*Non-Official Translation*

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

# ON THE CASE CONCERNING THE CONSTITUTIONALITY OF POINT 2 OF PART 1 OF ARTICLE 419 OF THE CIVIL PROCEDURE CODE OF THE REPUBLIC OF ARMENIA, RAISED BY THE APPLICATION OF ARAMAYIS, HAMASPYUR, ARMINE, ARMAN, ARSHAK, LEVON, MANUSHAK ALIKHANYANS AND OTHERS

**City of Yerevan** **11 February 2025**

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

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| Presiding Justice: | Arman Dilanyan, |
| Justices: | Vahe Grigoryan,<br>Hrayr Tovmasyan,<br>Davit Khachaturyan,<br>Yervand Khundkaryan,<br>Hovakim Hovakimyan,<br>Edgar Shatiryan,<br>Seda Safaryan,<br>Arthur Vagharshyan, |

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

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| Applicants: | Aramayis, Hamaspyur, Manushak, Armine, Arman, and Arshak Alikhanyans (in the civil case No. LD/1218/02/08), |
| | Gevorg, Astghik, Zori Avetyans, and Naira Amirkhanyan (in the civil case No. LD/1327/02/08), |
| | Artur Ghumashyan (in the civil case No. LD/0862/02/08), |
| | Davit Chitchyan (in the civil case No. LD/0958/02/08), |
| | Ararat, Ara, Gor Yesayans, and Susanna Sargsyan (in the civil case No. LD/0858/02/08), |
| | Ashkharhabek, Gharib, Araksya, Nazeli, Sona, Nune, and Narine Mehrabyans (in the civil case No. LD/1139/02/08), |
| | Rafik, Seda, Romanos, Svetlana, and Rudik Alikhanyans (in the civil case No. LD/1345/02/08), |

Hermine Shakhyan, Yeghishe, Ashot, Mariana, and Tsovik Hobosyans (in the civil case No. LD/1305/02/08),

Martin, Garegin, and Lusik Shakhkyans (in the civil case No. LD/1186/02/08),

Artur, Arman Shahnazaryans, and Ruzanna Hovhannisyan (in the civil case No. LD/1273/02/08),

Hrayr, Artur, Marat Chilingaryans, and Irina Kikanyan (in the civil case No. LD/1198/02/08),

Ruben, Volodya, Shushanik, Narine, Shushan, Syuzanna Petrosyans, and Larisa Shakhkyan (in the civil case No. LD/0930/02/08),

Hovik Sahakyan (in the civil case No. LD/1283/02/08) (hereinafter referred to as "the Applicants"),

Representatives: advocate Karen Tumanyan (as of the moment of submitting the application) and advocate Meri Karapetyan,

Respondent: the National Assembly of the Republic of Armenia (hereinafter referred to 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 and point 8 of part 1 of Article 169 of the Constitution, as well as Articles 22 and 69 of the Constitutional Law "On the Constitutional Court",

examined, through written procedure, in an open session the "Case concerning the constitutionality of point 2 of part 1 of Article 419 of the Civil Procedure Code of the Republic of Armenia, raised by the application of Aramayis, Hamaspyur, Armine, Arman, Arshak, Levon, Manushak Alikhanyans and others.

Having examined the application, the attached documents, the written explanation of the Respondent, and other materials in the Case, the Constitutional Court **ESTABLISHED:**

**Proceedings Before the Constitutional Court**

**1.** The Civil Procedure Code of the Republic of Armenia (hereinafter also referred to as "the Code") was adopted by the National Assembly on 9 February 2018, signed by the President of the Republic on 27 February 2018, and entered into force on 9 April 2018.

**2.** Point 2 of part 1 of Article 419 of the Code, titled "Grounds for review of a judicial act on the basis of new circumstances", provides as follows:

*"New circumstances shall serve as grounds for the review of a judicial act where, (...) by a judgment or decision of an international court acting on the basis of an international treaty ratified by the Republic of Armenia and having entered into force, the fact of violation of the right of a person provided for by an international treaty ratified by the Republic of Armenia and having entered into force has been established, or where, at the time of the entry into force of such judgment or decision, the person had the opportunity to exercise that right in accordance with the requirements (time limits) prescribed by an international treaty, or where the international court has approved a peace agreement (friendly settlement) concluded between the parties or a unilateral declaration made by the Republic of Armenia".*

The contested provision of the Code, namely, point 2 of part 1 of Article 419, was supplemented, after the word *"opportumity",* by the wording: "*or where the international court has approved a peace agreement (friendly settlement) concluded between the parties or a unilateral declaration made by the Republic of Armenia"*, pursuant to Article 5 of the Law HO-182-N of 9 June 2022.

**3.** This case was initiated by the individual application submitted on 8 July 2020 (by handing over to a communications organization), which was received by the Constitutional Court on 21 July 2020.

**4.** By letter dated 28 August 2020, the Applicants' representative was informed by the staff of the Constitutional Court that the application did not comply with the requirements of the Constitutional Law "On the Constitutional Court", in particular due to the absence of a document confirming payment of the state fee, or a motion requesting exemption from payment of the state fee. Within the time limit prescribed by part 4 of Article 26 of the Constitutional Law "On the Constitutional Court", the Applicants remedied the deficiencies of the application by submitting a motion requesting exemption from payment of the state fee.

**5.** By Decision DPJCC-51 of the Panel of Justices of the Constitutional Court dated 30 September 2020, the Constitutional Court accepted the case for examination with respect to the Applicants, and refused to accept the application with respect to other persons listed therein on the grounds that the time limit prescribed for applying to the Constitutional Court had expired and that all judicial remedies had not been exhausted.

**6.** By Procedural Decision PDCC-11 of the Constitutional Court dated 19 January 2021, the proceedings in the case were suspended on the basis of point 3 of part 1 of Article 56 of the Constitutional Law "On the Constitutional Court", due to the necessity of requesting additional evidence.

**7.** By Procedural Decision PDCC-7 of the Constitutional Court dated 14 January 2022, the proceedings in the case were resumed on the basis of the first sentence of part 3 of Article 56 of the Constitutional Law "On the Constitutional Court".

**8.** By Procedural Decision PDCC-8 of the Constitutional Court dated 14 January 2022, the proceedings in the case were suspended on the basis of point 3 of part 1 of Article 56 of the Constitutional Law "On the Constitutional Court", due to the necessity of requesting additional evidence.

**9.** By Procedural Decision PDCC-20 of the Constitutional Court dated 10 February 2025, the proceedings in the present case were resumed.

**10.** By Procedural Decision PDCC-21 of the Constitutional Court dated 11 February 2025, the proceedings in the case were partially terminated with respect to the applicants Liparit, Lusine, and Nare Amirjanyans, Heriknaz Nerkararyan, and Lusik Hobosyan (in civil case No. LD/0945/02/08).

**The Background of the Constitutional Dispute**

**11.** On 1 November 2007, the Government adopted Decision No. 1279-N "On Declaring Exceptional Overriding Public Interest in Certain Areas within the Administrative Boundaries of the Rural Communities of Shnogh and Teghut of the Lori Marz (Region) of the Republic of Armenia and on Changing the Designated Purpose of Lands". According to that Decision, the acquirer of the land plots listed in its annexes is Armenian Copper Programme Closed Joint-Stock Company or Teghut Closed Joint-Stock Company established by it for the purpose of implementing the Teghut copper-molybdenum deposit exploitation project. The land plots belonging to the Applicants are included among the land areas designated as zones subject to expropriation.

**12.** Teghut Closed Joint-Stock Company filed respective statements of claim with the court seeking expropriation of the land plots belonging to the Applicants. On the basis of the submitted claims, civil cases Nos. LD/1218/02/08, LD/1327/02/08, LD/0862/02/08, LD/0958/02/08, LD/0858/02/08, LD/1139/02/08, LD/1345/02/08, LD/1305/02/08, LD/1186/02/08, LD/1273/02/08, LD/1198/02/08, LD/0930/02/08, and LD/1283/02/08 were initiated, in which judgments granting the claims were rendered; the judgments delivered in the aforementioned cases entered into legal force.

**13.** By the judgment delivered on 11 October 2018 in the case of *Osmanyan and Amiraghyan v. Armenia*[1] (Application no. 71306/11), the European Court of Human Rights (hereinafter also referred to as the "ECtHR") found that there had been a violation of the applicants' right to the peaceful enjoyment of possessions, guaranteed by Article 1 of Protocol No. 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 (hereinafter also referred to as the "ECHR"). The judgment became final on 11 January 2019.

**14.** In the aforementioned judgment, the ECtHR, in particular, stated as follows:

> "(…) 9. On 1 November 2007 the Government adopted Decision No. 1279-N "On Declaring Exceptional Overriding Public Interest in Certain Areas within the Administrative Boundaries of the Rural Communities of Shnogh and Teghut of the Lori Marz (Region) of the Republic of Armenia and on Changing the Designated Purpose of Lands". According to that Decision, Armenian Copper Programme CJSC or Teghout CJSC,

[1] See *Osmanyan and Amiraghyan v. Armenia* judgment of 11 October 2018 (Application no. 71306/11), paragraphs 9, 13-16, 21, 26, 49, 50, 62, and 69-71 (Armenian translation).

established by it for the purpose of implementing the Teghut copper-molybdenum deposit exploitation project, was to acquire the land units listed in its annexes. The applicants' plot of land was listed among the units of land within these expropriation zones.

(…)

13. On 12 May 2008 Teghout CJSC lodged a claim with the Lori Regional Court [of general jurisdiction] ("the Regional Court") against the applicants and L., the first applicant's late wife, seeking to oblige them to sign the agreement on the taking of their property for State needs. The company based its claim, *inter alia*, on the evaluation report prepared by Oliver Group LLC.

14. In the course of the proceedings, Teghout CJSC submitted a corrected version of the evaluation report on the applicants' property stating that Oliver Group LLC had made certain corrections as a result of which the market value of the land was estimated at AMD 194,000 (approximately EUR 422). The final amount of compensation, together with the additional 15% required by law, would thus be equal to AMD 223,100 (approximately EUR 485). The remainder of the data contained in the original report had not been changed.

15. The applicants argued before the Regional Court that the market value of their land had been underestimated and that the court should order a forensic expert examination to determine the real market value of their property.

16. On 6 October 2008 the Regional Court granted Teghout CJSC's claim, awarding L. and the applicants a total of AMD 223,100 in compensation.

