

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

**ON THE CASE OF CONFORMITY OF PART 6 OF ARTICLE 24 AND CLAUSE 4 OF
PART 1 OF ARTICLE 30 OF THE RA LAW ON STATE REGISTRATION OF RIGHTS
TO THE PROPERTY WITH THE CONSTITUTION OF THE REPUBLIC OF
ARMENIA ON THE BASIS OF THE APPLICATION OF THE ADMINISTRATIVE
COURT OF THE REPUBLIC OF ARMENIA**

Yerevan

19 March 2019

The Constitutional Court of the Republic of Armenia composed of H. Tovmasyan (Chairman), A. Gyulumyan, A. Dilanyan, F. Tokhyan A. Tunyan, A. Khachatryan (Rapporteur), H. Nazaryan, A. Petrosyan,

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

the applicant – Administrative Court of the Republic of Armenia,

the respondent: A. Kocharyan, official representative of the RA National Assembly, Chief of the Legal Expertise Division of the Legal Expertise Department of the RA National Assembly Staff,

pursuant to clause 1, article 168, part 4, article 169 of the Constitution, articles 22 and 71 of the Constitutional Law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of part 6 of article 24 and clause 4 of part 1 of article 30 of the RA Law on State Registration of Rights to the Property with the Constitution of the Republic of Armenia on the basis of the application of the Administrative Court of the Republic of Armenia.

The Law HO-295 on State Registration of Rights to Property (hereinafter referred to as the Law) was adopted by the National Assembly on April 14, 1999, signed by the President of the Republic on April 30, 1999 and entered into force on May 6, 1999. In the future, by the Law HO-247-N on Making Amendments to the Law of the Republic of Armenia on State Registration of Rights to Property adopted by the National Assembly on June 23, 2011, the Law HO-295 on State Registration of Rights to Property was fully revised, which was signed by the President of the Republic on July 19, 2011 and entered into force on January 1, 2012.

Part 6 of article 24 of the Law establishes:

“The rights arising from transactions aimed at the origin, change, transfer of rights to real estate (with the exception of unilateral transactions) must be submitted to state registration no later than 30 working days from the date of notarization of these transactions.

Failure to comply with the requirement of this part entails the invalidity of the transaction. Such a transaction is considered void.

An application for state registration of rights arising from a transaction may be filed by each of the parties to the transaction”.

Clause 4 of part 1 of article 30 of the Law states:

“The authorized state registration authority is obliged to refuse state registration of the right if (...) an application for state registration on the basis of a notary certified transaction is filed with a violation of the 30-day period established by part 6 of article 24 of this Law”.

The challenged provisions in this edition are set out in accordance with the Law HO-247-N, adopted by the National Assembly on June 23, 2011, and have not been amended since adoption.

The case was initiated on the basis of the application of the Administrative Court of the Republic of Armenia (hereinafter referred to as the Court) registered in the Constitutional Court on December 6, 2018, which included the Decision VD/3098/05/18 of the Administrative Court of the Republic of Armenia dated December 5, 2018 “On terminating the proceedings of the administrative case and applying to the Constitutional Court”.

Having examined the application, the written explanation of the respondent, other documents of the case and having analyzed the legal provisions and other related legislative norms, the Constitutional Court of the Republic of Armenia **ESTABLISHES**:

1. Position of the applicant

According to the applicant, he had a reasonable doubt that part 6 of article 24 and clause 4 of part 1 of article 30 of the Law, limiting the property rights of people, are not sufficiently defined and create problems in the realization of the right of ownership/to property/.

According to the applicant, the challenged provisions, insofar as they do not delimit transactions concluded on the basis of an administrative act and do not define the consequences of their non-registration, do not meet the requirements of legal certainty enshrined in article 79 of the Constitution, and contradict article 60 of the Constitution, as in the case of a contract concluded on the basis of the administrative act and its notary certification, but failure to submit the contract for the state registration in the 30-day period established by law, is considered null and void and is not subject to state registration, on the one hand, and, on the other hand, the administrative act remains in force and causes a legitimate expectation of acquiring the right of ownership/ to property / (with the exception of administrative acts on condition).

