesting the competent body with absolute discretion, unconstrained by anything, to extend the examination period.

289. According to the Applicant's position, the Law does not provide for any regulation for the protection of the interests and rights of third parties in cases where the illegal asset has been obtained to the detriment thereof. In particular, there is no mechanism for notifying the latter of the proceedings, involving them in the proceedings, or any other measure for the protection of their interests and rights.

290. The Applicant notes that one of the conditions envisaged for starting an examination for the purpose of initiating civil forfeiture proceedings (suspicion

that the assets are illegal) constitutes an entirely evaluative judgment. The Law does not establish any objective criteria that would allow restricting the absolute discretion of the person evaluating the grounds for suspicion concerning the illegal assets.

291. The Applicant notes that the hierarchical rules relating to civil forfeiture proceedings, enshrined in part 2 of Article 2 of the Law, directly result in a violation of Article 5 of the Constitution, since they establish a hierarchy between norms of equal legal force, thereby attributing superior legal force to the Law. Furthermore, uncertainty arises regarding which norms the law enforcer should be guided by, particularly considering that paragraph 2 of part 1 of Article 1 of the Civil Code of the Republic of Armenia prescribes the following: "Norms of civil law contained in other laws must comply with this Code".

292. The Applicant notes that the Law fails to address the key issue of which specific assets are subject to civil forfeiture. For instance, in the event of a real discrepancy between lawful income and expenses, where it remains unclear which assets are subject to civil forfeiture and to what extent, how to proceed if the assets were acquired partly through lawful means and partly through unlawful means.

293. In their supplementary explanations, the Applicant notes that the first of the preconditions presented by the Respondent (the existence of suspicion) is entirely an evaluative judgment, and furthermore, its existence may not be challenged in court under the Law. As an objective criterion, the mere preservation of evidence concerning the acquisition of assets is insufficient; there must be at least some objective grounds regarding the fact that the assets are illegal.

294. Referring to the methodology for [calculating] the lawful income and expenses, the Applicant notes that, in this matter, the mathematical calculation of the

combination of a person's income and acquired assets may not be applicable in many cases, for example, where the assets were acquired at a value significantly lower than its current market value.

2. The Respondent

295. Referring to the argument in the application that the concept of “assets” enshrined in the Law is uncertain, and that it is unclear how intellectual property may be regarded as illegal and be forfeited, the Respondent states that the concept of "assets" within the meaning of both Article 132 of the Civil Code and the Law does not include the results of intellectual activity, including exclusive rights thereto, and, accordingly, there is no uncertainty or ambiguity in the Law in this regard.

296. Referring to the uncertainty of the term "cryptocurrency" enshrined in the Law, the Respondent notes that pursuant to part 1 of Article 15 of the Law "On regulatory legal acts", in a regulatory legal act, concepts or terms that are defined by regulatory legal acts or are widely-known shall be used, and the concept of "cryptocurrency" is sufficiently clear to the public, particularly to the group of persons who engage in cryptocurrency operations. The Respondent also notes that various cryptocurrencies and their circulation are widespread worldwide, and with the assistance of appropriate specialists, state bodies will have the opportunity to clarify the content of the aforementioned concept.

297. Referring to the concept of "lawful income", the Respondent notes that, in assessing the lawfulness of income, the applicable law may include not only the law of the Republic of Armenia but also the law of another state, nonetheless, it is of essential significance that the income be obtained in compliance with applicable norms, and the regulation in question does not entail any uncertainty in this regard.

298. Referring also to the concepts of "borrowing" and "gifting" as mentioned in the

Law, the Respondent notes that, in the absence of specific definitions in the Law regarding them, the definitions and regulations set forth in the Civil Code and other applicable legal acts serve as the basis within the meaning of the application of these concepts.

299. Referring to the issue of the absence of a methodology for calculating lawful income and expenses raised in the application, the Respondent finds that enshrining such a methodology in the Law is unnecessary for the purposes of safeguarding the constitutional principle of legal certainty: the comparison of a person's income, identified expenses, and acquired assets constitutes, in general, a predictable and certain guideline, and that the only possible mechanism for its implementation is a mathematical calculation by combining the specified data. Therefore, the Respondent finds that the absence of an appropriate methodology does not result in a violation of the principle of certainty provided for by the Constitution.

300. Referring to the Applicant's claims that the possibility of extending the examination period back to 1991 constitutes an "absolute unconstrained discretion", the Respondent notes that they are unsubstantiated, since the Law provides for clear preconditions namely, the suspicion of the competent body regarding the existence of previously acquired illegal assets, as well as the preservation of evidence related to the acquisition of such assets.

301. The Respondent further notes that the Applicant's claims regarding the aforementioned conditions not being subject to judicial review are unfounded, since the court may declare any evidence inadmissible in accordance with the rules of civil procedure.

302. With respect to the Applicant’s claims concerning the absence of a mechanism to protect the interests of third parties, the Respondent notes that the Law provides for the requirement to notify all interested persons identified during the

examination, including through public notice, which provides an opportunity for even those interested persons not identified by the competent body to become aware of the existence of proceedings. As for the judicial stage of examination of the case, all interested persons who are not respondents may, in accordance with the rules provided for by the Civil Procedure Code, participate in the examination of the action as a third party and enjoy the relevant procedural rights. Therefore, the Respondent finds that the Law regulates the relations related to the notification of third parties with sufficient certainty, and in this respect, there is no breach of the requirement of certainty either.

303. Referring to the position of the law to be applied in the hierarchy of norms, the Respondent notes that part 2 of Article 2 of the Law does not confer upon the Law superior legal force over the Civil Code, the Civil Procedure Code or other legal acts, but rather enshrines at the legislative level the fact that the regulations established by the Law, in relation to the relevant general norms, constitute special norms within the framework of the proceedings for the civil forfeiture of illegal assets. Thus, according to the Respondent, a conflict may arise not between legal acts, but between general and special norms, as the norms established by the Law govern relations arising within the framework of a specific legal procedure — namely, the civil forfeiture of illegal assets — which constitute special legal relations with regard to general civil law and judicial relations.

304. The Respondent notes that the Applicant's argument — that it is unclear which specific assets may be the subject of civil forfeiture as a result of the proceedings for civil forfeiture of illegal assets — is unfounded. According to the Respondent, the competent body is required to determine the presence or absence of legal means for the acquisition of each specific asset, as a result of which it becomes clear whether the specific asset is illegal and subject to civil forfeiture or not.

305. The Respondent further notes that the competent body is not deprived of the opportunity to forfeit the relevant asset by separating the part thereof, and, in cases where such separation is objectively impossible, an amount equivalent to

the market value of the asset in question may be forfeited.

B. The law applicable to the resolution of the dispute

306. Article 1 of the Constitution:

"The Republic of Armenia is a (...) state governed by the rule of law."

307. Article 79 of the Constitution: "Principle of Certainty":

"When limiting fundamental rights and freedoms, laws must define the grounds and extent of limitations, be sufficiently certain to enable the holders and addressees of these rights and freedoms to display appropriate conduct."

C. Position of the Constitutional Court

308. The Constitutional Court has addressed in a number of its decisions the substance of the constitutional requirement of legal certainty, recording, in particular, the following:

- "[T]he law must also comply with the legal position expressed in a number of judgements of the European Court of Human Rights, according whereto no legal norm can be considered a "law" if it does not comply with the principle of legal certainty (*res judicata*), *i.e.* it is not formulated with a sufficient degree of clarity, which will allow the citizen to bring his or her behaviour into compliance with it[46]."
- "The principle of the state governed by the rule of law requires, *inter alia*, the existence of legitimate laws. The latter must be sufficiently accessible — subjects of law must, in the relevant circumstances, be able to determine which legal norms apply in a given case. A norm cannot be regarded as a "law" unless it is formulated with sufficient accuracy to enable legal and natural persons to regulate their behaviour accordingly; they must be able to foresee the consequences which a given action may entail.

[46] Decision DCC-630 of 18 April 2006, point 11.

The existence or absence of conflicts between various regulations managing these relations is another important factor in assessing the foreseeability of the laws[47]."

- "At the same time, separate concepts used in laws may not be self-sufficient. Their contents, scope of characteristic features are adjusted not only as a result of law-making activities but also in the judicial practice[48]."

- "Even if a legal norm has an extremely clear wording, the judicial interpretation [of it] should never be ruled out. There is always a need to clarify legal norms and to adapt them to the changing circumstances, evolving social relations. Therefore, the certainty and accuracy of the legislative regulation should not be made absolute, and even insufficient clarity may be supplemented by judicial interpretations.

  The European Court of Human Rights has repeatedly taken the position that, "Despite the fact that the certainty in definitions is highly desirable, their excessive rigidity needs to be avoided, and the law must be able to keep pace with changing circumstances. Accordingly, laws often contain terms which, to a greater or lesser extent, are uncertain. Their interpretation and application are matters of judicial practice (The Sunday Times v. the United Kingdom (Application no. 6538/74, 26/04/79, § 49)[49]" (Decision DCC-1270 of 3 May 2016).

- "When examining the matter in the context of the principle of legal certainty, due regard must be had to the reality that legal norms, as general and abstract regulations, always require some interpretation, and that it is virtually impossible to regulate the entire diversity of relations of social life through unequivocal

[47] Decision DCC-753 of 13 May 2008, point 9.
[48] Decision DCC-780 of 25 November 2008, point 7.
[49] Decision of the Constitutional Court DCC-1270 of 3 May 2016, point 7.

legal norms[50]" (Decision DCC-1610 of 23 September 2021).

- "(...) despite stipulating a requirement for certainty of the law, it is not possible to regulate every issue exclusively by law, therefore, the importance of a clear judicial interpretation of the law is particularly emphasised here.

- (...)

- (...) There is always a need to clarify legal norms and to adapt them to the changing circumstances, evolving social relations. Therefore, the certainty and accuracy of the legislative regulation should not be made absolute, and even insufficient clarity may be supplemented by judicial interpretations." The above-mentioned is confirmed also by the legal positions of the European Court of Human Rights, in particular, in Busuioc v. Moldova judgment (Case of Busuioc v. Moldova, application no. 61513/00, 21/12/2004) the Court has found:

  "... that whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Therefore, many laws are inevitably couched in terms which, to a greater or lesser extent, are uncertain and whose interpretation and application are questions of practice[51]."