(…)

21. On 31 July 2009 the Civil Court of Appeal quashed the Regional Court's judgment, stating that it should have granted the applicants' request by ordering a forensic expert examination to determine the market value of the property. The case was remitted to the Regional Court.

(…)

26. On 21 April 2011 the Regional Court granted Teghout CJSC's claim. It relied on the corrected evaluation report prepared by Oliver Group CJSC and two forensic expert reports. The Regional Court granted the applicants AMD 264,500 (approximately EUR 575) by taking the highest market value of the three evaluations at its disposal and adding to that amount the additional 15% as required by law.

(…)

49. In the present case, it is not in dispute that there has been a "deprivation of possessions" within the meaning of the second sentence of Article 1 of Protocol No. 1. The Court must

therefore ascertain whether the impugned deprivation [of property] was justified under that provision.

50. The Court reaffirms that to be compatible with Article 1 of Protocol No. 1, an expropriation measure must fulfil three conditions: it must be carried out "subject to the conditions provided for by law", which rules out any arbitrary action on the part of the national authorities, must be "in the public interest", and must strike a fair balance between the owner's rights and the interests of the community (see, among other authorities, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 94, 25 October 2012). The Court will thus proceed to examine whether those three conditions have been met in the present case.

(…)

62. Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, § 66, 15 April 2014).

(…)

69. Without prejudice to the relevant provisions of the Law and the margin of appreciation of the State in these matters, the Court considers that there may be situations where compensation representing the market price of the real estate in question even with the addition of the statutory surplus, would not constitute adequate compensation for deprivation of property. In the Court's opinion, such a situation may arise in particular if the property the person was deprived of constituted his main, if not only source of income and the offered compensation did not reflect that loss (see *Lallement v. France*, no. 46044/99, § 18, 11 April 2002).

70. In the present case the applicants submitted that as a family unit they had depended economically on the land in question. This argument has not been refuted by the respondent Government (see paragraphs 47-48 above). It is to be noted that this particular aspect, namely that in consequence of the expropriation the applicants had lost their main source of income, was not taken into account by the domestic courts in their decisions on the amount of the compensation due. The courts decided that, despite the circumstances, the applicants should be provided with compensation which was determined in relation to the prices of real estate situated in the area subject to expropriation. They did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived.

71. In view of the foregoing, the Court finds that the applicants had to bear an excessive individual burden. Accordingly, the impugned expropriation was in violation of Article 1 of Protocol No. 1 to the Convention".

**15.** Based on the ECtHR judgment in the case of *Osmanyan and Amiraghyan v. Armenia* (cited above), the Applicants lodged appeals with the Civil Court of Appeal seeking review of their cases on the basis of a new circumstance. The Civil Court of Appeal dismissed the appeals lodged by the Applicants in civil cases Nos. LD/1218/02/08, LD/1327/02/08, LD/0862/02/08, LD/0958/02/08, LD/0858/02/08, LD/1139/02/08, LD/1345/02/08, LD/1305/02/08, LD/1186/02/08, LD/1273/02/08, LD/1198/02/08, LD/0930/02/08, and LD/1283/02/08.

**16.** In its decision of 6 September 2019 in civil case No. LD/1218/02/08, the Civil Court of Appeal stated as follows:

> "Thus, on the one hand, a new circumstance constituting grounds for the review of a judicial act is the fact that a violation of a right provided for by an international treaty ratified by the Republic of Armenia, specifically, in the present case, by the Convention, has been substantiated by a judgment of an international court operating on the basis of an international treaty ratified by the Republic of Armenia, specifically, in the present case, by the European Court, which has entered into legal force; and in the assessment of the Court of Appeal, this circumstance may constitute a condition for the application of that norm exclusively in cases where the respective judgment of the international court substantiates the violation of the right, provided for by an international treaty ratified by the Republic of Armenia, of the person who filed the appeal seeking review of the judicial act on the basis of a new circumstance, which means that, when filing an appeal seeking review of a judicial act, the given person must invoke and submit the judicial act of the international court substantiating the existence of a violation of their right.
>
> On the other hand, a new circumstance constituting grounds for the review of a judicial act is the fact that, at the moment when the judgment or decision of the International Court substantiating the violation of a right provided for by an international treaty ratified by the Republic of Armenia entered into force, the person had had the opportunity to exercise that right in compliance with the requirements (time limits) prescribed by the international treaty. It follows from the above-mentioned legal norm that this is the right provided for by the international treaty ratified by the Republic of Armenia, the violation of which has been substantiated by a judgment or decision of the International Court that has entered into legal force.
>
> According to point 4 of part 1 of Article 420 of the RA Civil Procedure Code, an appeal for the review of a judicial act on the basis of newly revealed or new circumstances may be lodged within three months, the calculation of which, in the case provided for by point 2 of part 1 of Article 419 of the same Code, shall commence from the date on which the judgment or decision that has entered into force, rendered by an international court operating with the participation of the Republic of Armenia, is delivered to the person who applied to the court, in accordance with the rules of the given court.
>
> Pursuant to Article 35, paragraph 1 of the Convention, the European Court of Human Rights may only deal with the matter after all domestic remedies have been exhausted, according to the generally recognised rules of international law, and within a period of six months from the date on which the final domestic decision was taken.

In its decision of 20 February 2018 declaring inadmissible Application No. 50000/12 in the case of Mario Peteck v. Croatia, the European Court stated that: "In accordance with Article 35, paragraph 1 of the Convention, the Court may only deal with a matter after all domestic remedies have been exhausted. The purpose of Article 35, paragraph 1 of the Convention is to afford the Contracting States the opportunity of preventing or putting right violations alleged against them before those allegations are submitted to the Court. The obligation to exhaust domestic remedies therefore requires applicants to make normal use of remedies which are available and sufficient in respect of their Convention grievances".

In light of the aforementioned legal provisions, the Court of Appeal emphasizes that a person filing an appeal for review assumes the possibility of benefiting from the protection of a right under an international treaty ratified by the Republic of Armenia exclusively in cases where all domestic remedies have been exhausted and an application has been lodged within six months after the adoption of the final decision.

It follows from fact No. (2), which is essential for the examination of the appeal, that the Court granted the Company's claim and the land plot belonging to the defendants was expropriated in favor of the Company in exchange for compensation in the amount of AMD (…). The said judgment was not appealed and entered into legal force.

In their appeal seeking review of the court judgment on the basis of a new circumstance, (…) the appellants invoked and submitted, as a new circumstance, the judgment of the European Court of Human Rights of 11 October 2018 in the case of Osmanyan and Amiraghyan v. Armenia, which had entered into legal force and by which a violation of Article 1 of Protocol No. 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms had been found. The Court of Appeal wishes to draw attention to the fact that the applicants in the aforementioned case of Osmanyan and Amiraghyan v. Armenia were Suren Osmanyan, Serob Osmanyan, Bakur Osmanyan, Mane Osmanyan, and Donara Amiraghyan. In other words, by the invoked judicial act, the European Court established not a violation of the rights of the persons having lodged the appeal (…) but rather a violation of the rights of Suren Osmanyan, Serob Osmanyan, Bakur Osmanyan, Mane Osmanyan, and Donara Amiraghyan. Moreover, the appellant neither submitted nor, in general, invoked any fact indicating that they had applied to an international court in the contested case, under which circumstances the presumption applies that the appellants did not apply to an international court in the contested case. Furthermore, the Court of Appeal notes that the appellants' right to apply to an international court could have arisen only if the latter had exhausted domestic remedies, that is, if they had appealed the Court's judgment first to the Court of Appeal and then to the Court of Cassation.

It is noteworthy that, by virtue of not being included among the persons who applied to the European Court, the appellants objectively could not have received the judgment of the European Court dated 11 October 2018 in the case of Osmanyan and Amiraghyan v. Armenia, which means that, with respect to the appellants, the calculation of the three-month time limit prescribed by point 4 of part 1 of Article 420 of the Civil Procedure Code of the Republic of Armenia for lodging an appeal for review of a judicial act on the basis of a new circumstance had not commenced. Meanwhile, the fact that the judgment in the case

of Osmanyan and Amiraghyan v. Armenia was received by the appellants' representative, Karen Tumanyan, is conditioned by the fact that he was also the representative of the applicants in the case of Osmanyan and Amiraghyan v. Armenia, which allows the conclusion that he obtained the judicial act in Osmanyan and Amiraghyan v. Armenia, allegedly serving as the basis for the present appeal for review, in his capacity as representative of the applicants in that case.

The Court of Appeal also wishes to note that the defendants in the case could not even claim the right to apply to an international court or the possibility of exercising that right, since they had not even appealed the Court's judgment at the relevant time, thereby failing to exhaust all domestic remedies in accordance with the generally recognized norms of international law and lacking a final domestic judicial act; this means that the appellants justifiably did not fall within the scope of the six-month period during which, pursuant to Article 35, paragraph 1 of the Convention, they could avail themselves of the opportunity to lodge an application with the European Court.

Summarizing the above, the Court of Appeal concludes that the new circumstance provided for by the legal norm enshrined in point 2 of part 1 of Article 419 of the Civil Procedure Code of the Republic of Armenia, invoked by the appellants, does not exist for them in the present case; therefore, taking into account that, in the specific case, a judicial act that has entered into legal force may be reviewed on the basis of a new circumstance only in compliance with the rule prescribed by point 2 of part 1 of Article 419 of the Civil Procedure Code of the Republic of Armenia, which is absent in the present case, the appeal must be dismissed".

**17.** In 2019, in cases Nos. LD/1327/02/08, LD/0862/02/08, LD/0958/02/08, LD/0858/02/08, LD/1139/02/08, LD/1345/02/08, LD/1305/02/08, LD/1186/02/08, LD/0930/02/08, LD/1283/02/08, and LD/1198/02/08, the Civil Court of Appeal rendered decisions dismissing the appeals on grounds identical in substance to those set out above (the editorial differences contained therein do not create any substantive difference in the reasoning), and therefore they are not cited separately.

**18.** In its decision of 30 August 2019 in civil case No. LD/1273/02/08, the Civil Court of Appeal stated as follows:

"(...)
Comparing the foregoing with the facts of the present case, the Court of Appeal notes that the appellants did not appeal the Court's judgment of 1 October 2008 either by way of appeal or, consequently, cassation, thereby failing to exhaust the possibility of review of the judicial act through all domestic remedies; and this means that, in the present case, the condition provided for by Article 419 of the RA Civil Procedure Code is absent, namely, at the time when the judicial act of the international court entered into force, they did not have the possibility, in compliance with the requirements of the international treaty, to apply to an international court regarding a possible violation of their rights, since at that time they had not exhausted all domestic remedies for the protection of their rights and, as there was no final domestic judicial act for the purpose of applying to the ECtHR, under

such circumstances it becomes unnecessary to examine the existence of the other conditions required for applying to the ECtHR.