In addition, the applicant considers that although the term for applying to an administrative body ensures legal predictability, as well as sustainability and reliability of legal relations, it cannot be non-recoverable if it is missed for a good reason.

According to the applicant, the challenged provisions insofar as they do not prescribe the possibility of restoring the validity period of the state registration of rights to property missed for a valid reason, thereby violating the effective exercise of the property right of a person, contradict articles 60 and 79 of the Constitution.

2. Position of the respondent

The respondent believes that in order to determine whether the challenged provisions comply with the requirement of certainty of the legal law, these provisions need to be considered in comparison with articles 10, 134, 135, 163 and 176 of the RA Civil Code systemically interrelated with them.

According to the respondent, the Civil Code of the Republic of Armenia recognizes the moment of state registration of this right as the moment of occurrence of the ownership right to real estate. In particular, article 176 of the Code recognizes the moment of state registration of this

right if the right of ownership of the property under the contract arises when the right of state registration of this right is registered.

In addition, according to the respondent, the RA Civil Code regards the date of state registration of the right to immovable property as a precondition for the emergence of this right not only in the case of the right of ownership, but also of any other property right to immovable property. In particular, in the opinion of the respondent, articles 225 and 235 of the RA Civil Code cause the emergence of the right to use the dwelling and, in some cases, the right of lien at the moment of state registration of the right.

According to the respondent, the legislator unequivocally emphasized state registration of rights on any basis provided for by the RA Civil Code as a definite value, stipulating the emergence of property rights to real estate not by the circumstances that serve as the basis for them, but by recognition of the state registration of a property right circumstances, clearly providing and fixing by the Law 30 day period for registration.

According to the respondent, the challenged provisions fully comply with the jurisdiction requirements of legal certainty, sufficient availability, practical, real possibility of bringing relevant behavior by relevant subjects to the requirements of the law and the predictability of possible negative legal consequences in case of non-compliance with the law.

According to the respondent, the challenged provisions of the Law comply with the requirements of the Constitution.

3. Circumstances to be established in the framework of the case

In the framework of the present case, the Constitutional Court considers it necessary to note that the issue raised by the applicant concerns the establishment of effective procedures and mechanisms necessary for the exercise of this right, and not the question of the certainty of limiting the right of ownership.

The challenged provisions, in essence, provide for a procedure for acquiring property rights, and the main problems raised by the applicant should be considered from the point of view of legislatively enshrined procedures and mechanisms necessary for the effective exercise of a person's property rights.

Considering the above, the issue of the constitutionality of the provisions of part 6 of article 24 and clause 4 of part 1 of article 30 of the Law will be considered by the Constitutional Court in terms of their compliance with articles 60, 75 and 78 of the Constitution.

To resolve this constitutional legal dispute, the Constitutional Court finds it important to consider, in particular, the following issues:

- 1) Whether the requirement to conclude relevant transactions aimed at the emergence change, transfer of rights to immovable property, including after the adoption of the administrative act, and the requirement to submit them for state registration no later than within 30 working days is controversial from the point of view of constitutional demand securing at the legislative level the effective procedures and mechanisms for the exercise of the right to property;
- 2) Whether the absence of a legislative possibility of restoring the 30-day period, which was missed for valid reasons, provided for state registration of rights arising from notary certified transactions, is disputable from the point of view of article 60 of the Constitution, the constitutional requirement to secure effective procedures and mechanisms for acquiring rights to immovable property, as well as whether the restriction of the right to legitimate expectation of the acquisition of the right of ownership is lawful, that is, the goal established by the Constitution, and is it a suitable and necessary measure chosen by the legislator to achieve this goal?

4. Legal positions of the Constitutional Court

4.1. The Constitutional Court states that the state registration of rights to immovable property is aimed at providing guarantees necessary for the exercise and protection of a person's right of ownership, especially to the mentioned property.