- "(...) taking into account the diversity of vital issues and the impossibility of addressing every situation through a norm-making practice, the requirement for certainty of legislative and secondary legislative regulations does not rule out the enshrinement of uncertain legal concepts in laws and secondary regulatory legal acts, however it must mandatorily be accompanied by an adequate and, in case the concepts are the same —

[50] Decision of the Constitutional Court DCC-1610 of 23 September 2021, point 4.1.2.
[51] Decision of the Constitutional Court DCC-1452 of 2 April 2019, point 4.3.

uniform interpretation of such concepts, without which it will be impossible to establish the foreseeability of those provisions[52]" (Decision DCC-1488 of 15 November 2019).

- "(...) despite the requirement for certainty in legislative regulations, they cannot anticipate every detail of a legal relationship, since a number of circumstances inherent in the specific nature of a given legal relationship must receive their interpretation in the course of judicial examination.

- (...)

- (...) In that sense, it is impossible to construct legislation according to a logic that would exclude evaluative categories, terms or formulations subject to interpretation, however, this cannot result in legal uncertainty, since such formulations are given their interpretation and clarification by the court, taking into account the circumstances of a certain case, and are assessed within the framework of the exercise of the court's discretionary powers in the application of the law[53]" (Decision DCC-1561 of 24 November 2020).

- "(...) from the perspective of ensuring the principle of legal certainty, the general logic amounts to the idea that, although legal certainty is necessary, this principle does not preclude the presence in legal acts of formulations or terms of an evaluative nature, which are clarified in greater detail in each particular case within the framework of law enforcement practice[54]."

- "(...) legal certainty should not be made absolute. Due to the existence of evaluative terms, legal regulation in itself should not be problematic, in which circumstances the mission of supplementing the scope of certainty

[52] Decision of the Constitutional Court DCC-1488 of 15 November 2019, point 4.3.
[53] Decision of the Constitutional Court DCC-1561 of 24 November 2020, point 4.2.
[54] Decision of the Constitutional Court DCC-1592 of 4 May 2021, point 4.3.

and imparting the content that is necessary and sufficient for the application of legal provisions is entrusted to the law enforcer[55]."

- "(...) legal certainty should not be made absolute, and legal regulation containing certain elements of uncertainty is not, in itself, problematic, in which circumstances the mission of supplementing the required degree of certainty and imparting the content that is necessary and sufficient for the application of legal regulation is entrusted to the law enforcer[56]." (Decision DCC-1669 of 22 November 2022).

309. Reaffirming the positions set out above, the Constitutional Court records that legal certainty should not be made absolute, and that legal regulation containing certain elements of uncertainty or evaluative terms is not, in itself, problematic, while the mission of supplementing the required degree of certainty and imparting the content that is necessary and sufficient for the application of legal regulation is entrusted to the law enforcer, primarily through judicial interpretation. In such circumstances, the Constitutional Court concludes that, from the perspective of compliance with the constitutional requirement of legal certainty, the question of the constitutionality of legal regulations containing certain elements of uncertainty or evaluative terms arises only where it is not possible, through their interpretation, to impart the necessary degree of certainty to the legal regulation (to overcome the presumed uncertainty).

310. Point 1 of part 1 of Article 3 of the Law prescribes, that assets shall be the assets provided for in part 1 of Article 132 of the Civil Code of the Republic of Armenia, including cryptocurrency. Pursuant to part 1 of Article 132 of the Civil Code, the following shall be the objects of civil rights: (1) property, including monetary means, crypto-assets, securities and property rights; (2) works and services; (3)

[55] Decision of the Constitutional Court DCC-1646 of 29 April 2022, point 5.6.
[56] Decision of the Constitutional Court DCC-1669 of 22 November 2022, point 5.3.

information; (4) results of intellectual activities, including exclusive rights with respect thereto (intellectual property) and (5) intangible assets. Addressing the mentioned provision of the Law, the Applicant notes that it is unclear how intellectual property may, within the meaning of the Law, be regarded as illegal, as well as that, under the same provision, cryptocurrency is also considered an asset, whereas the definition of cryptocurrency is not provided for by the legislation of the Republic of Armenia. In this regard, the Constitutional Court records that the content of the concept of "asset" may and must be revealed through judicial interpretation, on the basis of which an answer shall be given to the question of whether intellectual property falls within the scope of the concept of "asset" and, consequently, whether it may be forfeited or not. In addition to what was mentioned, the Constitutional Court observes that, by Law HO-394-N "On making amendments to the Civil Code of the Republic of Armenia", which entered into force on 21 November 2024, the Civil Code was supplemented with Article 143.1, entitled "Crypto-asset", which, in particular, defines the concept, bearing the same name. Meanwhile, by Law HO-336-N "On making amendments to the Law "On civil forfeiture of illegal assets", entered into force on 21 November 2024, the term "cryptocurrency" was replaced in the Law with the term "crypto-asset" (in the corresponding case-form).

311. Point 3 of part 1 of Article 3 of the Law prescribes, that lawful income shall be incomes received by observing provisions of applicable law determined in accordance with Article 1277 of the Civil Code of the Republic of Armenia, in the form of money of the Republic of Armenia, foreign currency, crypto-asset or in-kind (non-monetary), excluding taxes and compulsory payments, including received loans (credits), assets (also monetary funds) received as gift or aid. Referring to points 2 and 3 of part 1 of Article 3 of the Law, the Applicant notes that the content of the concept of "lawful income" is unclear, "as the defining concept actually repeats the concept being defined", and further questions

whether, when assessing the existence of legal relations pertaining to borrowing and gifting, the provisions of the Civil Code, including the requirements for a transaction, shall serve as the basis, or whether, within the meaning of the Law, "borrowing" or "gifting" is to be given another content. In this regard, the Constitutional Court notes that, for the purposes of the Law, the content of the concepts of "borrowing" and "gifting", as well as the relevant legal regulations concerning them, must and may be determined within the framework of law-enforcement practice.

312. Addressing points 1 and 2 of part 1 of Article 5 of the Law, the Applicant finds that one of the grounds for launching an examination — namely, the suspicion regarding the illegal asset — constitutes entirely an evaluative judgement. Pursuant to part 3 of Article 7 of the Law, where, based on the materials of the examination, suspicions over illegal assets acquired earlier than the period provided for in part 2 of the same Article emerge, and evidence related to the acquisition of such assets are available, the competent body shall render a decision establishing a new time period for examination, which may include only the time period after 21 September 1991. Addressing the provision presented, the Applicant finds that the preconditions set out therein are themselves, by their nature, evaluative, and that the Law does not provide any objective criteria. In this regard, the Constitutional Court records that (1) by virtue of the positions expressed in this Decision, the issue of ascertaining of the time-limits for the examination is directly connected to objective benchmarks, such as the commencement of the term of office of an official (see points 146-149 of this Decision) or the offence in relation to which proceedings for civil forfeiture of assets are being conducted (see points 160-161 of this Decision). Under these circumstances, agreeing with the Applicant's position, the Constitutional Court also records that the selection of the time period for examination is a matter to be determined at the discretion of the competent body; nevertheless, it serves no

purpose other than to verify the legality of the assets acquired during an objectively predetermined time period. Furthermore, (2) under these circumstances, due to the fact that the legal regulation contains terms of an evaluative nature does not render it problematic from the perspective of the constitutional requirement of legal certainty, while the mission of supplementing the required degree of certainty and providing additional clarification of the content of such legal regulations is entrusted to the law-enforcer. Accordingly, the presence of alleged evaluative terms in points 1 and 2 of part 1 of Article 5, and in part 3 of Article 7 of the Law, is not, in itself, problematic, and in each specific case, their content must and may be clarified in greater detail within the framework of law-enforcement practice.

313. Pursuant to part 1 of Article 7 of the Law, the competent body shall, with the view to establish the grounds necessary for lodging a claim on the civil forfeiture of the illegal assets, collect materials concerning, particularly, the incomes and expenses of the person acquiring the assets, including the monthly average expenses for subsistence. Addressing part 1 of Article 7 of the Law, the Applicant finds that the Law does not establish the form or methodology for calculation, used to establish the income and expenses of a person, including the monthly average expenses for subsistence, as defined by part 1 of Article 7 of the Law, the result of which, when compared with the value of the asset, is used to reach a conclusion regarding its legality. In this regard, the Constitutional Court records that the questions raised by the Applicant are issues that arise and must be addressed in the course of the application of the Law. Accordingly, how a person's income and expenses are to be calculated (determined) must be clarified, and issues related thereto are to be resolved within the framework of law-enforcement practice.

314. The Applicant further finds that the Law does not address the question of which specific asset is subject to civil forfeiture and to what extent. Point 2 of part 1 of

Article 3 of the Law defines, that illegal asset is the asset, including one unit of asset, several units of asset or a share of one unit of asset, the acquisition whereof is not justified by lawful income, as provided for by this Law, irrespective of whether it was acquired before or after entry of this Law into force, as well as proceeds received from the use of such an asset (fruits, products, income). Pursuant to part 1 of Article 24 of the Law, the illegal assets shall be subject to civil forfeiture where, based on the evaluation of the submitted evidence, the court comes to the conclusion that the market value of such assets exceeds AMD 50 million at the moment of bringing the action. The Constitutional Court states that, under the Law, illegal asset is defined as one unit of asset, several units of asset or a share of one unit of asset, the acquisition whereof is not justified by lawful income, as well as proceeds received from the use of such an asset (fruits, products, income). In turn, the illegal assets shall be subject to civil forfeiture where the market value of such assets exceeds AMD 50 million at the moment of bringing the action. Under these circumstances, the Constitutional Court finds that, in each case, the composition of the asset subject to civil forfeiture based on the Law may and must be ascertained through the interpretation and application of the provisions of the Law.

315. The Applicant finds that part 2 of Article 2 of the Law contradicts part 2 of Article 5 of the Constitution. Pursuant to part 2 of Article 5 of the Constitution, laws must comply with constitutional laws, whereas secondary regulatory legal acts must comply with constitutional laws and laws. Article 2 of the Law defines the following:

"1. In the Republic of Armenia, the relations pertaining to civil forfeiture of illegal asset shall be regulated by this Law, the Civil Procedure Code of the Republic of Armenia, the Civil Code of the Republic of Armenia and other laws.