Proceeding from the foregoing, the Court of Appeal finds that the grounds of the appeal, *per se*, become devoid of subject matter; and even a separate analysis of each of them cannot affect the outcome of the case, since in the present case the general conditions for the review of a judicial act provided for by Article 419 of the RA Civil Procedure Code have not been complied with. Consequently, the appeal is subject to dismissal, and the challenged judicial act of the Court must be left unchanged".

**19.** Cassation appeals were lodged against the decisions rendered by the Civil Court of Appeal in civil cases Nos. LD/1218/02/08, LD/1327/02/08, LD/0862/02/08, LD/0958/02/08, LD/0858/02/08, LD/1139/02/08, LD/1345/02/08, LD/1305/02/08, LD/1186/02/08, LD/1273/02/08, LD/1198/02/08, LD/0930/02/08, and LD/1283/02/08; however, the Court of Cassation refused to admit them into proceedings.

**Submissions of the Applicants**

**20.** The Applicants stated that they reside in the communities of Teghut and Shnogh in the Lori Region and that, by Government Decision No. 1279-N of 1 November 2007, an exclusive prevailing public interest was recognized with respect to the agricultural land plots owned by them and located within the administrative territories of the rural communities of Teghut and Shnogh in the Lori Region.

**21.** The Applicants indicated that, under the aforementioned Government Decision, the acquirer of the land plots is Armenian Copper Programme Closed Joint-Stock Company or, by its decision, Teghut Closed Joint-Stock Company established for the purpose of implementing the Teghut copper-molybdenum deposit exploitation project; Armenian Copper Programme Closed Joint-Stock Company selected Teghut Closed Joint-Stock Company as the acquirer.

**22.** The Applicants stated that Teghut Closed Joint-Stock Company applied to the court seeking expropriation, with equivalent compensation, of the land plots owned by them by right of ownership for the purpose of securing overriding public interests (for the needs of society and the State); by the judgments rendered by the court, the respective claims were granted, and those judgments entered into legal force.

**23.** The Applicants note that, in its judgment in the case of *Osmanyan and Amiraghyan v. Armenia*, the ECtHR, having examined and assessed the entire expropriation procedure carried out for the purpose of exploiting the Teghut deposit, found that the expropriation "measure" process did not comply with the requirement of fair compensation stipulated in Article 1 of Protocol No. 1 to the ECHR. It is further noted that, following the judgment in the case of *Osmanyan and Amiraghyan v. Armenia*, the European Court of Human Rights rendered seven additional repetitive judgments in which it found violations identical to those established by the judicial acts rendered with respect to the former owners.

**24.** The Applicants consider that, at the time when the judgment of the European Court of Human Rights in the case of *Osmanyan and Amiraghyan v. Armenia* entered into legal force, they had suffered violations of their property rights similar to those established in the Osmanyan and Amiraghyan case, as well as in the subsequent seven judgments of the European Court of Human Rights.

**25.** Referring to the ECtHR judgment in the case of *Osmanyan and Amiraghyan v. Armenia*, the Applicants state that, on that basis, the courts refused to review the judicial acts rendered in their cases that had entered into legal force.

**26.** Presenting the legal positions of the Constitutional Court and the European Court of Human Rights regarding the principle of legal certainty, the Applicants contend that the legal wording contained in point 2 of part 1 of Article 419 of the Civil Procedure Code – "*(...) or where, at the time when that judgment or decision entered into force, the person had the opportunity to exercise that right in compliance with the requirements (time limits) prescribed by the international treaty*" – does not comply with the requirements of legal certainty. According to the Applicants, by virtue of the said norm, a legal mechanism has been established whereby a person whose rights have allegedly been violated may challenge those rights before a court by invoking, as a new circumstance, a judgment or decision rendered by an international court. Presenting their perception of the contested provision, the Applicants stated that, by virtue of a "*new circumstance*", a person may apply to the court for review of a judicial act if:

**(1)** at the time when the judgment or decision of the international court entered into force, the person had that right;

**(2)** at the time when the judgment or decision of the international court entered into force, the applicant must have the possibility to exercise their violated right in a manner compliant with the requirements prescribed by the international treaty;

**(3)** moreover, the possibility of exercising that right must comply with the conditions established by the international treaties;

**(4)** the possibility of exercising that right must comply with the time limits established by the international treaties.

**27.** The Applicants consider that none of the above-mentioned preconditions possesses a degree of clarity sufficient to enable a person whose rights have been violated to apply to a court for the review of the judicial act rendered with respect to them. In particular, it is unclear how, at the time when the ECtHR judgment in the case of *Osmanyan and Amiraghyan v. Armenia* entered into legal force, the Applicants were supposed to compare their violated rights with the violated rights of the applicants in that case, as well as how, at the time when the said judgment entered into legal force, the Applicants were supposed to understand that there had existed an opportunity to exercise their property rights and to apply for review of the judicial act rendered with respect to them.

**28.** According to the Applicants, the contested provision lacks the degree of legal certainty necessary for the Applicants to be able to apply to a court for the protection of their rights; while the courts do not consider the possibility of applying that norm, relying on Article 35 of the ECHR.

**29.** Subsequently, the Applicants consider that point 2 of part 1 of Article 419 of the Civil Procedure Code contradicts part 3 of Article 5, part 1 of Article 61, and part 1 of Article 63 of the Constitution, insofar as it does not allow an application to be lodged with the competent court for the review of a judicial act on the basis of a "*new circumstance*" in cases where a judgment or decision of an international court establishes a violation of a general (systemic) nature.

**30.** The Applicants note that judgments and decisions rendered by the ECtHR may establish two types of violations: individual and general in nature. According to the Applicants, the individual nature of a violation recognized by the ECtHR consists in the acknowledgment of the fact of violation of the applicant's right and the award of just satisfaction to the "victim", whereas violations of a general nature concern systemic deficiencies in the law-enforcement and/or legislative regulation of the given State, the identification of which also entails recognition of the widespread nature of the violations.

**31.** The Applicants find that, in cases where an ECtHR judgment or decision establishes violations of a general nature, the legislation of the Republic of Armenia does not provide a legal possibility for a person injured as a result of a "systemic violation" to apply to a court; that is, a person whose rights have been violated as a consequence of a systemic problem cannot apply to a court for review of the judicial act rendered against them. In such circumstances, according to the Applicants, the constitutional rule concerning the superior legal force of international treaties over laws becomes meaningless.

**32.** The Applicants consider that the legislator must establish such preconditions for the review of judicial acts as would preclude any "retreat" from the principles of a State governed by the rule of law, ensure that the review of judicial acts serves the interests of justice and fair trial, and pursue the aim of restoring violated rights and freedoms of individuals. According to the Applicants, legal regulations should be established whereby, for the review of a judicial act that has entered into legal force, an assessment is made of the existence of a new circumstance, its essential significance for the case, as well as the existence of such a judicial error whereby the court deviated from the human rights and fundamental freedoms guaranteed by the Constitution of the Republic of Armenia and established by the international commitments assumed by the Republic of Armenia.

**Submissions of the Respondent**

**33.** The Respondent states that, in execution of ECtHR judgments, the Contracting States, including the Republic of Armenia, are required, *inter alia*, to undertake individual measures. The Respondent emphasizes that individual measures, as a rule, include the review of domestic judicial acts on the basis of the judgment of the European Court; in execution of an ECtHR judgment, such an individual measure becomes unavoidable in all cases where the reason for the violation of a Convention right is a breach of procedural norms during domestic judicial proceedings.

**34.** Interpreting the contested norm, the Respondent notes that, on the one hand, a new circumstance constituting grounds for the review of a judicial act is the fact that the violation of a person's right provided for by an international treaty of the Republic of Armenia has been substantiated by a judgment of an international court operating on the basis of an international treaty ratified by the Republic of Armenia that has entered into legal force; on the other hand, such a circumstance also includes the existence – at the time when the judgment or decision of the international court substantiating the violation of a right provided for by an international treaty ratified by the Republic of Armenia entered into force – of the possibility for the person to exercise that right in compliance with the requirements (time limits) prescribed by the international treaty.

**35.** Referring to the right to apply to the ECtHR, the Respondent notes that a person acquires the possibility to avail themselves of such a right exclusively after exhausting all domestic remedies and applying to the ECtHR within six months from the date of the final decision.

**36.** According to the Respondent, the contested provision makes it possible to review a judicial act where, at the time when the judgment or decision of the international body entered into force, the person had the possibility to exercise that right in compliance with the requirements (time limits) prescribed by the international treaty, whereas persons who did not have such a possibility at the relevant time (including with respect to the time limits) are lawfully not granted the possibility of review of a domestic judicial act. The Respondent considers that, otherwise, the rights of the other participant in the proceedings would be violated, since, in the absence of an appeal having been lodged, that participant has a justified and legitimate expectation that the rendered judicial act will not be reviewed, and the very mechanism is established by the contested provision.

**37.** The Respondent also states that one of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where courts have rendered a final judicial act on a matter, that act should not be called into question. The power of higher courts to review a case should be exercised for the purpose of correcting judicial errors and improperly administered justice, and not for conducting a new examination.

**38.** The Respondent notes that, in the case of *Osmanyan and Amiraghyan v. Armenia*, the ECtHR expressed the opinion that the owners had not received compensation of such an amount as would have enabled them to acquire other equivalent property without difficulty, and concludes that the ECtHR judgment merely establishes the possibility of higher compensation amounts and in no way calls into question the issue of the lawfulness of the law.

**39.** Presenting certain positions expressed by the Constitutional Court regarding the review of judicial acts on the basis of a new circumstance, the Respondent states that the contested provision not only does not restrict, but also provides a rather broad opportunity for persons who have exhausted domestic remedies and lodged an application with the European Court of Human Rights within the prescribed time limits and procedure.

**40.** The Respondent considers that the Applicants had been afforded every opportunity in due time to challenge the judgment before higher judicial instances; however, they simply failed to avail themselves of that opportunity and are now merely formally contesting the constitutionality of the provision of the law, which is inadmissible.