Based on the legal content of the institute of state registration of rights to immovable property, the Constitutional Court considers that by establishing the obligation of state registration of rights arising from transactions with immovable property, causing the registration of rights to be registered by the state, the legislator pursued a legitimate goal.

From the content of the legal regulations of article 3 of the Law it follows that the state registration of immovable property is based on certain principles that relate to the recognition, guarantee and protection of property rights registered by the state, their restrictions, the cadastral valuation of this property, the creation and management of accounting information system, and also contributes to ensuring the availability, objectivity, permanence and unity of data regarding the property and the rights and restrictions registered thereto, and the establishment of the real estate market.

The first condition for the implementation of these principles, especially the more effective realization of recognition, guaranteeing and protection of rights to real estate, is that for the state it must be certain who owns the property, which, amongst others, is ensured by the institution of state registration of the right to property.

Consequently, the existence of a period of state registration of rights to property, as well as the legal consequences of invalidity of transactions aimed at the occurrence, change, transfer of rights to real estate (except for unilateral transactions) on the basis of the expiration of this period or the invalidity of such transactions are also aimed at ensuring effective recognition, guaranteeing and protecting the rights to property and their limitations.

4.2. According to article 299 of the RA Civil Code, notary certification of transactions shall be mandatory either in cases referred to in this Code, or upon the request of any of the parties, even if that form is not required by law for the given type of transactions.

At the same time, according to the same article, the requirement for notary certification shall not apply to the contracts specified in this article (as in article 562 concerning the form of a real estate sale contract), where all the conditions set forth therein are written in accordance with the standard contract conditions approved by the Government of the Republic of Armenia, other conditions are not included therein, and the authenticity of signatures of the parties of those contracts has been verified as prescribed by the Law on state registration of rights to property.

It should also be noted that in some cases the mandatory requirement of the conclusion of certain types of transactions in a notarial procedure is established by a particular law. Such cases include, inter alia, article 70 of the Land Code of the Republic of Armenia, which is dedicated to the registration of auction results and the transfer of ownership, which states that within two days after full payment of the amount between the parties, an alienation agreement is signed, notarized and subject to state registration.

Thus, the Constitutional Court states that agreements on the alienation of immovable property can be concluded both in a notarial procedure and without a notary certification if the concluded transaction meets the above-mentioned conditions.

Considering that the requirements for concluding transactions in a notarial procedure are established by other legal acts, the Constitutional Court in the framework of the present case will not address the issues of constitutionality of the provisions of these acts.

At the same time, taking into account that in some cases, the decisions on the alienation of property are made by administrative acts, the Constitutional Court considers that the state's duty

is to establish effective mechanisms for regulating the alienation of property that will minimally burden the acquirers of property right with respect to conclusion of contracts and state registration of rights arising from the latter. Moreover, the consolidation of the acquisition of the right of ownership on the basis of an administrative act may in some cases be carried out by combining notarial functions, when one body takes over all actions aimed at providing an administrative act to a person.

4.3. Given the particular importance of real estate in terms of civil turnover, the legislator has established a mandatory requirement for state registration of a number of rights to real estate. In particular, according to part 2 of article 176 of the Civil Code of the Republic of Armenia, the right of ownership for the acquirer shall arise from the moment of its state registration.

Having established the obligatory requirement of state registration of rights arising from transactions with real estate, the legislator simultaneously provided for the legal consequences of non-compliance with the requirement to register the rights arising from these transactions. In particular, according to article 302 of the Civil Code of the Republic of Armenia, failure to comply with the requirement of state registration of rights arising from transactions shall result in the invalidity thereof.

However, by declaring invalid the transactions in which the requirement of state registration is not met, the RA Civil Code does not provide for any deadline for submission to the state registration of rights arising from these transactions after notary certification. Such a period is set out in article 24 challenged in the present case.