2. Where rules other than those prescribed by the Civil Procedure Code of the Republic of Armenia, Civil Code of the Republic of Armenia or other laws, are prescribed by this Law, rules prescribed by this Law shall be effective."

316. The Constitutional Court states that part 2 of Article 5 of the Constitution is devoted to the regulation of issues of legal force (hierarchy) between constitutional laws, laws, and secondary regulatory legal acts. In turn, part 2 of Article 2 of the Law concerns the determination of the applicable law in cases of legal conflicts between laws (including codes), which is a legal matter, resolved not on the basis of constitutionality of any specific provision of the law, but according to the general principles for resolving potential collisions between individual provisions of laws, which cannot be included within the scope of the present constitutional dispute at all.

317. The Applicant also notes that uncertainty arises as to which norms the law-enforcer should follow, taking into account that, pursuant to paragraph 2 of part 1 of Article 1 of the Civil Code, norms of civil law contained in other laws must comply with the same code. The Constitutional Court first considers it necessary to note that the existence of alleged legal conflicts does not, in itself, undermine the legal certainty, where effective rules exist to resolve them. In this regard, the Constitutional Court reiterates its approach that, in order to resolve the legal matter raised by the Applicant, the submission of the relevant matter to the competent law-enforcer and the competence of the latter to address it within the scope of interpretation and application of the relevant legal provisions cannot be substituted by the identification of the constitutional content thereof through interpretation of the relevant provisions in the process of reviewing the constitutionality of the legal provision by the Constitutional Court. The interpretative tools of legal norms do not in any way preclude resolving the legal matter raised by the Applicant through judicial interpretation, where the law-

enforcement bodies conclude that such a conflict actually exists.

318. The Applicant also finds that the Law does not provide any regulation for the protection of the interests and rights of third parties in cases where the illegal asset has been acquired to the detriment thereof. Point 16 of part 1 of Article 3 of the Law prescribes that an interested person shall be the person the rights and obligations whereof may be prima facie affected by civil forfeiture of the asset. Accordingly, the Constitutional Court states that, within the meaning of the Law, any third party who may have prima facie rights in respect of assets subject to civil forfeiture under the procedure provided for by the Law may also be regarded as an interested person, even if such rights have not been recognised. Part 1 of Article 16 of the Law prescribes that: "The competent body shall (...) notify and invite all the interested persons known upon the examination materials to familiarise themselves with the materials collected as a result of examination and to express their position on the data obtained."

Accordingly, the Constitutional Court states that, pursuant to the Law, the above-mentioned third parties who may have prima facie rights over the asset with respect to which the competent body is taking measures to file an action of civil forfeiture, shall also be notified by the competent body and have the right to express their position to it. Moreover, it follows from part 1 of Article 17 of the Law that interested parties having not been notified in accordance with the procedure provided for by the Law may, prior bringing a case before the Court, exercise their rights — i.e. to familiarise themselves with the materials collected as a result of examination and to express their position on the data obtained — in the manner and within the time limits provided for in Article 16 of the same Law, starting from the moment when they learned or could have learned about the existence of an examination. On the basis of the foregoing, the Constitutional Court finds that the Law provides mechanisms for notifying all interested persons known to the competent body upon the examination materials, including third

parties, of the examination and for enabling them to express their position.

319. Based on the above-stated, the Constitutional Court finds that, within the scope of the substantiations submitted by the Applicant, the regulations concerning the protection of the rights of third parties at the stage of judicial examination of an action filed based on the Law are not problematic, having regard to the results of the abstract review of the provisions of the Law.

VIII. REGARDING THE RIGHTS TO INVIOLABILITY OF PRIVATE LIFE AND PROTECTION OF PERSONAL DATA

A. Positions of the Parties

1. The Applicant

320. The Applicant finds that the legal norms enshrined in parts 1 and 3 of Article 12 of the Law are problematic, in particular from two perspectives:

(1) Information relating to the private life and personal data of a wide range of persons is made accessible. No answer is provided to the question of whether the application submitted by the competent body concerns solely the person in respect of whose asset proceedings have been initiated, or also persons affiliated thereto, or any person whose personal data the body conducting the proceedings deems necessary to obtain.

(2) The requested data are made accessible, within the framework of the proceedings, to an indeterminate scope of persons, as a result whereof the mechanisms for maintaining confidentiality of personal data obtained are rendered problematic.

321. Analysing the constitutionally permissible grounds for limiting the right guaranteed by Article 31 of the Constitution, the Applicant argues that, from the perspective of an examination launched in relation to illegal asset, the purpose

may, in essence, correspond to only one of those grounds — namely, the prevention or detection of crimes.

322. The Law is also based on such a presumption, and point 77 of the Substantiation for the draft Law states that the examination is launched in the presence of established criminal-procedural triggers, after which it proceeds independently of the criminal procedures. Thus, according to the Applicant, when the body conducting the examination applies to a civil court with a motion to obtain banking or other information constituting a secret relating to a person, it must be motivated exclusively by the aim of preventing or detecting crime and must substantiate that obtaining the indicated information may significantly contribute to achieving that purpose.

323. Taking into account the existence of the aforementioned criminal-procedural triggers and the logic of the Substantiation of the Law, the Applicant considers that all five points of part 1 of Article 5 of the Law should be applicable either after the initiation of a criminal case or should presuppose the initiation of criminal proceedings along with the examination concerning the asset. The above-mentioned causal link is not provided for by the Law; therefore, in case of proceedings initiated upon the grounds of point 5 of part 1 of Article 5 of the Law, the constitutionally provided legitimate aim is entirely absent. Since, even in case of proceedings initiated on the ground of points 1 and 2 of part 1 of the same article, the causal link between the committed criminally punishable act and illegal asset is, in certain instances, directly severed, substantiating the provision of information containing personal data to the competent body on the grounds of preventing or detecting crimes is, according to the Applicant, problematic from the perspective of constitutionality.

324. Taking into account that, within the framework of the Law, the legislator has not specified the scope of entities entitled to obtain information containing banking

secrecy, the Applicant considers that it is problematic to regard the cumulative components of the proportionality test as having been satisfied in this case.

325. According to the Applicant, the scope of limitations of constitutionally guaranteed rights of a person suspected of a crime cannot be fully identical to the scope of limitations of the rights of persons affiliated thereto, let alone other third parties. By failing to clarify the list of entities presumed to possess the requested information, the legislator has, from the outset, equated all persons whose lawful interests and rights may be affected by the regulatory norm.

326. According to the Applicant, the provisions of the Law do not specify the scope of entities whose rights protected by Article 31 of the Constitution may be limited within the framework of the proceedings, and an indeterminate norm may not constitute an appropriate means for limiting a person's fundamental right guaranteed by the Constitution; accordingly, the provision enshrined in part 3 of Article 12 of the Law contradicts to the principle of legal certainty enshrined in Article 79 of the Constitution, which, in turn, renders the chosen means of limitation incompatible with the principle of proportionality provided for in Article 78 of the Constitution.

327. The Applicant notes that part 1 of Article 9 of the Law enshrines that the circumstances of launching an examination, the grounds thereof, the date on its progress and the data obtained as a result thereof shall be confidential and shall be subject to disclosure to the interested persons only in accordance with the procedure provided for by this Law, and to other persons only upon the consent of the competent body based on the purposes of the proceedings for civil forfeiture of illegal assets. Considering that the text of the Law lacks a definition of the purposes of the proceedings, the Applicant finds that this creates an excessively broad discretion for the body conducting the proceedings, as that body is the one to decide whether the disclosure of information to a particular

person derives from the purposes of the proceedings.

328. The Applicant also notes that the Law does not specify who, and through what procedure, may have access to and use the personal data obtained, nor how such data are protected from third-party access. According to the Applicant, the Law allows the competent body to make data obtained as a result of examination accessible to "other persons involved," and the latter may be interpreted as any individual to whom the body conducting the proceedings deems appropriate to disclose sensitive information containing personal data, which, in turn, does not satisfy the principle of proportionality enshrined in the Constitution, nor the cumulative criteria of compliance to the given principle.

329. In its additional explanations, the Applicant further notes that the Law allows the competent body, when conducting the examination, to collect an excessively broad range of information containing secrets protected by law. Such a broad range of information is in no way comparable to the possibilities for requesting evidence provided for by Article 64 of the Civil Procedure Code. When assessing a motion submitted by a person participating in the case within the framework of Article 64 of the Civil Procedure Code, the court derives from the specific case that is already in the court's proceedings, that is, the arguments and evidence of the parties are known, and the court is to assess the proportionality of the request for evidence more precisely. However, when the case is still in the stage of examination conducted by the Prosecutor's Office, the court, naturally, has more limited information to objectively assess how lawful the request of the competent body for obtaining evidence is, particularly when the competent body in question is the Prosecutor's Office.

330. According to the Applicant, the Respondent does not provide any substantiated explanation regarding the issues raised and substantiated in the application, such as who and through what procedure may have access to and use the obtained

personal data, as a result whereof the individual's fundamental rights to inviolability of private life, as enshrined in Article 31 of the Constitution, as well as to the protection of personal data, as enshrined by Article 34 of the Constitution, could seriously be undermined.

331. The Applicant finds that, compared to the opportunity provided for by Article 64 of the Civil Procedure Code, the Law provides excessive access to a broad range of personal data, even in cases where the causal link between the commission of a criminally punishable act and the illegal asset is severed. This approach is problematic, as it does not pursue a legitimate aim for the limitation of a fundamental right.

332. The Applicant notes that the Law provides for the possibility of obtaining an excessively broad range of personal data not only of individuals directly involved in the proceedings but also of affiliated persons or any other person whose personal data the body conducting the proceedings deems necessary. A person participating in the case has no such opportunity within the framework of Article 64 of the Civil Procedure Code, for sure.

333. The Applicant notes that if the acquisition of personal data concerns an indefinite group of private individuals who "have no relation to the specific crime," such interference to the fundamental right to personal data of those individuals, is not proportionate.