**The Scope of Examination of the Constitutional Dispute**

**41.** The Constitutional Court examines the present case on the basis of an individual application submitted by the Applicants pursuant to point 8 of part 1 of Article 169 of the Constitution. Therefore, for the purpose of determining the scope of the constitutional dispute in the present case, the Constitutional Court considers it necessary to clarify the type of legal relations constituting the subject matter of the dispute. These are the legal relations concerning the review of a judicial act on the basis of a new circumstance in connection with the issue of "*prior and adequate compensation*" for expropriation of property arising from part 5 of Article 60 of the Constitution.

**42.** The present constitutional dispute arose from the legal relations involved in the expropriation process of the Applicants' property described in paragraphs 11–14 of this Decision, which are clearly distinguishable from other categories of property relations regulated by civil law, taking into account that the provisions of civil legislation governing them: **(1)** constitute an exception to the general principles underlying civil legislation, namely the autonomy of will and property independence of participants in regulated relations, as well as freedom of contract[2]; and **(2)** the right to receive "*prior and adequate compensation*" provided for by part 5 of Article 60 of the Constitution is absolute in comparison with other property rights guaranteed by the Constitution[3].

**43.** Consequently, the specific nature of the above-mentioned legal relations determines the substantive scope of the present constitutional dispute, namely: exclusively the examination of the constitutionality of restricting the right to fair trial through the application of the principle of finality of judicial acts with respect to claims for compensation for expropriated property in legal relations concerning the expropriation of property or legitimate expectations thereof for the purpose of securing overriding public interests (for the needs of society and the State), arising from part 5 of Article 60 of the Constitution.

**44.** When referring, on the basis of part 5 of Article 60 of the Constitution, to property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), the Constitutional Court, for editorial reasons, will hereinafter use in this Decision the general term "*property*", understanding thereunder also the legitimate expectation of acquiring property rights, as "*property*" within the meaning of part 1 of Article 60 of the Constitution[4].

**45.** The constitutional dispute raised by the Applicants, namely the constitutionality of restrictions on the review of judicial acts on the basis of a new circumstance in connection with the protection of the right to receive adequate compensation for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), concerns the sphere of

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[2] See part 1 of Article 3 of the Civil Code of the Republic of Armenia.
[3] See paragraphs 4.1 and 5.7 of Decision DCC-1699 of the Constitutional Court.
[4] See Decisions of the Constitutional Court DCC-741 of 18 March 2008 (point 8), DCC-1238 of 1 December 2015 (point 7), DCC-1326 of 6 December 2016 (point 6), DCC-1424 of 10 July 2018 (point 4.2), DCC-1448 of 19 March 2019 (point 4.4), DCC-1583 of 9 March 2021 (point 4.2), DCC-1609 of 14 September 2021 (point 4.2), DCC-1611 of 27 September 2021 (point 6.2), DCC-1617 of 9 November 2021 (point 3), and DCC-1618 of 30 November 2021 (point 4.5).

procedural guarantees ensuring the substantive right provided for by part 5 of Article 60 of the Constitution. Consequently, within the framework of the present constitutional dispute, the constitutionality of the contested legal provision is subject to examination by the Constitutional Court from the perspective of its compliance with the guarantees of the substantive right provided for by part 5 of Article 60 of the Constitution.

**46.** At the same time, the constitutional dispute raised by the Applicants, namely the constitutionality of restrictions on the review of judicial acts on the basis of a new circumstance in connection with the protection of the right to receive adequate compensation for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), also concerns the restriction of the right to fair trial provided for by part 1 of Article 63 of the Constitution, in particular the right of access to a court. Consequently, within the framework of the present constitutional dispute, the constitutionality of the contested provision is also subject to examination by the Constitutional Court from the perspective of its compliance with part 1 of Article 63 of the Constitution.

**47.** Taking into account the foregoing, the Constitutional Court determines the scope of the present constitutional dispute according to the following questions:

**(a)** whether the contested provision complies with the requirement of certainty prescribed by Article 79 of the Constitution in terms of restricting the fundamental rights provided for by part 5 of Article 60 and part 1 of Article 63 of the Constitution;

**(b)** whether the restrictions on the review of judicial acts on the basis of a new circumstance, provided for by the contested provision in relation to claims for adequate compensation for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) under part 5 of Article 60 of the Constitution, pursue a constitutionally legitimate aim;

**(c)** whether the restrictions on the review of judicial acts on the basis of a new circumstance, provided for by the contested provision in relation to claims for adequate compensation for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) under part 5 of Article 60 of the Constitution, comply with the principle of proportionality prescribed by Article 78 of the Constitution.

**Legal Position of the Constitutional Court**

**48.** The provisions of the Constitution relevant to the resolution of the present constitutional dispute are as follows:

Pursuant to Article 1 of the Constitution: "*The Republic of Armenia is a (...) State governed by the rule of law*".

Pursuant to part 2 of Article 3 of the Constitution: "*The respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the duties of public power*".

Pursuant to part 3 of Article 3 of the Constitution: "*The public power shall be bound by the fundamental rights and freedoms of the human being and the citizen as directly applicable law*".

Pursuant to part 1 of Article 5 of the Constitution: "*The Constitution shall have supreme legal force*".

Pursuant to part 5 of Article 60 of the Constitution: "*Expropriation of property for the purpose of securing overriding public interests shall be performed in exceptional cases and in the procedure prescribed by law, with prior and adequate compensation only*".

Pursuant to part 1 of Article 63 of the Constitution: "*Everyone shall have the right to a fair and public hearing of their case within a reasonable period by an independent and impartial court*".

Pursuant to part 2 of Article 81 of the Constitution:

"*2. Restrictions on fundamental rights and freedoms may not exceed the restrictions prescribed by the international treaties of the Republic of Armenia*".

**49.** Taking into account that it follows from the background of the present constitutional dispute that the violation established in the case of *Osmanyan and Amiraghyan v. Armenia*, invoked by the Applicants, concerns the inadequacy of compensation granted for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the Constitutional Court considers it necessary, for the resolution of the present constitutional dispute, to specify the nature of the fundamental right subject to examination within its framework and the scope of its protection.

**50.** The Constitutional Court has already addressed the constitutional content of the owner's right to "*prior and adequate compensation*", arising from part 5 of Article 60 of the Constitution, in the context of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), stating as follows[5]:

> "The axiological content of the constitutional guarantee provided for in part 5 of Article 60 of the Constitution, according to which expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) is implemented 'only with prior and adequate compensation', is a literal and unequivocal promise by the Constituent, free of any conditionalities applicable to the expropriated property, to ensure 'prior and adequate compensation'. By virtue of the supreme legal force of the Constitution provided for in part 1 of Article 5 of the Constitution, and the directly applicable nature of rights provided for in part 3 of Article 3 of the Constitution, the legal content of this promise constitutes, accordingly, an unconditional commitment of public authorities to fulfil such a promise. At the same time, this promise of the Constituent, in a mirrored reflection, serves

[5] See paragraphs 5.7 and 5.9 of Decision DCC-1699 of the Constitutional Court dated 7 November 2023.

as an absolute right of the owner of the expropriated property to claim 'prior and adequate compensation' for the property expropriated for the purpose of securing overriding public interests (for the needs of society and the State).

The Constitutional Court considers it necessary to state that the quality of a right being "absolute", i.e. protected from restrictions or other interference by public authorities, does not apply, as a general rule, to the right to property provided for in Article 60 of the Constitution, which, as the Constitutional Court has stated in paragraphs 5.4–5.6 of this Decision, is a right subject to restrictions and other interferences, including termination of the right to property (*mutatis mutandis*, paragraph 8 of the Constitutional Court Decision DCC-903 of 13 July 2010, and paragraph 4.4 of the Constitutional Court Decision Decision DCC-1546 of 18 June 2020), provided that such restrictions and other interferences with the right to property meet the requirements of constitutional legitimacy of such interferences.

The quality of an absolute right – meaning a right in respect of which the Constituent has excluded the possibility of interference by public authorities, while at the same time imposing on public authorities an obligation to establish the necessary organisational mechanisms and procedures for its effective exercise in order to exercise that right – applies solely to the right of the owner of the expropriated property, under part 5 of Article 60 of the Constitution, to claim "prior and adequate compensation" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State).

(…)

The Constitutional Court states that the purpose of the obligation imposed on public authorities under part 2 of Article 3 of the Constitution to respect and protect the fundamental rights and freedoms of the human being and the citizen is to oblige public authorities not only to ensure the protection of each enshrined right, but also to provide compensation for damages caused in the event of a violation thereof (Constitutional Court Decision DCC-1383 of 7 November 2017).

The effective enjoyment of a fundamental right requires public authorities not only to refrain from interfering with the exercise of that right but, owing to the necessity of ensuring its effective realization, also imposes certain positive obligations upon them.

In light of the above, the Constitutional Court states that the primary procedural guarantee for the effective implementation of the right, provided for in part 5 of Article 60 of the Constitution, to claim "prior and adequate compensation" for the expropriation of property is to ensure its protection through the respective mechanisms of the right to a fair trial.

(…)

As mentioned above, the constitutional guarantee of providing prior and adequate compensation for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State) is not subject to conditionalities determined

at the discretion of public authorities. Consequently, the right of a person to claim prior and adequate compensation for expropriated property is not subject to restriction, regardless of the purpose of any such alleged restriction, under the principle that "an absolute right is subject to absolute protection".

**51.** The above position was expressed by the Constitutional Court within the framework of the constitutional dispute under examination in the present Case, which, due to the specific features of proceedings on the basis of an individual application, required the determination of a certain temporal scope, for the purpose of localizing the Constitutional Court's positions in relation to the application of law with respect to the applicants in the same case.

**52.** Nevertheless, in the same decision, the Constitutional Court, as a result of its analysis, stated as follows[6]:

"The above constitutionally prescribed special rule on the expropriation of property for the society and State needs – upon the adoption of the Constitution of 1995, and for the purpose of securing overriding public interests – upon the entry into force of the constitutional amendments of 2015, underwent contextual amendments , which referred to **(1)** the content of the constitutional purpose of the interference with the right to property (from 1995 to the constitutional amendments of 2005 – "*for the needs of society and the State*", after the entry into force of the amendments to the Constitution of 2005 – "*for the needs of society and the State only in exceptional cases of overriding public interests*"; and according to the current Constitution – "*for the purpose of securing overriding public interests*"), and **(2)** the legal grounds for interference (constitutional amendments from 1995 to 2005 – "*based on the law*", after the entry into force of the amendments to the Constitution of 2005 – "*in the procedure prescribed by law*", and according to the current Constitution – "only *in exceptional cases and in the procedure prescribed by law*").