Based on the aforementioned circumstance, and also considering that the right to real estate arises from the moment of state registration, the RA Court of Cassation in a decision of September 18, 2009 on a civil case number HYKD4/0002/02/08 expressed the position that “the 30 days period provided for the submission to the state registration of rights arising from the concluded transactions with real estate does not entail legal consequences, therefore, the Cadastre, rejecting the application of the person for registration of ownership on the basis of missing a 30-day period, misinterpreted article 23 of the Law of the Republic of Armenia on state registration of rights to property, as a result of which refused the state registration of the property rights of a person on such a basis that is not provided for by article 43 of the Law”.

At the same time, the Constitutional Court states that as a result of a new version of the Law, Law HO-247-N of June 23, 2011 established that an application for state registration on the basis of a notary certified transaction submitted with a violation of the 30-day period is subject to

rejection. As a result of these changes, the implementation of the aforementioned position of the Court of Cassation in law enforcement practice practically becomes impossible, since the legislator directly provided for a time lapse as the basis for rejecting the registration of rights.

4.4. By virtue of the legal regulations enshrined in articles 60 and 75 of the Constitution, the state guarantees the right of a person to legitimate expectations of acquiring property rights, amongst others, by legislatively enshrining effective procedures and mechanisms for its implementation.

According to the case law of the European Court of Human Rights, within the meaning of the Conventional norm, not only existing material means, but also the **legitimate expectations** of acquiring material means are considered property (see, in particular, the case of Trgo v. Croatia, Trgo v. Croatia, decision of June 11, 2009, paragraph 44).

At the same time, the Constitutional Court, in its Decisions DCC-723, DCC-741, DCC-881, stated the possibility of protecting the right of ownership on the basis of **legitimate expectations** of acquiring the right of ownership. Moreover, in clause 8 of the Decision DCC-741 of 18.03.2008, the Constitutional Court stated that “the protection of property rights guaranteed by article 31 of the RA Constitution is granted to those whose property rights have been recognized by law or lawful expectation of acquiring property rights.”

The period of state registration of the right to property, as well as the legal consequences of the expiration of this period - the invalidity of transactions aimed at the occurrence, change, transfer of rights to immovable property (except for unilateral transactions), or the nullity of these transactions are generally aimed at ensuring effective recognition by the state, guarantee and protect property rights and restrictions.

In addition, the Constitutional Court states that the existing legal regulations do not create obstacles for the parties to conclude after the 30-day period of the contract established by the Law in a notarial procedure, including on the basis of an administrative act that was previously issued and still valid.

Nevertheless, the Constitutional Court considers that legislative procedures for the establishment by the legislator of a 30-day period of state registration of notary certified transactions and the occurrence of negative legal consequences after the expiration of this period may in some cases impede the realization of a person’s legitimate expectations regarding real estate, therefore these procedures are not effective in terms of exercising the right of a person to legitimate expectations of acquiring property rights.

4.5. The Constitutional Court states that the second paragraph of part 6 of article 24 and clause 4 of part 1 of article 30 of the Law restrict the right of a person to legitimate expectations of the acquisition of the right to property. The second paragraph of part 6 of article 24 of the Law, to which reference is made in clause 4 of part 1 of article 30, invalidates or nullifies all those transactions with real estate, the rights arising from which are not submitted to the state registration within 30 working days from the moment of their conclusion.

As a result of these legal regulations, the right of ownership of a person secured by the Constitution is limited, because after missing a deadline of 30 working days, a person can no longer acquire the right of ownership through a transaction already concluded.

At the same time, the Constitutional Court considers that such a restriction by the legislator of the right of ownership is not justified from the point of view of the Constitution, with the rationale that, according to part 3 of article 60 of the Constitution, “The right to property may be restricted only by law with the aim of protecting the interests of the public or the fundamental rights and freedoms of others”.

The Constitutional Court considers that the restriction took place on the basis of the Law (second paragraph of part 6 of article 24 and clause 4 of part 1 of article 30), and was also aimed at protecting the interests of society, therefore, pursued a legitimate aim.