2. The Respondent

334. The Respondent finds that the preparation of a civil action, whether by private individuals or public authorities, often presumes obtaining personal data from various public and non-public databases, and their use for the purpose of filing an action. The obtaining of personal data, in this regard may not in itself be problematic, and in cases of processing of personal data by the claimant in violation of the law, the responding person is entitled to raise the issue of

inadmissibility of evidence during the course of the examination of the judicial case.

335. As regards the data constituting a secret protected by law, the Respondent notes that the Civil Procedure Code permits the parties to obtain such information in accordance with the procedure provided for by Article 64 of the Civil Procedure Code. The Respondent finds that the Law, in comparison to the rules of civil procedure, has not changed either the requirements concerning the entity composition or the criteria used by the court to assess the necessity of obtaining such data.

336. Concerning the use of collected personal data, the Respondent finds that the competent body's ability to make the data accessible to persons other than the interested persons is limited to the necessity arising from the purposes of the proceedings for civil forfeiture of illegal assets.

337. Having regard to the foregoing, the Respondent finds that the Law, insofar as it does not provide for alternative criteria for access to data constituting a secret, including information constituting a banking secret, and for other rules for the use of personal data beyond those provided for by the Civil Procedure Code, does not violate the guarantees of inviolability of private life and the protection of personal data.

B. The law applicable to the resolution of the dispute

338. Article 31 of the Constitution: "Inviolability of Private and Family Life, Honour and Good Reputation":

"1. Everyone shall have the right to inviolability of his or her private and family life, honour and good reputation.

2. The right to inviolability of private and family life may be limited only by law, for the purpose of state security, economic welfare of the country,

preventing or disclosing crimes (...)."

339. Article 34 of the Constitution: "Protection of Personal Data":

"1. Everyone shall have the right to protection of data concerning him or her.

2. The processing of personal data shall be carried out in good faith, for the purpose prescribed by law, with the consent of the person concerned or without such consent in case there exists another legitimate ground prescribed by law.

3. Everyone shall have the right to get familiar with the data concerning him or her collected at state and local self-government bodies and the right to request correction of any inaccurate data concerning him or her, as well as elimination of data obtained illegally or no longer having legal grounds.

4. The right to get familiar with personal data may be limited only by law, for the purpose of state security, economic welfare of the country, preventing or disclosing crimes, protecting public order, health and morals or the fundamental rights and freedoms of others.

5. Details related to the protection of personal data shall be prescribed by law."

C. Analysis of the Constitutional Court

340. The Constitutional Court, in its Decision DCC-1546 of 18 June 2020, addressed the constitutional legal content of the right to inviolability of private and family life, honour, and good reputation (hereinafter shortly referred to as "the right to privacy") in the context of guarantees ensuring the constitutional right to the protection of personal data. Specifically, in the mentioned decision, the Constitutional Court expressed the following position:

"The enshrinement of the right to privacy is aimed at guaranteeing for the person and around the person a framework (space) in which, free from any

direction or, even more so, coercion by the state or the public, he or she may freely express and develop his or her personality, with respect for his or her dignity, and general and specific freedoms and rights, by the state, the public, and other private individuals. Consequently, the inviolability of personal space, in combination with other fundamental rights and freedoms, makes it possible to ensure both the person's individual internal self-determination in accordance with his or her vital interests and the confidentiality of his or her private life ties with other private individuals, from the state, society, and third parties, and, it is in this sense that the Constitution guarantees the inviolability of the private life of a person.

(...)

The protection of the fundamental right to privacy includes not only the state's obligation to refrain from intervening in private life but also the state's positive duty to guarantee and ensure such protection through necessary and effective legislative and law-enforcement means. Consequently, the state must, first refrain from intervening in this fundamental right, except in cases permitted by the Constitution, and is also obligated to establish the necessary procedures and mechanisms for effective protection against violations of this fundamental right not only by itself but also by third parties; and, finally, is also obliged to ensure in practice the protection of this fundamental right from third-parties.

(...)

The Constitutional Court records that limitations of the fundamental right to privacy must also comply with the requirements of Article 79 of the Constitution, in conjunction with the requirements of Article 78 of the Constitution. Additionally, laws enshrining such limitations must prescribe necessary mechanisms and procedures for effective judicial protection, meaning they must also meet the requirements of Article 75 of the Constitution, in conjunction with

part 1 of Article 61 of the Constitution[57]."

341. From the mentioned Decision of the Constitutional Court, it follows that:

- the right to privacy is a fundamental right that guarantees the existence of a person's life space, free from the influence of the state and society;
- the latter stands as a general norm (*lex generalis*) in relation to the constitutional right to the protection of personal data, and the specific manifestation (*lex specialis*) of that norm is the right to the protection of personal data;
- the constitutional right to privacy, including the right to the protection of personal data, is not absolute and is subject to constitutionally proportional limitations, which must comply with the requirements of the principle of proportionality of intervention in fundamental rights prescribed by Article 78 of the Constitution, the constitutional content of which must be identified, based on the general rules for the limitation of the right to privacy, as provided for by part 2 of Article 31 of the Constitution, or the special rules provided for by part 2 of Article 34 of the Constitution, for the case specified in the same part.

342. By establishing in its Decision DCC-1546 of 18 June 2020 the methodology for identifying the constitutional proportionality of limitations of a fundamental right, the Constitutional Court noted the following regarding the determination of the constitutional proportionality of the aim pursued by the limitation:

"The first element of the principle of proportionality is the legitimacy of the purpose behind the limitation of the fundamental right, i.e., being provided for by the Constitution. This means that when exercising its authority to limit a fundamental right, the legislator must rely on the objectives provided for by the

[57] Decision of the Constitutional Court DCC-1546 of 18 June 2020, points 4.1 and 4.3.

Constitution. In all cases where these objectives are directly enshrined in constitutional provisions relating to the fundamental right or freedom being limited, such as in the case of the fundamental right to privacy, the legislator is only competent to specify them in laws, in other cases, the legislator itself must identify the constitutional content of the purpose of limitation, based on the interpretation of the relevant norms of the Constitution[58]."

343. In accordance with the above-mentioned part 2 of Article 34 of the Constitution, the processing of personal data shall be carried out for the purpose prescribed by law. The terms "personal data" and "processing of personal data" are defined in the Law "On protection of personal data". Pursuant to point 1 of part 1 of Article 3 of the latter, personal data shall mean any information relating to a natural person, which allows or may allow for direct or indirect identification of a person's identity. Pursuant to point 2 of part 1 of the same Article, processing of personal data shall mean any operation or set of operations, irrespective of the form and mode of implementation (including automated, with or without use of any technical means) thereof, which is related to the collection or record or input or systematisation or organisation or storage or use or alteration or restoration or transfer or rectification or blocking or destruction of personal data or to carrying out other operations. From the cited Article of the Law "On protection of personal data", it follows that personal data refers to information relating to a person or identifying thereof, the processing of which includes, inter alia, the collection, transfer and use of such data.

344. Points 3-5 of part 1 of Article 3 of the Law "On protection of personal data" define the terms "transfer of personal data to third parties", "use of personal data", and "processor of personal data". Thus:

- transfer of personal data to third parties shall mean an operation aimed at

[58] Decision of the Constitutional Court DCC-1546 of 18 June 2020, point 4.4.

transferring personal data to a certain scope of other persons or the public at large or at familiarising with them, including disclosure of personal data through the mass media, posting in information telecommunication networks or otherwise making personal data available to other persons;

- use of personal data shall mean an operation performed upon personal data, which may be directly or indirectly aimed at delivering decisions or forming opinions or acquiring rights or granting rights or privileges or limiting or depriving of rights or achieving other purpose, which give rise or may give rise to legal consequences for the data subject or third parties or otherwise relate to the rights and freedoms thereof;

- processor of personal data shall mean a state administration or local self-government body, state or community institution or organisation, legal or natural person, which organises and/or carries out processing of personal data.

345. Article 8 of the Law "On protection of personal data" regulates the legal grounds for the generation of data, including the restoration, modification, and transfer thereof. In particular, pursuant to point 1 of the given Article, the processing of personal data shall be lawful, where the data have been processed in observance of the requirements of the law, and the data subject has given his or her consent, except for cases directly provided for by this Law or other laws.

346. Accordingly, the legal grounds for the processing of personal data are classified into two categories: data processed with the consent (or will) of the data subject, i.e., the addressee of the data, and data processed without such consent (independently of the data subject's will). In the latter case, the processing of data constitutes a limitation on the right to the protection of personal data, as the law may prescribe cases in which data on a person may be collected, used, and transferred to third parties without obtaining that person’s consent.

347. Part 1 of Article 5 of the Law "On protection of personal data" prescribes that

"the processing of data must pursue a legitimate purpose (...)". In other words, the purpose of creating, collecting, using, and transferring data without the consent of the data subject must be prescribed by law. The constitutional proportionality of such a purpose, insofar as it relates to the interference with the right to privacy, must align with one of the purposes for limiting the right to privacy provided for by part 2 of Article 31 of the Constitution.

348. In the assessment of the Constitutional Court, the mechanism prescribed by parts 1 and 3 of Article 12 of the Law is aimed at obtaining appropriate relevant information conditioned by the necessity for verifying the grounds of legality of the origin of an asset in cases where there is a suspicion that it is illegal, for the constitutionally proportional purposes of ensuring state security, economic welfare of the country, preventing or disclosing crimes (provided for by part 2 of Article 31 of the Constitution). These purposes are consistent with international standards for civil forfeiture of illegal assets. Specifically, the European Commission for Democracy through Law of the Council of Europe, in its Advisory Opinion No. 1108/2022 of 19 December 2022, on certain questions relating to the Law on the Forfeiture of Assets of Illicit Origin", addressed to the Constitutional Court of the Republic of Armenia, noted the following:

> "13. Most commonly, the overall objective of illicit enrichment/civil forfeiture laws is to address corruption. (…) [C]orruption undermines the rule of law, weakens public trust in political institutions and has adverse effects on the exercise of human rights and fundamental freedoms. (…)[59]."