Meanwhile, in the case of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the commandment of proportionality of interference with the right to property has consistently remained unchanged, thereby guaranteeing the imperative condition for observing proportionality in the event of such interference, i.e. "*compensation*", and the requirements thereto as constitutional requirements in the case of interference, i.e. "*prior*" and "*adequate*".

**53.** Reaffirming the analyses set out in paragraphs 5.7 and 5.9 of Decision DCC-1699 of 7 November 2023 concerning the nature of the right of the rightholder to compensation in cases of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) – as general principles of the right provided for by part 5 of Article 60 – by virtue of the conclusion reached in that decision that "*the requirement of proportionality in cases of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) has consistently remained unchanged*", the Constitutional Court also notes that the scope of the constitutional dispute resolved by the same decision[7] had been limited exclusively to the examination of the constitutionality of the application of limitation periods to

[6] See paragraph 5.4 of Decision DCC-1699 of the Constitutional Court dated 7 November 2023.
[7] See paragraph 4.2 of Decision DCC-1699 of the Constitutional Court dated 7 November 2023.

claims for adequate compensation in legal relations concerning expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), arising from part 5 of Article 60 of the Constitution, which had been regulated by the legal provisions in force from 1 January 1999 to 1 October 2006.

**54.** The reason for the chronological clarification of the history of regulation of legal relations concerning expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) in Decision DCC-1699 of 7 November 2023, as described in paragraph 4.2 of the same decision, was the existence, during separate periods, of different legislative and subordinate legislative regulations governing those relations. In particular, the Constitutional Court stated[8]:

> "(...) In general, the history of regulation of legal relations concerning expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) comprises three chronological periods, each providing for different legislative regimes.
>
> The first period of the aforementioned regulation covers the time from 1 January 1999 (the date of entry into force of the Civil Code) until 1 October 2006, when, by Decision DCC-630 of the Constitutional Court of 18 April 2006, the following key legal provisions regulating legal relations concerning compulsory expropriation of property for the needs of society and the State were declared invalid:
>
> (a) Article 218 of the Civil Code, on the grounds of its inconsistency, in terms of regulating legal relations concerning compulsory expropriation of property for the needs of society and the State, with the requirements of Articles 3, 8 (part 1), 31 (part 3), and 43 of the Constitution (as amended in 2005);
>
> (b) Article 104 of the Land Code, on the grounds of its inconsistency, in terms of regulating legal relations concerning compulsory expropriation of property for the needs of society and the State, with the requirements of Articles 8 (part 1), 31 (part 3), and 43 of the Constitution (as amended in 2005);
>
> (c) Article 106 of the Land Code, on the grounds of its inconsistency with the requirements of Articles 31 (part 3), 43, and 83.5 (points 1 and 2) of the Constitution (as amended in 2005);
>
> (d) Article 108 of the Land Code, on the grounds of its inconsistency with the requirements of Articles 3, 31 (part 3), and 43 of the Constitution (as amended in 2005);
>
> (e) Government Decision No. 1151-N of 1 August 2002 'On Measures for the Implementation of Development Programs within the Administrative Boundaries of the Kentron District Community of Yerevan' – being based on the provisions of Article 218 of the Civil Code and Article 104 of the Land Code – on the grounds of its inconsistency, in terms of subordinate legislative regulation of legal relations concerning compulsory

[8] Ibid.

expropriation of property for the needs of society and the State, with the requirements of Articles 3, 8 (part 1), 31 (part 3), 43, 83.5 (points 1 and 2), and 85 (part 2) of the Constitution (as amended in 2005).

The subsequent, second period of legal relations concerning expropriation of property for the needs of society and the State covers the period from 1 October 2006 – the deadline for the invalidation of the above-mentioned provisions of the Civil Code and the Land Code, and Government Decision No. 1151-N of 1 August 2002, as prescribed by point 4 of the operative part of Decision DCC-630 of the Constitutional Court of 18 April 2006 – until 29 December 2006 (that is, until the entry into force of the Law 'On Expropriation of Property for the Needs of Society and the State' /HO-185-N/), during which legal relations concerning expropriation of property for the needs of society and the State had no legislative regulation whatsoever.

Finally, the subsequent, third period of regulation of legal relations concerning expropriation of property for the needs of society and the State or for the purpose of securing overriding public interests covers the period from 30 December 2006 to the present day, which includes the period during which the Law 'On Expropriation of Property for the Needs of Society and the State' (HO-185-N) has been in force".

**55.** Taking into account the particular feature of the present constitutional dispute, namely that it concerns the limitation on the review of judicial acts that have entered into legal force in the Applicants' case, without distinguishing under which legislative regulations the property was expropriated for the purpose of securing overriding public interests (for the needs of society and the State), the Constitutional Court considers the positions expressed within the framework of the present constitutional dispute to be applicable to the right to compensation provided for in part 5 of Article 60 of the Constitution in connection with expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) throughout all chronological periods envisaged by paragraph 4.2 of Decision DCC-1699.

***The Criterion Provided for in Part 2 of Article 81 of the Constitution***

**56.** The constitutional dispute raised by the Applicants in the present case concerns the absence of a possibility to review, on the basis of a new circumstance, judicial acts adopted in cases relating to the amount of compensation payable and the procedure for calculating such compensation for the expropriation of their property for the purpose of securing overriding public interests (for the needs of society and the State), which judicial acts, according to the Applicants, are relevant to their cases; and the given circumstance invoked by the Applicants is the judgment of the ECtHR concerning other persons, which confirmed, with regard to the Applicants' claims, a violation of the principle of adequate compensation for their property.

**57.** In light of the foregoing, and taking into account that the background presented in paragraphs 11–19 of this Decision indicates that the violation established in the case of *Osmanyan and*

*Amiraghyan v. Armenia*, relied upon by the Applicants, concerns the inadequacy[9] of compensation granted for expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the Constitutional Court considers it necessary, for the resolution of the present constitutional and legal dispute, to clarify the issues concerning the relationship between the norms of international law and constitutional law with regard to the restriction and protection of constitutional fundamental rights.

**58.** The fundamental constitutional rule of the "*limitation of the restriction*" on a constitutional fundamental right or freedom, provided for in part 2 of Article 81 of the Constitution, defines the scope within which a constitutional fundamental right or freedom may be restricted, establishing as its maximum limit the extent of restrictions provided for by the international treaties of the Republic of Armenia. This constitutional rule applies to every constitutional fundamental right or freedom and does not provide for any exceptions from the list of fundamental rights and freedoms, thereby clearly delineating **the maximum permissible extent of restriction or interference by public authorities with any constitutional right or freedom**. Consequently, by virtue of this fundamental constitutional rule governing the relationship between the Constitution and international law in the protection of constitutional fundamental human rights and freedoms, any violation of a fundamental right established by an international treaty ratified by the Republic of Armenia **automatically** constitutes a violation of the maximum permissible limit of restriction or other interference with the respective fundamental right or freedom guaranteed by the Constitution. In other words, the level of protection of a right or freedom provided for by the international treaties of the Republic of Armenia constitutes the "*minimum threshold*" of protection of the respective constitutional fundamental right or freedom, the violation of which amounts not only to a breach of an international treaty of the Republic of Armenia, but also to a violation of the Constitution.

**59.** The formula of the principle described above for defining the "*minimum threshold*" of protection of a constitutional fundamental right or freedom is not identical to the full scope of prohibitions on interference with a fundamental right or freedom provided for by the Constitution, which are determined exclusively by the Constitution. In other words, a conclusion that there has been no violation of a fundamental right or freedom guaranteed by the international treaties of the Republic of Armenia **cannot automatically** lead to the conclusion that there has been no violation of the respective fundamental right or freedom guaranteed by the Constitution, since a fundamental right or freedom under the Constitution may enjoy a higher degree of protection than its "*minimum threshold*" of protection, taking into account the autonomous content of the Constitution and the sovereign discretion of the Constituent, as provided therein, regarding the protection of human rights and freedoms, which, by virtue of the legal content of part 1 of Article 5 of the Constitution, cannot be restricted by any other legal act, including an international treaty, unless the relevant effect of such legal act serving as the basis for the restriction is expressly (*expressis verbis*) enshrined in the Constitution.

**60.** The above-mentioned standard of the "*minimum threshold*" of protection guaranteed by the Constitution with respect to protection provided under international treaties, as a formula governing the relationship between national and international law in the field of human rights protection, is also enshrined in international human rights law. In particular, insofar as relevant to

[9] See the judgment in the same case (Application no. 71306/11), paragraphs 62-71.

the present dispute, Article 53 of the ECHR provides that no provision of the ECHR "*shall be construed as restricting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party*". In terms of substance, this provision of the ECHR coincides with the part of the legal analysis carried out by the Constitutional Court in paragraph 58 of the present Decision, according to which the standard of the "*minimum threshold*" of protection provided by the international treaties of the Republic of Armenia leaves open to a State that has ratified the ECHR the possibility of establishing, at the domestic level, stricter requirements concerning the permissibility of interference with a fundamental right or freedom than those provided for by the ECHR. Consequently, by virtue of Article 81 of the Constitution, the constitutional criteria governing the permissibility of restricting or otherwise interfering with a fundamental right or freedom may be stricter than those established by the ECHR.

**61.** Addressing the issue raised by the Applicants before the Constitutional Court in the present Case, namely, the constitutionality of restricting the possibility of reviewing a judicial act on the basis of a new circumstance in cases where the European Court of Human Rights, by its judgment, has found a violation by the courts of the principle of adequacy of compensation in the process of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the Constitutional Court observes that, in the above-mentioned judgment in the case of *Osmanyan and Amiraghyan v. Armenia*, the European Court of Human Rights found that the compensation awarded for the property expropriated from the applicants for the purpose of securing overriding public interests (for the needs of society and the State) on the basis of Government Decision No. 1279-N of 1 November 2007 "On Declaring Exceptional Overriding Public Interest in Certain Areas within the Administrative Boundaries of the Rural Communities of Shnogh and Teghut of the Lori Marz (Region) of the Republic of Armenia and on Changing the Designated Purpose of Lands" was not adequate (the amount of compensation had been determined on the basis of the prices of immovable property located within the expropriation area), and as a result, the applicants had to bear an individual and excessive burden, and their right to property was subjected to a disproportionate restriction, leading to a violation of Article 1 of Protocol No. 1 to the ECHR.