The economic value of ownership of real estate, as noted, should be recognized by the state and private individuals. That is why this right is subject to state registration. Thus, the legislator in the legal aspect gives the right of ownership of property clarity and certainty, which in turn can serve as evidence in the framework of various trials (including judicial).

However, when accepting this regulation which pursues a legitimate goal, the legislator had to take into account the principle of proportionality guaranteed by article 78 of the Constitution, according to which the measure chosen for restricting fundamental rights and freedoms have to be suitable and necessary for the achievement of the aim prescribed by the Constitution..

In this case, the measure chosen is the regulation of the above articles of the Law. They are suitable for achieving this goal. The goal here is legal clarity. The state has a legitimate interest in clarifying the question of who exactly is the owner of real estate. Answers to a number of other financial and economic issues depend on the answer to this question.

Recognizing such regulation, the legislator in the legal aspect limits the duration of an uncertain situation - if within 30 working days the title to real estate is not registered, the transaction is

considered invalid. This eliminates legal uncertainty, which is suitable for achieving the above goal.

However, the measure chosen by the legislator should also be necessary. A measure is necessary if there is no softer intervention with which the said goal can be achieved with the same efficiency.

The Constitutional Court considers that the regulation established by the legislator is not necessary, since as a softer measure, part 6 of article 24 of the Law could provide for a provision to restore the missed deadline if the deadline was missed through no fault of a person.

Establishing circumstance of entailing of invalidity or nullity of the transaction as a legal effect disproportionately restricts the right to legitimate interest to the acquisition of property rights. There may be cases when the person's failure to comply with the deadline occurs through no fault of his own. This circumstance should have been taken into account by the legislator when regulating the relevant issue.

Considering the fact that in part 6 of article 24 of the Law, the legislator chose that of the measures that constitute a stricter interference with the right of ownership of a person than could be the in case if the above exception was established, it is suitable, however, within the meaning of article 78 of the Constitution, but not a necessary measure. Therefore, the legal consequences in the form of invalidation of a transaction can entail only the omission of the deadline established by the Law through the fault of a person

Based on the review of the case and governed by clause 1 of article 168, part 4 of article 169 of the Constitution, articles 63, 64 and 71 of the Constitutional Law on the Constitutional Court, the Constitutional Court **HOLDS**:

1. To declare part 6 of article 24 of the Law of the Republic of Armenia on state registration of rights to property in the part where non-observance of the requirement for submission to state registration of rights arising from transactions aimed at creating, changing, transferring rights to immovable property (except for unilateral transactions), not later than within 30 working days from the date of notary certification of these transactions, without taking into account the reasons for missing the deadline, shall invalidate the transaction, contradicting articles 60, 75 and 78 of the Constitution.
2. To declare clause 4 of part 1 of article 30 of the Law of the Republic of Armenia on State Registration of Rights to Property, in part to which it prevents state registration of

rights to property on the basis of applications filed with violation of a 30-day period for a good reason, contradicting articles 60, 75 and 78 of the Constitution.

3. Taking as grounds part 3 of article 170 of the Constitution, clause 4 of part 9 and part 19 of article 68 of the Constitutional Law on the Constitutional Court, and also taking into account the fact that declaring the challenged provisions as contradicting the Constitution and void at the time of the announcement of this Decision will inevitably result in consequences, thereby violating the legal security established by repealing the mentioned provisions, that is, there will be a gap in the legal regulation that an obstacle to properly ensuring the legality of acquiring rights to immovable property, to define June 1, 2019 for the final invalidation of the provisions declared by this Decision as contradicting the Constitution, providing the National Assembly the possibility to reconcile the legal regulations of the Law on State Registration of Rights to Property with the requirements of this Decision.

4. Pursuant to Part 2 of Article 170 of the Constitution this Decision shall be final and shall enter into force upon its promulgation.

Chairman

H. Tovmasyan

March 19, 2019

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