349. According to the law established by the ECtHR, a legitimate aim for civil forfeiture of illegal assets without a criminal judgement of conviction may be guaranteeing — including as a measure for the fight against public corruption —

[59] European Commission for Democracy through Law of the Council of Europe, Amicus Curiae Brief No 1108/2022 for the Constitutional Court of Armenia on Certain Questions Relating to the Law on the Forfeiture of Assets of Illicit Origin, 19 December 2022, p. 5, para. 13.

that individuals do not procure advantage from such assets to the detriment of the public[60]."

350. In light of the foregoing, the Constitutional Court states that the objectives pursued by the interference provided for in parts 1 and 3 of Article 12 of the Law, which is at issue in this section, align with the objectives of interference provided for by part 2 of Article 31 of the Constitution.

351. Furthermore, in order to verify the compliance of parts 1 and 3 of Article 12 of the Law with the requirement for certainty provided for by Article 79 of the Constitution, the Constitutional Court recalls its relevant positions on this matter (see in conjunction with point 308 of this Decision), namely that:

- "(...) the Constitutional Court considers the principle of legal certainty as one of the main requirements for the state governed by the rule of law enshrined in Article 1 of the Constitution and for one of the most important features thereof, i.e. the rule of law; and the effect of mentioned constitutional legal principle extends to all laws, regardless of whether the latter are of a nature limiting a fundamental right or of a nature regulating the exercise of a fundamental right [61]".
- "[T]he principle of legal certainty implies both a maximally clear legal regulation and ensuring foreseeability thereof. In particular, the formulation of a legal regulation must enable a person not only to regulate his or her conduct accordingly, but also to foresee what the actions of the public authorities may be and what consequences may arise as a result of the application of the given legal regulation[62]".

"(1) *legal certainty is also an important component of legal security,* which, inter

[60] Gogitidze and others v. Georgia, no. 36862/05, §§ 101-103, 12 May 2015.
[61] Decision of the Constitutional Court DCC-1357 of 14 March 2017, point 5.
[62] Decision of the Constitutional Court DCC-1452 of 2 April 2019, point 4.3.

alia, ensures trust in public authority and its institutions;

(2) the protection of trust in the further operation of the existing legal system in the state governed by the rule of law must be guaranteed exclusively through certain *legislative regulations that are foreseeable, clear and accessible to everyone;*

(3) the principle of certainty is reflected not only in Article 79 of the Constitution, as a substantive requirement for laws that limit fundamental rights and freedoms, but also as a fundamental component of the principle of legality, according to which, the norms authorising the adoption of secondary regulatory legal acts must comply with the requirements of legal certainty (second sentence of part 2 of Article 6 of the Constitution);

(4) the violation of the principle of certainty by the public authorities directly affects the principle of the rule of law and significantly reduces the level of establishment of the state governed by the rule of law;

(5) the clarity, foreseeability and accessibility of laws limiting fundamental rights or freedoms are directly proportional to the degree of limitation of fundamental rights**; the more intensive the limitation is, the more certain, foreseeable and accessible the formulations of the** mentioned **laws should be,** so as not to give rise to ambiguity for individuals with regard to prohibitions, other limitations or the availability or essence of the obligations imposed thereon;

(6) taking into account the diversity of vital issues and the impossibility of addressing every situation through a rule-making practice, the requirement for certainty of legislative and secondary legislative regulations does not rule out the enshrinement of uncertain legal concepts in legislative and secondary legislative regulations, but it must mandatorily be accompanied by an adequate and, in case the concepts are the same — uniform

interpretation of such concepts, without which it will be impossible to establish the foreseeability of those provisions [63]".

352. The Constitutional Court's position, that norms of law with abstract content must be given additional certainty through judicial interpretation, is fully aligned with the ECtHR's established practice regarding the requirement for legal certainty, according whereto: "Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in concepts which, to a greater or lesser extent, are uncertain and interpretation and application of which are questions of practice[64]."

353. A combined analysis of the legal positions of the Constitutional Court and the ECtHR reveals that the legislator must ensure a reasonable balance between, on the one hand, the clarity and foreseeability of the rules of conduct defined by law, and on the other hand, the conformity of the law with changing life circumstances and accordingly the necessary level of abstraction, which will enable the law enforcer, by using appropriate methodology for interpretation, reveal the legislator's will and ensure the effectiveness and consistency of legal regulation. Furthermore, with regard to the certainty of legal regulation, it is not problematic to enshrine the rules of conduct within the text of the legal norm or article, or to place the elements of the legal norm across different articles of the law, based on the application of various rules of legal technique.

354. In this case, parts 1 and 3 of Article 12 of the Law prescribe (1) the authority of the competent body to collect information containing secret protected by law, the list of information, and (2) the procedure for collecting mentioned information (dispositive provision), including judicial review regarding the legality and justification of the collection of information by the competent body.

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[63] Decision of the Constitutional Court DCC-1488 of 15 November 2019, point 4.3.
[64] Busuioc v. Moldova no. 61513/00, § 52, 21 December 2004.

355. The scope of the subjects concerning which the competent body may request and obtain relevant information through judicial procedures is identified by other provisions of the Law. Specifically, among the grounds for launching an examination provided for by points 1-6 of part 1 of Article 5 of the Law, the existence of a suspicion that the convicted person or the person affiliated thereto possesses illegal assets is prescribed; pursuant to point 5 of part 1 of Article 3 of the Law, asset belonging to a person is, in particular, any asset belonging to another person by right of ownership, while the beneficial owner whereof is the given person, or which is transferred by the given person — gratuitously or actually gratuitously or at a price significantly lower than the market price — to another person; whereas points 6-10 of the same part provide the definitions of the beneficial owner, affiliated person, close relative, and member of family.

356. Considering what has been mentioned above, it is clear that, in case the grounds for launching an examination are present, personal data containing a secret protected by law may be collected by the competent body regarding the above-mentioned subjects in accordance with parts 1 and 3 of Article 12 of the Law. Therefore, as a result of an abstract review of the provisions of the Law within the framework of the justifications cited by the Applicant, the Constitutional Court does not find any grounds for inconsistency of parts 1 and 3 of Article 12 of the Law with the requirements of Article 79 of the Constitution.

357. The other comprehensive question raised regarding the rights provided for by Articles 31 and 34 of the Constitution concerns the proportionality of the interference with those rights. In the relevant part of this matter, the legal positions of the Constitutional Court in Decision DCC-1546 regarding the principle of proportionality of limitation of constitutional rights, which were already presented in Point 135 of this Decision, are also applicable when addressing the questions raised by the Applicant under the provisions of this constitutional right.

358. When assessing, in the context of the mentioned constitutional law standards, the issue of the suitability of the interference with the right to the protection of personal data as prescribed by parts 1 and 3 of Article 12 of the Law, it should be noted that, within the meaning of the Law, the instruments of the competent body for clarifying the alleged illegal assets is aimed at a comparative analysis of the market value of the assets at the time of its acquisition and the lawful income of the acquirer or a person affiliated with the acquirer, as well as at examining the subsequent legal circulation of the assets in civil circulation (point 2 of part 1 of Article 3 of the Law; part 1 of Article 7 of the Law). The Constitutional Court may not rule out that the market value of the assets, the lawfulness of the income of the person having acquired it, and subsequent transactions related to the assets may be clarified by means of relevant information constituting personal data which, by their nature, contain or may contain secrets protected by other laws (banking secrecy, insurance secrecy, notarial secrecy, commercial secrecy, official information prescribed by the Law "On securities market", credit information or credit history). Accordingly, the aforementioned constitutionally proportional objectives pursued by the Law, as well as the operational (procedural) tasks aimed at the implementation thereof, may be achieved by granting the competent bodies' access to the relevant information. Accordingly, the regulations provided for by parts 1 and 3 of Article 12 of the Law provide for suitable means for attaining the pursued constitutionally proportional objective through the limitation of the constitutional rights to respect for personal data, private life and to the protection of personal data.

359. The component of necessity of the chosen limiting measure, as an element of the principle of proportionality, must be considered in the light of the requirement for good-faith in processing of personal data prescribed by part 2 of Article 34 of the Constitution, which constitutes an additional safeguard applicable where the right to the protection of personal data — also regulated as a special norm *(lex*

specialis) — is subject to limitation. In this regard, the Constitutional Court finds that the constitutional requirement for good-faith in processing of personal data imposes an obligation on public authorities, when seeking, obtaining, using, and transferring private information relating to a person, to limit themselves exclusively to such information as is genuinely necessary for the pursuit of a constitutionally proportional objective conditioned by the public interest, and, while possessing private information, to make it accessible solely to those entities whose connection to such information is justified by any constitutionally proportional objective prescribed by Articles 31 and 34 of the Constitution.

360. The Constitutional Court notes that, in the present case, Article 7 of the Law exhaustively defines the issues subject to clarification in the course of the examination, thereby also delineating the scope of the limitations on interference with the right to the protection of personal data that are necessary to achieve the legitimate objective provided for by the Law. Furthermore, the scope of subjects relating to information is limited under the Law solely to those state bodies, officials, and non-official persons whose involvement is constitutionally necessary (for the purposes of proceedings for civil forfeiture of illegal assets[65]), and who have an obligation not to disclose information obtained in the course of the examination that has been made accessible to them[66].

361. At the same time, in assessing the necessity of the interference with the right to the protection of personal data, the Constitutional Court notes that neither the application submitted by the Applicant, nor the explanations subsequently provided thereby, contain any reference to a measure of interference of lesser

[65] See the points 104-118 and 119-128 of this Decision on the objectives of the proceedings for civil forfeiture of illegal assets.

[66] See part 1 of Article 34 of the Constitution (as a directly applicable right enforceable against public authority), part 2 of Article 12 of the Law (which obliges the competent body to undertake measures aimed at preservation of information obtained during examination and constituting a secret), Article 9 of the Law (in conjunction with Article 484 of the Criminal Code, which establishes liability for the disclosure of data of examination).

intensity that could have ensured the achievement of the relevant objectives pursued by the Law. In this regard, within the framework of the constitutional dispute specified in the present case, the Constitutional Court — in the course of its abstract review of the provisions of the Law — does not identify any measure that, while being within the legislator's field of consideration, was nonetheless disregarded by the latter in favour of the measure under discussion. Accordingly, the Constitutional Court concludes that the regulations provided for by parts 1 and 3 of Article 12 of the Law comply with the criterion of "necessity" within the meaning of Article 78 of the Constitution.