**62.** The ECHR specifically noted that[10]:

> "(…) this particular aspect, namely that in consequence of the expropriation the applicants had lost their main source of income, was not taken into account by the domestic courts in their decisions on the amount of the compensation due. The courts decided that, despite the circumstances, the applicants should be provided with compensation which was determined in relation to the prices of real estate situated in the area subject to expropriation. They did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived".

**63.** An examination of the judgments rendered in the Applicants' civil cases Nos. LD/1218/02/08, LD/1327/02/08, LD/0862/02/08, LD/0958/02/08, LD/0858/02/08, LD/1139/02/08,

[10] See *Osmanyan and Amiraghyan v. Armenia* judgment of 11 October 2018 (Application no. 71306/11), paragraph 70.

LD/1345/02/08, LD/1305/02/08, LD/1186/02/08, LD/1273/02/08, LD/1198/02/08, LD/0930/02/08, and LD/1283/02/08 demonstrates that the Applicants' property was expropriated on the basis of the same Government Decision No. 1279-N of 1 November 2007 and that, as in the case of *Osmanyan and Amiraghyan v. Armenia*, the calculation of compensation for the expropriated property did not include the actual loss connected with the deprivation of means of subsistence, nor was consideration given to whether the amount of compensation awarded was sufficient for them to acquire equivalent land within the area in which they lived.

**64.** In other words, it was the substantive similarity of the circumstances underlying the violation of rights found by the ECtHR in the case of *Osmanyan and Amiraghyan v. Armenia* that served as the basis for the Applicants to reapply to the courts of the Republic of Armenia by lodging applications for the review of the final judicial acts rendered in their cases, whereby the substantive right for the protection of which relief was sought was their right to the peaceful enjoyment of their possessions as guaranteed by Article 1 of Protocol No. 1 to the ECHR.

**65.** The Civil Court of Appeal dismissed the applications seeking review of the judgments rendered in the Applicants' cases on the basis of the ECtHR judgment in the case of *Osmanyan and Amiraghyan v. Armenia*, reasoning that: (1) in the aforementioned judgment, the ECtHR had not individually established a violation of the Applicants' rights, and (2) the Applicants had failed to exhaust domestic remedies and, consequently, had not been entitled to apply to the ECtHR. The Civil Court of Appeal held that the legal basis for reviewing final judicial acts on the basis of a judgment of the ECtHR is point 2 of part 1 of Article 419 of the Civil Procedure Code, and the present Case lacked the conditions prescribed thereby. According to the Civil Court of Appeal, point 2 of part 1 of Article 419 of the Civil Procedure Code provides that, for the review of a final judicial act on the basis of a judgment of the ECtHR, it is necessary that such judgment individually establish a violation of the rights of the person having lodged the application for review, or that, at the time when the judgment of the ECtHR establishing the violation of rights entered into legal force, the person having lodged the application for review had the opportunity to exercise that right in compliance with the requirements (time limits) prescribed by the relevant international treaty; and these conditions had not been satisfied in the Applicants' case.

***Conformity with Article 79 of the Constitution***

**66.** With regard to the conformity of the disputed provision with the constitutional requirement of legal certainty, the Constitutional Court recalls that, pursuant to Article 79 of the Constitution, when restricting fundamental rights and freedoms, laws shall define the grounds and scope of such restrictions and be sufficiently precise so that the holders and addressees of those rights and freedoms are able to engage in appropriate conduct.

**67.** In its interpretations aimed at elucidating the content of this constitutional principle, the Constitutional Court has addressed its various manifestations, noting, in particular, insofar as relevant to the present dispute, that:

- "The principle of the State governed by the rule of law, *inter alia*, also requires the existence of a legal law. The latter must be sufficiently accessible, enabling subjects of law, in the relevant circumstances, to orient themselves as to which legal norms are applicable in a given case. A norm cannot be regarded as a 'law' unless it is formulated with sufficient precision to enable legal and natural persons to regulate their conduct accordingly; they must be able to foresee the consequences which a given action may entail"[11].

- "From the standpoint of ensuring legal certainty, the concepts used in legislation must be clear, certain, and precise and must not give rise to divergent interpretations or confusion"[12].

- "The principle of legal certainty, as one of the fundamental principles of the State governed by the rule of law, also presupposes that the actions of all subjects of legal relations, including the bearer of public authority, must be foreseeable and lawful"[13].

- "Even where a legal norm is formulated with maximum precision, judicial interpretation is not excluded. The need to clarify legal provisions and adapt them to changing circumstances and evolving social relations is always present. Consequently, the certainty and precision of legislative regulation cannot be absolutized; even insufficient clarity may be supplemented through judicial interpretation"[14].

- "Legal certainty must not be absolutized, and a legal regulation containing certain elements of uncertainty is not, in itself, problematic, in which case the task of supplementing the necessary degree of certainty and imparting the necessary and sufficient content for the application of the legal regulation is entrusted to the law-enforcement authority"[15].

**68.** The provision disputed in the present Case (as worded at the time of its application to the Applicants) provided that a new circumstance shall serve as grounds for the review of a judicial act where, by a judgment or decision of an international court acting on the basis of an international treaty ratified by the Republic of Armenia and having entered into force, a violation of a right provided for by an international treaty ratified by the Republic of Armenia has been established, or where, at the time of the entry into force of such judgment or decision, the person had the opportunity to exercise that right in accordance with the requirements (time limits) prescribed by the international treaty.

**69.** It follows from the disputed provision that the regulation governing the review of a final judicial act on the basis of a judgment or decision of an international court operating on the basis of an international treaty ratified by the Republic of Armenia extends not only to the person who applied to the relevant international court and upon whose application the respective judgment or

[11] See paragraph 9 of Decision DCC-753 of the Constitutional Court dated 13 May 2008.
[12] See paragraph 6 of Decision DCC-1176 of the Constitutional Court dated 2 Dcember 2014.
[13] See paragraph 9 of Decision DCC-1213 of the Constitutional Court dated 9 June 2015.
[14] See paragraph 7 of Decision DCC-1270 of the Constitutional Court dated 3 May 2016.
[15] See paragraph 5.3 of Decision DCC-1669 of the Constitutional Court dated 22 November 2022.

decision was adopted, but also to persons who, although they did not apply to that international court, nevertheless had the right to apply to the same international court at the time when the respective judgment or decision entered into force. In other words, in order to conclude whether a person may benefit from the regulation prescribed by the disputed provision, the courts of the Republic of Armenia vested with the authority to review judicial acts on the basis of a new circumstance must necessarily determine whether, at the time when the relevant judgment or decision of the international court – in the framework of the present constitutional dispute, the relevant judgment or decision delivered by the ECtHR – entered into force, the person had the right to lodge an application with the ECtHR.

**70.** The Constitutional Court observes that, within the meaning of the disputed provision, the phrase "*had the opportunity to exercise that right in accordance with the requirements (time limits) prescribed by the international treaty*", by virtue of the specific indication contained in parentheses, refers not to all admissibility criteria for an individual application under the ECHR as provided for in Article 35 thereof, but only to the time limit for lodging an individual application prescribed by the same article. In other words, for the purposes of verifying the criteria prescribed by the disputed provision concerning the admissibility of an application for the review of judicial acts on the basis of a new circumstance, the legislator has clarified that, in determining whether the legal possibility of lodging an individual application with the ECtHR existed, the courts of the Republic of Armenia are required exclusively to ascertain whether, at the time when the judgment or decision of the ECtHR entered into force, the person lodging the application on the basis of a new circumstance had or had not missed the time limit prescribed for lodging an individual application with the ECtHR.

**71.** In this regard, both the time limits for the entry into force of a judgment or decision of the ECtHR and the time limits for lodging an individual application with the ECtHR pursuant to Article 34 of the ECHR are clearly prescribed by the ECHR and by the Rules of Court adopted by the ECtHR. In particular:

**(1)** Judgments and decisions delivered by the Grand Chamber of the ECtHR shall become final, that is, within the meaning of the contested provision, enter into force from the moment of their delivery, pursuant to Article 44, paragraph 1 of the ECHR, and, in accordance with the Rules of Court of the ECtHR, in addition to being transmitted to the parties, are also published on the ECtHR's official case-law database, HUDOC[16].

**(2)** A judgment of a Chamber of the ECtHR shall become final and, within the meaning of the contested provision, shall enter into force under the conditions prescribed by Article 44, paragraph 2 of the ECHR, namely where, within a period of three months period from the date of the judgment, the parties inform the ECtHR that they do not request (in accordance with the procedure prescribed by Article 43, paragraph 1 of the ECHR) referral of the case to the Grand Chamber of the ECtHR, or where none of the parties submits, within a period of three months period from the date of the judgment, a request provided for in Article 43, paragraph 1 of the ECHR for referral of the case to the Grand Chamber of the ECtHR, or where the panel of the Grand Chamber of the ECtHR rejects the request(s) of the party(ies) for referral of the case to the Grand Chamber of the ECtHR. In addition to being formally transmitted to the parties, judgment of a Chamber of the

[16] http://www.hudoc.echr.coe.int/

ECtHR is also published on the ECtHR's official case-law database, while a special indication regarding the finality of the judgment is made at the beginning of its electronic version placed in the same database.

**(3)** Judgments and decisions delivered by the Committee of the ECtHR shall be final pursuant to Article 28, paragraph 2 of the ECHR and, in addition to being transmitted to the parties, shall also be published on the ECtHR's official case-law database.

**(4)** Where, pursuant to Articles 37 and 39 of the ECHR, the ECtHR removes a case from its list of pending cases on the basis of acknowledgment of the alleged violation through a unilateral declaration by the respondent State or on the basis of a friendly settlement, the ECtHR shall adopt a corresponding decision, which shall be final and, again, shall also be published on the ECtHR's official case-law database.

**72.** Consequently, in the presence of the publication on the ECtHR's official case-law database of the relevant judgment or decision of the ECtHR, as well as of the information regarding its finality, the next condition that the court applying the contested provision must ascertain is whether – as of the moment when the relevant judgment or decision of the ECtHR entered into force – the time limit prescribed by Article 35, paragraph 1 of the ECHR in the case of the person submitting an application for review of a judicial act on the basis of a new circumstance had not yet expired; and at the time when the Applicants lodged applications seeking review of the judicial acts rendered against them on the basis of a new circumstance, that time limit was six months[17].