362. The Constitutional Court considers it important to emphasise that personal data containing a secret protected by law, in accordance with the list, may be disclosed exclusively on the basis of a court decision. The Constitutional Court states that personal data requested by the competent body may be obtained by a court decision where the court concludes that the application submitted by the competent body reasons the necessity of the information requested for revealing the facts of essential significance for the examination (part 5 of Article 12 of the Law). Moreover, where the application for requesting evidence is granted by the court, a two-tier system of judicial appeal applies (part 8 of Article 12 of the Law). Accordingly, it follows from the aforementioned provisions of the Law that the legislator, on the one hand, has authorised the competent body to seek access to certain personal data, and, on the other hand, has established a judicial procedure for obtaining such data, thereby imposing on the competent body the obligation to justify the necessity of the requested information, as well as has provided for a two-tier judicial appeal system aimed at eliminating potential judicial errors to the detriment of the personal data subject.

363. On the basis of the above-written, the Constitutional Court finds that parts 1 and 3 of Article 12 of the Law provide for a measure necessary to achieve the constitutionally proportional objective pursued by the limitation on the

constitutional right to the protection of personal data.

364. The final element of the principle of proportionality, namely the requirement of adequacy of the limitation, as a criterion for assessing the constitutional proportionality of an interference with a fundamental right, presupposes verification that, in the specific case of a limitation of the right, subject to the full observance of the remaining elements of the principle of proportionality prescribed by Article 78 of the Constitution, a fair balance exists between the necessity of safeguarding the fundamental right and the public interest justifying the limitation, and that, accordingly, the interference with the fundamental right is adequate.

365. In this connection, the Constitutional Court notes that the Applicant's application does not contain any substantiation to the effect that the norms governing the interference provided for by parts 1 and 3 of Article 12 of the Law include elements of an inadequate interference with the relevant fundamental right. Consequently, the Constitutional Court sees no necessity to verify the compliance of this component of the principle of proportionality with parts 1 and 3 of Article 12 of the Law.

366. In the present case, the Constitutional Court, also taking into account the abstract nature of the constitutional review conducted in this case, does not discern any circumstance indicating a disturbance of the balance between the significance of the rights to privacy and protection of personal data subject to limitation, and the objectives pursued by the limitation of those rights under the Law. Accordingly, the Constitutional Court finds that the constitutional requirements posed by the constitutional principle of proportionality prescribed by Article 78 of the Constitution have been observed by the abstract review of the conditions governing the interference provided for by the contested legislative provisions.

367. On the basis of all the foregoing, the Constitutional Court concludes that the limitations of the rights to privacy and protection of personal data provided for by the Law, within the scope of the substantiation presented by the Applicant in the framework of the present constitutional dispute concerning the abstract review of the provisions of the Law, comply with the Constitution.

IX. REGARDING THE COMPETENCE OF THE PROSECUTOR'S OFFICE

A. Positions of the Parties

1. *The Applicant*

368. The Applicant finds that, under the Law, the Prosecutor's Office has been designated as the competent body to conduct the examination of the legality of a person's assets, which is problematic from the perspective that the powers of the Prosecutor's Office are exhaustively defined by Article 176 of the Constitution, since the Prosecutor's Office is vested with a power not provided for by the Constitution.

369. According to the Applicant, the power prescribed by the Law may not be justified from the standpoint of filing an action for the protection of state interests either, as this function is regarded not as a standard function of the Prosecutor's Office, but as one exercised only in exceptional cases; moreover, the scope of such cases and the procedure for exercising this function must be specified by the Law "On the Prosecutor's Office."

370. The Applicant notes that part 2 of Article 29 of the Law "On the Prosecutor's Office" elaborates the scope of such exceptional cases. An analysis thereof shows that, in this context, it concerns situations in which damage has been caused to the state as a result of the exercise of functions reserved to or delegated to a state or local self-government body, and the relevant body, being aware of the

violation of state interests, does not bring an action or lacks the competence to do so. Meanwhile, with regard to the legal relations regulated by the Law, according to the Applicant, it cannot be asserted that damage has been caused to the property interests of the state; rather, the issue concerns a socially dangerous act and damage caused to public interests.

371. The Applicant finds that vesting the Prosecutor's Office with the power to conduct proceedings for the civil forfeiture of illegal assets is problematic from the perspective of Article 176 of the Constitution, since the scope of the powers prescribed for the Prosecutor's Office by Article 176 of the Constitution is exhaustive, and none of those powers can, in terms of substance, include the conduct of proceedings for civil forfeiture provided for by the Law. In this regard, the function of filing an action for the protection of state interests has a strictly narrow content and may relate solely to the filing of an action with the court, and not the conduct of separate proceedings having external legal effects.

372. The Applicant further finds that vesting the Prosecutor's Office with the conduct of proceedings in cases concerning the civil forfeiture of illegal assets is problematic, from the standpoint of the objectivity and impartiality of that body. Notwithstanding the fact that the examination of illegal assets is carried out by a separate subdivision of the Prosecutor's Office, under the logic of Article 176 of the Constitution, the Prosecutor's Office is a single unified body operating under the Prosecutor General. In this respect, the influence of the Prosecutor General on the course of the examination is also problematic, as under part 2 of Article 20 of the Law, the Prosecutor General is even empowered to refuse the claim in action to be submitted to the court on the basis of the results of the examination. As a result, according to the Applicant's conclusion, both the criminal proceedings and the examination of illegal assets are carried out by the same body, which may use information obtained in one set of proceedings in another set of proceedings without impediment.

373. In view of the above-written, the Applicant finds that the conduct of an examination within the framework of the Law and filing an action with the court fall outside the scope of the powers of the Prosecutor's Office exhaustively prescribed by Article 176 of the Constitution. The Law likewise fails to guarantee the impartiality and objectivity of the Prosecutor's Office as a competent body, and further endows it with a number of advantages that are at odds both with the fundamental principle of adversarial proceedings and with international practice.

374. In its additional explanations, the Applicant notes that, according to the Respondent, the examination prescribed by the Law constitutes a set of actions aimed at preparing an action, within the framework whereof relevant data are collected and examined.

375. In the Applicant's position, the Respondent's substantiations that, in case of the proceedings prescribed by the Law, the sole distinctive feature lies in the stage of requesting the indicated information, do not reflect the provisions of the Law "On the Prosecutor's Office" and of the Law. The Applicant finds that, unlike other cases of filing an action for the protection of state interests, for the purpose of filing an action prescribed by the Law, the Prosecutor's Office is entitled to request and obtain legal acts, documents, and other information necessary for filing an action both from courts, and from natural and legal persons. In addition, in the cases prescribed by the Law, prior to filing an action, the Prosecutor's Office is entitled to assign the implementation of operational-intelligence measures provided for by the Law "On operational-intelligence activity."

376. According to the Applicant, the Constitution itself indicates that the constituent intended to confine the scope of the powers of the Prosecutor's Office primarily to the framework of criminal proceedings and to involve it in other types of proceedings only in exceptional cases. The Applicant notes that the competence vested by the Constitution in the Prosecutor's Office — namely, the possibility to

file an action with regard to protection of state interests in exclusive cases and under the procedure prescribed — when being defined by the legislator, may not be subject to absolute discretion, but must derive from the Constitution and the objectives of the constituent reflected therein.

2. *The Respondent*

377. The Respondent finds that the civil forfeiture of illegal assets falls within the category of exclusive cases prescribed by law in which the Prosecutor's Office is entitled to bring an action before the court for the protection of state interests; accordingly, the bringing of an action for the civil forfeiture of illegal assets derives from the powers vested in the Prosecutor's Office under Article 176 of the Constitution. The "examination" defined by the Law does not constitute a proceeding having external legal effects and is nothing more than a set of actions aimed at preparing the action.

378. According to the Respondent, the preparation of an action for the protection of state interests, as well as its bringing before the court and examination in the court, inevitably presuppose the necessity of using materials from criminal proceedings; moreover, the need to bring an action is often assessed on the basis of data contained in the materials of a criminal case. Addressing the arguments presented by the Applicant concerning the powers of the Prosecutor's Office, the Respondent notes that the use of information obtained in the course of examination of the criminal case for the purpose of bringing an action for the protection of state interests not only does not contradict the regulations provided for by the Constitution, but also follows from the very logic of vesting the Prosecutor's Office with the power to apply to a court with an action for the protection of state interests. Given that information on damage caused to the state and on the existence of illegal assets often emerges precisely in the course of examination of a criminal case, the Respondent considers it logical to confer

upon the same body the opportunity to initiate civil proceedings in connection therewith.

379. Consequently, according to the Respondent, the opportunity of initiating a civil action on the basis of information collected in criminal proceedings stems from the essence and content of the Prosecutor's Office's power, provided for by the Constitution, to act in defence of state interests, which precludes the possibility of the contested power being incompatible with the Constitution.

380. Addressing the issue of the existence of a state interest in the case of the mentioned function, the Respondent notes that the civil forfeiture of illegal assets leads not only to the protection of non-material interests of public nature, but also constitutes a restorative instrument, as a result whereof funds deposited into the state budget may be allocated to addressing issues of social significance.

381. Taking into account the arguments and substantiations presented, the Respondent finds that the relevant provisions of the Law comply with the Constitution.

B. The law applicable to the resolution of the dispute

382. Article 1 of the Constitution:

"The Republic of Armenia is a (...) state governed by the rule of law."

383. Article 6 of the Constitution: "Principle of Lawfulness":

"1. State (...) bodies and officials shall be entitled to perform only such actions for which they are authorised under the Constitution or laws."

384. Article 176 of the Constitution: "Prosecutor's Office":

"(...)

3. The Prosecutor's Office shall, in exclusive cases and under the procedure prescribed by law, bring an action to court with regard to protection of state interests.

4. The Prosecutor's Office shall act within the scope of powers vested therein by the Constitution, on the basis of law.

5. The (...) rules of operation of the Prosecutor's Office shall be prescribed by law."

C. Position of the Constitutional Court

385. For the purpose of determining the constitutionality of point 15 of part 1 of Article 3 of the Law, which confers the status of a competent body on the relevant subdivision of the Prosecutor General's Office, as well as of the other provisions defining the powers vested in the competent body by the Law, in particular parts 2-6 of Article 4, part 2 of Article 5, part 2 of Article 6, part 3 of Article 6, Article 7, Article 9, part 2 of Article 10, parts 1-2 of Article 11, parts 1-3, 7, 10 and 11 of Article 12, part 1 of Article 13, part 1 of Article 14, Article 15, Article 18, parts 1-3 of Article 20 and part 1 of Article 21 of the Law, the Constitutional Court, within the framework of the constitutional dispute specified in points 23--27 of the this Decision, considers it necessary to address the arguments submitted by the Applicant, in the sequence in which they were submitted and in their interconnection.

386. The Constitutional Court considers it necessary to clarify to what extent the power of the Prosecutor's Office, as provided for by the Law, to file an action, as well as to conduct examinations that lead to the adoption of a decision to file an action, complies with the provision provided for by part 3 of Article 176 of the Constitution, according to which *"the Prosecutor's Office shall, in exclusive cases and under the procedure prescribed by law, bring an action to court with regard to the protection of state interests."*

1. The power of the Prosecutor's Office to bring an action

387. The Constitutional Court considers it necessary to note that the Prosecutor's

Office, both in the field of criminal justice and in legal relations lying outside it, exercises the functions vested in it by the Constitution on behalf of society, pursuing the public interest. This mission and the role assumed by the Prosecutor's Office are also recognized in international practice, whereby the status of the Prosecutor's Office in exercising functions outside the criminal justice on behalf of society and for the protection of public interest is not considered problematic from the standpoint of the principle of separation of powers."[67]

388. Addressing the Applicant's assertion that the powers vested in the Prosecutor's Office by the Law may not be justified from the standpoint of filing an action for the protection of state interests either, since the latter is in fact a function exercised in exclusive cases and the scope of such cases and the procedure for exercising this function should have been specified in the Law "On the Prosecutor's Office," the Constitutional Court considers it necessary to record that the power provided for by part 3 of Article 176 of the Constitution had also been vested in the Prosecutor's Office by Article 103 of the Constitution of 1995, as well as by the same article of the Constitution as amended in 2005. The Constitution of 1995 did not contain a reference to the law with regard to the cases and the procedure for exercising the mentioned power, whereas pursuant to the Constitution as amended in 2005 the power to bring an action for the protection of state interests could be exercised *"in cases and under the procedure provided for by law,"* and under the Constitution as amended in 2015 — *"in exclusive cases and under the procedure prescribed by law."*

389. With regard to the Law "On Prosecutor's Office", pursuant to parts 1 and 2 of

[67] The Recommendation Rec(2012)11 of the Committee of Ministers of the Council of Europe to member States "On the role of public prosecutors outside the criminal justice system" *(in English)* (adopted by the Committee of Ministers on 19 September 2012, at the 1151st meeting of the Ministers' Deputies). See also the Opinion No. 3 of the Consultative Council of European Prosecutors (CCPE) "On the role of prosecution in the criminal law field, addressed to the Committee of Ministers of the Council of Europe" *(in English)* (adopted by the CCPE at its 3rd Plenary Session, 15–17 October 2008, Strasbourg), para. 6.

Article 29 thereof, which are the most relevant to the present issue (in the current edition at the moment of the entry into force of the Law):

"1. Bringing an action by the prosecutor with regard to the protection of state interests, including of the funds directed to the community by the State for exercising delegated powers, shall include:

(4) bringing an action with regard to civil forfeiture of assets based on the Law of the Republic of Armenia "On civil forfeiture of illegal assets".

2. The prosecutor shall file an action with regard to the protection of state interests only in the following exceptional cases:

(1) he or she reveals, in the course of exercising his or her powers, that the state or local self-government body entitled to bring an action with regard to issues related to the protection of state interests, being aware of the fact of violation of state interests, has failed to bring an action within a reasonable time period following the receipt of a proposal of the prosecutor on bringing an action; or

(2) a violation of state interests has been committed with regard to issues in respect of which bringing an action is not reserved by legislation to any state or local self-government body;

(3) there are grounds for filing an action with regard to civil forfeiture of assets pursuant to the results of examination conducted on the basis of the Law of the Republic of Armenia "On civil forfeiture of illegal assets".

390. From the provision enshrined in part 3 of Article 176 of the Constitution, according to which *"The Prosecutor's Office shall, in exclusive cases and under the procedure prescribed by law, file an action with court with regard to protection of state interests"* it follows that the determination of the exclusive

nature of "cases" is reserved by the constituent to the legislator, refraining from establishing any constitutional precondition for the exclusiveness of a case.

391. The Constitutional Court considers it necessary to note that the constitutional imperative for prosecutorial intervention outside the field of criminal justice to be carried out exclusively on the basis of law constitutes an important safeguard to ensure the predictability of such intervention. Moreover, it follows from part 3 of Article 176 of the Constitution that the intervention required by the Constitution must be carried out by a legal act that constitutes *"law"* and in this respect, the Law meets that requirement[68].

392. Accordingly, the Constitutional Court notes that, in fulfilment of the requirements of part 3 of Article 176 of the Constitution *("in exclusive cases and under the procedure prescribed by law"),* the National Assembly, in part 2 of Article 29 of the Law "On the Prosecutor's Office," as well as in the Law, has established the Prosecutor's Office's power to file an action for the protection of state interests for the purpose of civil forfeiture of illegal assets, together with the mechanisms and procedures necessary for the exercise of that power.

393. Besides that, the Constitutional Court considers it necessary to first emphasise that part 3 of Article 176 of the Constitution does not contain any precondition for bringing an action for the protection of state interests, such as the failure by another competent body to exercise its powers. And the fact that, in one case, the Law (point 1 of part 2 of Article 29 of the Law "On the Prosecutor's Office,") requires, for the Prosecutor's Office to bring an action with regard to protection of state interests, in case the relevant competent body has remained inactive, does not in itself mean that it is a constitutional criterion predetermining a

[68] This approach is also recognised in internationally accepted standards regarding the status of prosecutors and prosecution offices. In particular, but not limited to, see the Recommendation Rec(2012)11 of the Committee of Ministers of the Council of Europe to member States "On the role of public prosecutors outside the criminal justice system" *(in English)* (adopted by the Committee of Ministers on 19 September 2012, at the 1151st meeting of the Ministers' Deputies), paragraphs 3 and 19.

framework for the legislator to provide a mechanism for the implementation of the Prosecutor's Office's power to file an action with regard to protection of state interests or to interpret the relevant power.

394. Thus, the Constitutional Court finds that the power of the Prosecutor's Office to file an action for the civil forfeiture of illegal assets, as well as its powers vested in it during the preceding pre-trial stage, fall, within the meaning of part 3 of Article 176 of the Constitution, under the constitutional power to bring *"an action with regard to protection of state interests"* constituting a set of powers necessary for the exercise of that power. Accordingly, within the scope of the questions raised by the Applicant and based on the abstract review of the constitutionality of the relevant provisions of the Law concerning the powers of the Prosecutor's Office, the Constitutional Court does not consider them problematic from the standpoint of constitutionality.

395. On the basis of the above-written, the Constitutional Court concludes that the Constitution links the opportunity for the Prosecutor's Office to file an action with regard to protection of state interests solely and exclusively to the fact that such powers, as well as the procedure for the exercise thereof, are prescribed by law, without specifying any other precondition. The Constitutional Court finds that the Law complies with the indicated requisite.

2. Power provided for by Law to conduct examinations

396. The Constitutional Court records that, within the framework of the examination provided for by the Law, by virtue of the power vested in the Prosecutor's Office under point 5 of part 1 of Article 11 of the same Law, the Prosecutor's Office may — for the purpose of obtaining information — assign to carry out operational intelligence measures provided for by the Law "On operational intelligence activity". In this regard, it should be noted that:

- The Prosecutor's Office's assignments may not relate to measures provided

for by points 8, 11, 12, 13, 15 and 16 of part 1 of Article 14 of the Law "On operational intelligence activity," i.e., actions which, under part 1 of Article 34 of the same Law, may be carried out only by authorisation of the court.

- The Law clearly defined the purpose of actions conducted within the framework of operational intelligence activity, which is exclusively to ascertain "the beneficial owners, the scope of affiliated persons, and the volume of the assets," which is necessary for fulfilment of the procedural evidentiary duties imposed on the Prosecutor's Office by the Law.

- In any case, the obtained information and other factual data are provided to interested persons as provided for by Article 16 of the Law, and, based on the information acquired, in the event of subsequent filing an action, the Respondent, pursuant to part 3 of Article 22 of the Law, has the opportunity not only to rebut the presumption that the assets are illegal, by presenting evidence justifying the acquisition of assets by lawful incomes, but also to challenge the admissibility of the relevant evidence in court, in accordance with part 3 of Article 63 of the Constitution and Article 59 of the Civil Procedure Code, which define that (1) the facts which must be confirmed only by certain evidence according to law or regulatory legal acts may not be confirmed by other evidence; and (2) the use of evidence that has been acquired in violation of fundamental rights, or an evidence undermining the right to a fair trial shall be prohibited.

- In this regard, it should be noted that the acquisition of evidence in violation of the law within the scope of operational-intelligence activities leads to an interference with the relevant fundamental right or freedom without legal grounds, and therefore, the acquisition of evidence in violation thereof, in which circumstances the use of such evidence is prohibited in accordance with part 3 of Article 63 of the Constitution and

part 2 of Article 59 of the Civil Procedure Code. In turn, pursuant to point 10 of part 1 of Article 167 of the Civil Procedure Code, at preliminary court session the court shall discuss with persons participating in the case the issue concerning the relevance and admissibility of evidence submitted and shall decide on that issue, pursuant to point 1 of part 1 of Article 191 of the same Code, while delivering a judgment, the court shall, inter alia, assess the evidence and, it follows from part 2 of Article 66 that the assessment of evidence, in particular, includes verifying the admissibility thereof.