**73.** The Constitutional Court also emphasizes the circumstance that the time limit for lodging an individual application prescribed by Article 35, paragraph 1 of the ECHR constitutes, within the ECHR system, an admissibility requirement for an individual application, the legal content of which – including the determination of the domestic final decision regarded as the starting point for the calculation of that time limit, as well as the exercise of judicial interpretative authority and the development of the law concerning the restoration of that time limit where it has been missed – falls within the exclusive jurisdiction of the ECtHR in connection with the application of the aforementioned provision of the ECHR. In other words, with regard to the questions of from which moment the time limit prescribed by Article 35, paragraph 1 of the ECHR is to be calculated and what possible exceptions may be permissible where such time limit has been missed so that the individual application lodged with the ECtHR may nevertheless be considered admissible, the final determination is reserved to the ECtHR. In this connection, when interpreting the phrase of the contested provision – *"had the opportunity to exercise that right in accordance with the requirements (time limits) prescribed by the international treaty*" – domestic courts' reasoning both as to the calculation of the time limit prescribed by Article 35, paragraph 1 of the ECHR and as to failure to comply with it must be carried out solely in the light of the case-law developed by the ECtHR, in particular taking into account those situations in which, notwithstanding the expiry

[17] Subsequently, pursuant to Article 4 of Protocol No. 15 to the ECHR, which entered into force on 1 August 2021, the time limit prescribed by Article 35, paragraph 1 of the ECHR for lodging an individual application was reduced to four months.

of the prescribed time limit following the domestic final decision, the application may nevertheless be declared admissible by the ECtHR[18].

**74.** The Constitutional Court notes that, by the time the judgment of the ECtHR in the case of *Osmanyan and Amiraghyan v. Armenia*, regarded by the Applicants as a new circumstance, became final on 11 January 2019 (which is the date closest to the date of the last domestic judicial act in the Applicants' civil cases and, consequently, the most favourable possible option for the calculation from their perspective), approximately ten years had elapsed since the judicial acts which the Applicants sought to have reviewed on the basis of a new circumstance had been rendered in their cases. At the same time, in their applications seeking review of the judicial acts rendered against them on the basis of a new circumstance, the Applicants did not invoke such exceptional circumstances which, even disregarding compliance with the other admissibility criteria prescribed by Article 35 of the ECHR, could have served as a basis for the courts vested with jurisdiction to review judicial acts on the basis of a new circumstance to calculate the period of six months prescribed by Article 35, paragraph 1 of the ECHR in such a manner as to justify failure to comply with the relevant time limit more than ten years after the entry into force of the final domestic decisions, that is, the judicial acts in each of their respective cases against which the Applicants had lodged applications for review in the cases concerning them.

**75.** At the same time, the Constitutional Court observes that, as cited in paragraphs 16–18 of this Decision, the courts in the Applicants' cases went beyond the scope required by the contested provision, namely, the examination solely of compliance with the time-limit criterion prescribed by Article 35, paragraph 1 of the ECHR, and rejected the Applicants' applications for review of the final judicial acts in their cases through application of the contested provision also on the ground that the Applicants had failed to satisfy the criterion prescribed by Article 35, paragraph 1 of the ECHR concerning exhaustion of domestic remedies. However, this circumstance in itself does not diminish the certainty of the contested provision, although, in practice, it was interpreted differently by the courts.

**76.** Thus, the Constitutional Court, applying the contested provision to the individual circumstances relating to the Applicants, finds that the legislature formulated the contested provision with sufficient clarity, and that a person is reasonably capable of foreseeing the consequences of their conduct. Under such circumstances, the contested provision is not problematic in terms of legal certainty.

***On the Constitutional Legitimacy of the Purpose of Restrictions***

[18] See, for example, the special situations that have been regarded by the ECtHR as exceptions to the admissibility requirement notwithstanding failure to comply with the period of six months prescribed by Article 35, paragraph 1 of the ECHR, in particular:
*Varnava and Others v. Turkey* [GC], nos. 16064/90 et seq., §§ 159-172, ECHR 2009, *Er and Others v. Turkey*, no. 23016/04, §§ 59-60, 31 July 2012, Trivkanović v. Croatia, no. 12986/13, §§ 54-58, 6 July 2017, *Sargsyan v. Azerbaijan* [GC] (dec.), no. 40167/06, §§ 124-148, 14 December 2011, *Sokolov and others v. Serbia* (dec.), nos. 30859/10 and six others, §§ 31-32, 2014.

**77.** With regard to the constitutional legitimacy of the purpose pursued by the contested norm, the Constitutional Court considers the principle of finality of judicial acts as one of the key guarantees of legal certainty, the essence of which is the general rule that a judicial act which has entered into legal force is not subject to challenge by public authorities or private persons[19].

**78.** The Constitutional Court notes that the aim of the general constitutional principle of legal certainty, ensured through the principle of the finality of judicial acts that have entered into legal force, is the stability of the justice system and of its outcome – namely, the final judicial determination – as well as the strengthening of public trust in the judiciary[20]. It follows from the principle of the finality of judicial acts that no subject may seek its review solely for the purpose of re-examining the case and reaching a new decision. The Constitutional Court further notes that, nevertheless, the principle of finality of judicial acts that have entered into legal force is not absolute, and exceptions are possible where departure from this principle is justified by substantial and weighty reasons. The review of a final judicial act must not amount to a disguised appeal, and the mere fact that there are differing views from those expressed in the court's decision regarding the outcome of the case or its reasoning cannot constitute a ground for the review of a judicial act that has entered into legal force[21].

**79.** Noting that the principle of finality of judicial acts is not absolute and that exceptions thereto are possible where such departure is justified by substantial and weighty reasons, the Constitutional Court finds that such reasons include, in particular, those the disregard of which could lead to tolerance incompatible with the principle of the supremacy of the Constitution in relation to legal disputes concerning the protection of fundamental rights or freedoms, insofar as violations thereof are concerned.

**80.** The Constitutional Court emphasizes that any exception to the principle of the finality of judicial acts that have entered into legal force must be based on such weighty reasons that, in the context of competing interests between the protection of individual rights or freedoms and the stability of the justice system, exclude any reasonable doubt that a departure from the principle of finality of judicial acts that have entered into legal force may be justified.

**81.** In light of the above conclusions, the Constitutional Court notes that access to the procedural remedy aimed at protecting the Applicants' right to compensation for expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) – which in the present case should have taken the form of review of judicial acts on the basis of a new circumstance – was restricted by the provision contested by the Applicants; and this provision pursued the goal of ensuring legal certainty through safeguarding the principle of the finality of judicial acts that have entered into legal force, with the aim of protecting human rights and freedoms, as well as ensuring the stability of the administration of justice and strengthening public confidence in the judiciary.

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[19] See also: *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18 § 238, 1 December 2020).
[20] As cited above in *Guðmundur Andri Ástráðsson v. Iceland* [GC], § 238.
[21] *Ryabykh v. Russia*, no. 52854/99, §§ 52-56, ECHR 2003-IX, *Tığrak v. Turkey*, no. 70306/10, § 48, 6 July 2021.

***Conformity with Article 78 of the Constitution***

**82.** As regards the compliance of the contested provision with the requirement of proportionality prescribed by Article 78 of the Constitution, aimed at ensuring a fair balance between the constitutionally legitimate aim pursued by the restrictions envisaged by the contested provision and the means chosen, the analysis of the Constitutional Court, taking into account the case-law it has developed, must also include those circumstances which are of essential importance for such fair balance and the disregard of which may result in the application of the restrictions prescribed by the contested provision in a manner contrary to the aims pursued thereby.

**83.** As a result of examining constitutional disputes relating to exceptions to the principle of the finality of judicial acts that have entered into legal force and to the structural particularities thereof, the Constitutional Court, within the framework relevant to the present constitutional dispute – namely, the review of judicial acts on the basis of a new circumstance – has developed legal positions, in particular stating that:

- "The purpose of the institution of review of judicial acts on the basis of new circumstances is the restoration of constitutional rights and rights guaranteed by the European Convention on Human Rights that have been violated as a result of the application of a law declared unconstitutional. In other words, the institution of review of judicial acts on the basis of new circumstances is an important legal remedy for the restoration of violated rights of persons"[22].

- "The entire essence of the institution of review of judicial acts on the basis of a decision of the Constitutional Court lies in the fact that, through this institution, the restoration of violated constitutional rights is ensured. The restoration of violated rights requires the elimination of the negative consequences suffered by the person as a result of the violation, which, in turn, requires, to the greatest extent possible, the restoration of the situation that existed prior to the violation (*restitutio in integrum*). Where a person's constitutional right has been violated by a judicial act that has entered into legal force, restoration of the situation that existed prior to the violation for the purpose of restoring that right presupposes the creation of a situation that would have existed in the absence of the respective judicial act. That is, in the case at issue, restoration of the violated right may be ensured where the respective judicial act loses its legal force. Consequently, proceedings for the review of a judicial act, as a means of restoring a violated constitutional right, must result in invalidation of the judicial act that violated the right"[23].

- "Within the framework of proceedings for the review of judicial acts on the basis of new circumstances, the function of restoring a violated right is carried out in circumstances where a final judicial act that has entered into legal force exists; this function has its own distinctive objectives and purposes. The effective implementation of this function may be ensured by taking into account the peculiarities determined by its substance, objectives,

[22] See paragraph 6 of Decision DCC-833 of the Constitutional Court dated 13 October 2009.
[23] See paragraph 7 of Decision ՍԴՈ-984 of the Constitutional Court dated 15 July 2011.

and purposes, while excluding the possibility of leaving in force a judicial act subject to review that contains an unconstitutional norm"[24].

- "Despite the fact that the Constitutional Court, in several of its decisions, has noted the ineffectiveness of the legal regulation of the institution of review of judicial acts on the basis of new circumstances in the Republic of Armenia, that institution nevertheless remains imperfect. Taking this circumstance into account, the Constitutional Court considers it necessary, within the framework of the examination of the present case, to emphasize the need for a fundamental reassessment of the entire methodology of review of judicial acts on the basis of new circumstances, finding that the methodology of legal regulation of that institution must be anchored on the State's obligation, prescribed by Article 3 of the Constitution, to protect fundamental human and civil rights and freedoms in conformity with the principles and norms of international law.