397. On the other hand, were the Prosecutor's Office is not vested by legislation with powers to examine the grounds for filing an action and to ensure the necessary procedural safeguards, it would — in pursuing the legitimate purposes identified in paragraph 101 of this Decision and in achieving them through judicial means — be deprived not only of the ability to fulfil the evidentiary obligation to be imposed on it within the framework of proceedings concerning the civil forfeiture of illegal assets, but also of the ability to reach conclusions regarding the absence of such grounds during the stage of examination of the grounds for filing an action and to render a decision on refraining from deciding to file an action. In other words, the Prosecutor's Office would be deprived of the opportunity to exercise its procedural powers aimed at the fulfilment of a legitimate objective recognised by the Constitution.

398. On the basis of the above-written, the Constitutional Court finds that the powers to file an action with regard to civil forfeiture of illegal assets and to conduct examinations leading to the adoption of such a decision stem from part 3 of Article 176 of the Constitution, the reasoning underlying this conclusion amounts to the following:

- *First,* the power of the Prosecutor's Office to file an action with regard to civil forfeiture of illegal assets is, as such, provided for by Article 20 of the

Law. The qualification of the existence of grounds for filing an action with regard to civil forfeiture of illegal assets as an "exceptional case," as well as the determination of the procedure for filing such an action, fall within the discretion of the legislator.

- *Second,* as regards compliance of civil forfeiture of illegal assets with the criterion of the existence of a "state interest", it should be taken into account that, first, the objectives described in paragraphs 104-118 and 119-128 of this Decision are public interests pursued by the state and therefore acquire the quality of state interests, and, the material owner of the satisfaction of claims presented in proceedings for civil forfeiture of illegal assets is the Republic of Armenia. The combination of these two circumstances is sufficient for actions brought in such proceedings to be regarded as actions "with regard to protection of state interests" within the meaning of part 3 of Article 176 of the Constitution.

- *Third,* as regards the Applicant's assertion that the powers vested in the Prosecutor's Office within the framework of examining the grounds for filing an action are not provided for by the Constitution, those powers constitute exclusively a set of powers necessary for taking a decision on whether to file an action with regard to civil forfeiture of illegal assets and are exercised for that purpose. The outcome pursued through the exercise of the powers vested in the Prosecutor's Office within the framework of the examination is the legal assessment of the existence of the grounds provided for by the Law for filing an action with regard to civil forfeiture of illegal assets.

3. Regarding the adversarial principle

399. The Constitutional Court also considers it necessary to ascertain whether the powers of the Prosecutor's Office to conduct an examination (in particular, the

exercise, within its framework, of powers aimed at obtaining and/or requesting evidence, securing evidence in advance, or obtaining interim measures to secure an action), to file an action with regard to civil forfeiture of illegal assets, and to defend the action before the court comply with the adversarial principle in civil procedure — which constitutes a component element of the right to a fair trial guaranteed by Article 63 of the Constitution — including the requirement of equality of arms between the parties to the proceedings, as well as, within that framework, the issues of independence and procedural autonomy of the prosecutors participating in the proceedings raised by the Applicant.

400. The Constitutional Court does not consider it superfluous to note that, in both civil and administrative proceedings, private subjects of the process of justice are likewise vested with rights aimed at obtaining evidence for the purpose of substantiating the action, securing such evidence, as well as ensuring the enforcement of judicial acts to be rendered in the future — namely, both the persons participating in the case (for example, by submitting requests to obtain information, acquiring documents, etc.) and, in a broader sense, the representatives thereof (for comparison, see Article 18 of the Law "On the profession of advocate").

401. Accordingly, the scope of the powers necessary for conducting an examination is fully compatible with the constitutional competence of the Prosecutor's Office *"to file an action with regard to protection of state interests"* provided for by part 3 of Article 176 of the Constitution, constituting a set of powers necessary for the exercise of that competence.

402. As regards the incompatibility with the fundamental adversarial principle, the Constitutional Court notes that the powers vested in the Prosecutor's Office by the Law do not have the nature of a final or intervening decision affecting the assets at issue. This set of powers is aimed at filing an action through civil

procedure, the resolution whereof is vested exclusively in the court. The Applicant's argument concerning a conflict with the adversarial principle does not go beyond the assertion that, at the stage of preparing the action, the powers of the Prosecutor's Office are incompatible with the rights enjoyed by the Respondent. In other words, this argument does not concern any power of the Prosecutor's Office within the framework of civil proceedings that, unlike the Respondent, would afford it an opportunity to present its position to the court or to influence the court's conviction in a manner that would call into question the adversarial principle or the equality of arms in civil procedure.

403. Moreover, the Constitutional Court considers it necessary to record that, from the perspective of ensuring the adversarial principle, what is of primary importance is not so much the correlation between the powers of individual subjects in the proceedings with respect to obtaining evidence concerning the assets and its legality, but rather equality in access to such evidence and in the opportunity to present substantiations regarding the acquisition of the assets. In this sense, in proceedings for civil forfeiture of assets provided for by the Law, the Respondents are the persons whose assets or property interests constitute the subject matter of the dispute and, therefore, they are the ones who enjoy a natural advantage in terms of being better informed with respect to data concerning the acquisition of that assets and the substantiations of its legality. Finally, part 2 of the same article provides that "the court may deliver a judgement based on the presumption that the assets are illegal where, as a result of the examination of the case, the applicant proves that the assets, including one unit of assets, several units of assets or the share of one unit of assets, belonging to the respondent are not substantiated by the data concerning the sources of lawful income."

404. As a result of a textual analysis of the provisions presented in the preceding paragraph, the Constitutional Court establishes that the Law clearly defines the

subject of proof in cases relating to the proceedings for civil forfeiture at issue. Moreover, the burden of proof thereof is placed on the applicant, while the respondent, as a means of protecting his or her rights and lawful interests, avails himself or herself of the procedural opportunity to reduce the difference between lawful income and the value of the asset held (including reducing it to zero by submitting evidence substantiating the acquisition of the assets through lawful income); the effectiveness of this opportunity is significantly enhanced by virtue of the regulation of the Law according to which, where facts must, under the law or regulatory legal acts, be established solely by certain evidence, the failure by the respondent to submit evidence substantiating that the assets held was acquired through lawful income may not be interpreted to the detriment of the respondent, where it is proven that such evidence was destroyed or lost through no fault of the respondent.

405. The Constitutional Court finds that the mentioned regulations provide real guarantees to the respondent, both with regard to the certainty of the subject of proof and to the effective rebuttal by the respondent of the presumption that the assets are illegal and the prevention of the civil forfeiture thereof.

4. Regarding the independence and procedural autonomy of the prosecutors participating in the proceedings

406. The Constitutional Court considers it important to recall that, notwithstanding sectoral differences among the proceedings, the Prosecutor's Office in all cases confers legal personality on the public by acting as a party to the proceedings acting on its behalf, from which the important circumstance concerning the present case derives, that the Prosecutor's Office is the addressee of unified legal requirements and rules of conduct that are not conditioned by the nature of the proceedings. That is, the institutional and personal, organisational and procedural guarantees of independence, as well as the rules of conduct of the

Prosecutor's Office are uniform for all employees of the Prosecutor's Office and identical across all types of proceedings — civil, administrative and criminal.

407. On the basis of the foregoing, with regard to the Applicant's assertion that the Law does not guarantee a sufficient degree of independence and impartiality of the Prosecutor's Office in proceedings for civil forfeiture of illegal assets, the Constitutional Court notes that this assertion cannot, within the scope of the substantiation presented, serve as a basis for a judgement on unconstitutionality of the disputed Law or any of the provisions thereof, since: (1) the Prosecutor's Office itself does not have the competence to render any final decision interfering with the right to use the assets at issue, such competence being vested exclusively in the court by an act adopted as a result of adversarial proceedings; (2) the hierarchical subordination to the Prosecutor General or the unified nature of the prosecutorial system does not release a prosecutor, in general, and in the cases relevant to the present constitutional dispute, for the purposes of the Law, from the effect of the guarantees and, at the same time, the requirements of impartiality and independence required by the Law "On the Prosecutor's Office"; and (3) the objective and subject matter of regulation of the Law do not consist in defining the substantive and procedural legal mechanisms of the requirements imposed on the activities of the Prosecutor's Office, and the Applicant does not challenge any provision of legal acts establishing such mechanisms — namely, the Law "On the Prosecutor's Office," as the sector-wide unified law regulating the organisation and activities of the Prosecutor's Office, as well as the civil, administrative, or criminal procedure codes, as branch laws prescribing regulation of the relevant fields of justice and establishing a unified procedural form for the exercise of prosecutorial functions — the matter of constitutionality whereof could become the subject of substantive review only in case it was challenged.

408. On the basis of all the above-written, the Constitutional Court concludes that the

power of the Prosecutor's Office to bring an action seeking the civil forfeiture of illegal assets stems from the Prosecutor's Office's competence to file an action with regard to protection of state interests provided for by part 3 of Article 176 of the Constitution.

Deriving from the results of the examination of the case and guided by part 1 of Article 167, point 1 of Article 168, point 2 of part 1 of Article 169, parts 1 and 2 of Article 170 of the Constitution, as well as Articles 63, 64 and 68 of the Constitutional Law "On the Constitutional Court," the Constitutional Court **decided:**

1. Points 5 and 6 of part 1 of Article 5 of the Law "On civil forfeiture of illegal assets," in conjunction with part 1 of Article 24 of the same Law, comply with the Constitution, in the interpretation according to which the assets that have been acquired after the assumption of office by the relevant official shall be subject to civil forfeiture on the basis of the Law "On civil forfeiture of illegal assets".

2. Points 1-4 of part 1 of Article 5 of the Law "On civil forfeiture of illegal assets," in conjunction with part 1 of Article 24 of the same Law, comply with the Constitution, in the interpretation according to which the assets that relate to the relevant offence shall be subject to civil forfeiture.

3. The remaining provisions of the Law "On civil forfeiture of illegal assets" challenged by the Applicant, within the scope of the substantiations presented in respect thereof, comply with the Constitution based on the results of an abstract review of compliance with the Constitution.

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

Presiding Justice

16 April 2025

DCC-1776 A. Dilanyan

Date of official promulgation: 22 April 2025.