(…)

(…) The existence of an effective institution of review of judicial acts must also be based on the logic that the State must ensure the restoration of violated rights, since the obligation to protect the rights and freedoms of citizens implies that the State itself bears responsibility for restoring rights violated by judicial acts. The review of judicial acts by virtue of law is a sufficiently effective means of ensuring the fulfilment of such an obligation by the State"[25].

- "The effective application of the institution of review of judicial acts on the basis of a new circumstance also requires an appropriate level of legal culture. First and foremost, the issue concerns the fulfilment of the State's positive obligation in the sphere of ensuring and protecting human rights. If a judicial act has been rendered against a person through the application of an unconstitutional norm, then not only must the quashing of that act be unavoidable, but it is also the task of the administration of justice to establish judicial truth under the new circumstances".[26]

- "The review of judicial acts on the basis of new circumstances is one of those exceptional situations in which the objectives of ensuring the protection of the rights of a person and securing the effective execution of decisions of the Constitutional Court and judgments of the European Court of Human Rights prevail over the principles underlying the doctrine of *res judicata*, in particular, over the principle of legal certainty.

(…)

Proceeding from the above, the Constitutional Court notes that the rejection of a request for review of a judicial act on the basis of a new circumstance cannot be justified by

[24] Ibid, paragraph 8.
[25] Ibid, paragraphs 7 and 11.
[26] See paragraph 6 of Decision DCC-1099 of the Constitutional Court dated 31 May 2013.

considerations and necessity related to the preservation of the doctrine of *res judicata*, in particular, the principle of legal certainty underlying it"[27].

- "(...) where a person's Convention right has been violated by a judicial act that has entered into legal force, the person must have the opportunity to lodge an application for review of that judicial act for the purpose of restoring that right"[28].

**84.** Reaffirming the aforementioned legal positions, the Constitutional Court states that the review of a judicial act that has entered into legal force constitutes a means of protecting (restoring) a constitutional right violated by such judicial act, and that a person whose constitutional right has been violated by judicial acts that have entered into legal force must have the opportunity to lodge an application for review of those judicial acts for the purpose of restoring that right where the violation of the respective right has been established or recognised by a decision of a Constitutional Court or international court, within the procedure and limits prescribed by law. By virtue of Article 3 of the Constitution and Article 1 of the ECHR, the establishment of a violation of a fundamental right obliges the State to take the necessary measures to eliminate the violation that has occurred and to restore the situation that existed prior to the violation (*restitutio in integrum*), and one of the procedural mechanisms ensuring the above is the review of judicial acts that have entered into legal force, where no other equally effective alternative exists for the restoration of that right.

**85.** Within the legal system of the Republic of Armenia, the institution of review of judicial acts that have entered into legal force on the basis of a new circumstance, by virtue of the range of subjects affected by its operation, has predominantly a "*vertical*" effect and, in limited cases, also a "*horizontal*" effect. The "*vertical*" effect of the review of a final judicial act on the basis of a new circumstance extends to those cases in which the decision, judicial act, or judgment of the Constitutional Court, the Supreme Judicial Council, a court, or an international court constituting the new circumstance was rendered as a result of proceedings involving the person lodging the application for review of the judicial act on the basis of a new circumstance. Whereas, the "*horizontal*" effect of the review of a final judicial act on the basis of a new circumstance concerns situations in which, although the person did not participate in the proceedings that resulted in the decision, judicial act, or judgment constituting the basis for the new circumstance, they nevertheless enjoy the right to lodge an application seeking review of the judicial act rendered in their own case on the basis of that new circumstance.

**86.** The legal positions of the Constitutional Court referred to in paragraph 83 of this Decision contain guiding principles concerning exceptions to the principle of the finality of judicial acts that have entered into legal force, which relate both to cases of the "*vertical*" effect and to cases of the "*horizontal*" effect of a new circumstance, where such effect is provided for by the legislature.

**87.** The Constitutional Court has also addressed cases involving the "*horizontal*" effect of a new circumstance where the subject matter of the constitutional dispute concerned the effect of a decision of the Constitutional Court as a new circumstance. In particular, part 11 of Article 69 of the Constitutional Law "On the Constitutional Court" provides for a special case of the "*horizontal*" effect of a decision of the Constitutional Court, whereby persons who, as of the date

[27] See paragraph 7 of Decision DCC-984 of the Constitutional Court dated 15 July 2011.
[28] See paragraph 4.7 of Decision DCC-1573 of the Constitutional Court dated 27 January 2021.

of registration of the application with the Constitutional Court, still retained the right to apply to the Constitutional Court on the same issue acquire the right to lodge an application for review of a judicial act on the basis of the relevant decision of the Constitutional Court as a new circumstance. In turn, by Decision DCC-1645 of 29 March 2022, the Constitutional Court declared the aforementioned legal provision as contradicting Articles 61 and 63 of the Constitution and as invalid insofar as it failed to provide for the review, on the basis of a new circumstance, of final judicial acts rendered against persons who had exhausted judicial remedies after the registration of another person's application with the Constitutional Court, but for whom, as of the date of commencement of the hearing of the case before the Constitutional Court on the basis of another person's application concerning the constitutionality of the provision of the normative legal act applied in their regard, or as of the date of promulgation of the Constitutional Court's decision on that issue, the six-month time limit prescribed for lodging an application with the Constitutional Court had not yet expired.

**88.** In the said Decision, the Constitutional Court identified three groups of beneficiaries of the effects of that Decision. These are:

> "(1) persons with respect to whom the relevant provision was applied by a final judicial act, and who exhausted the remedies of judicial protection before the date on which another person's application was lodged with the Constitutional Court, and who, as of that date, had not lost the right to apply to the Constitutional Court (due to the expiration of the time limit prescribed by law); the final judicial act rendered with respect to such persons shall be subject to review on the basis of a new circumstance where the provision of the normative legal act applied by that judicial act has, by another person's application, been declared as contradicting the Constitution, and as invalid, or it has been declared as conforming the Constitution only in the interpretation provided by the Constitutional Court;
>
> (2) persons who exhausted the remedies of judicial protection after the promulgation of the relevant Decision of the Constitutional Court rendered in a case raised by another person's application, that is, the judicial proceedings with respect of those persons were still pending at the time of promulgation of the relevant Decision of the Constitutional Court; in cases involving such persons, the courts must be guided by the relevant Decision of the Constitutional Court and the legal positions expressed therein, which follows from the mission of the Constitutional Court to ensure the supremacy of the Constitution (part 1 of Article 167 of the Constitution) and is necessary for ensuring legal certainty;
>
> (3) persons who exhausted the remedies of judicial protection during the period between the lodging of another person's application with the Constitutional Court and the promulgation by the Constitutional Court of the Decision in the case raised by that application, and who, pursuant to points 3 and 4 of part 1 of Article 29 of the Constitutional Law "On the Constitutional Court", were deprived of the possibility to apply to the Constitutional Court. Under the currently applicable legal regulations, such persons may not seek review, on the basis of a new circumstance, of the final judicial act rendered with

respect to them on the basis of the relevant Decision of the Constitutional Court adopted in a case raised by another person's application"[29].

**89.** Thus, the Constitutional Court has also identified the *ex post* application of the Constitutional Court's decisions to persons falling within the substantive scope of the relevant decision of the Constitutional Court, subject to the fulfilment of certain conditions, thereby giving rise to the legal consequence of the possibility of reopening a case on the basis of a new circumstance, which constitutes one of the means of guaranteeing the supremacy of the Constitution.

**90.** In addition, parts 13 and 14 of Article 68 of the Constitutional Law "On the Constitutional Court" provide for another mechanism of the "*horizontal*" effect of the Constitutional Court's decisions, where it is necessary, by virtue of a decision of the Constitutional Court, to prevent possible grave consequences for society or the State. In such cases, a person is entitled to submit an application for administrative or judicial review on the basis of a new circumstance with respect to administrative or judicial acts adopted against them within the three years preceding the entry into force of the relevant decision of the Constitutional Court, where the legal norm applied by those acts has been declared by the Constitutional Court's decision as contradicting the Constitution, and as invalid.

**91.** The key issue of the constitutional dispute raised by the Applicants in the present case concerns the horizontal application of the legal mechanism for the review of a judicial act on the basis of a new circumstance in a manner that falls outside the scope established by the challenged provision due to the restrictions provided therein. Therefore, the Constitutional Court must examine the extent to which the restriction of the procedural possibility available for the protection of the Applicants' rights is justified and whether such restriction is compatible with the guarantees enshrined in part 5 of Article 60 and part 1 of Article 63 of the Constitution; to that end, the Constitutional Court considers it necessary, as a preliminary matter, to examine the constitutional content of the Applicants' right to "*prior and adequate compensation*" for the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State).

**92.** The Constitutional Court has already addressed the nature of the property owner's entitlement to compensation under part 5 of Article 60 of the Constitution, stating that such entitlement is, by its nature, an absolute right. Thus, in its Decision DCC-1699 of 7 November 2023, the Constitutional Court stated, *inter alia*[30]:

"In terms of the constitutional enshrinement of the general principle of proportionality, the constitutionally clear and express (*expressis verbis*) establishment of both the means for achieving proportionality and the qualitative requirements imposed thereon, as an exception to the general rule governing the constitutionally legitimate conditions for interference with all other rights provided for in Chapter 2 of the Constitution, transforms compensation for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State) into a direct constitutional imperative; and

[29] The Constitutional Court addressed this issue in its Decision DCC-1645 of 29 March 2022.
[30] See also the quotation from Decision DCC-1699 set out in paragraph 50 of this Decision, read in conjunction with the foregoing.

accordingly, neither the legislative, executive, nor judicial branch possesses any discretion to interfere with, including to restrict, the fulfilment of that constitutional requirement[31]".

**93.** While reaffirming the positions set out in paragraph 5.7 of Decision DCC-1699 of 7 November 2023 regarding the nature of the right to compensation provided for in part 5 of Article 60 of the Constitution, the Constitutional Court considers it necessary, in the present Case, to elucidate the constitutional content of the principles of "*prior*" and "*adequate*" compensation within the meaning of part 5 of Article 60 of the Constitution, since the Applicants' challenge to the constitutionality of the contested provision is raised in the context of ensuring compliance with these constitutional principles.

**94.** In cases of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the constitutional principle of adequate compensation is expressly enshrined in part 5 of Article 60 of the Constitution. The purpose of this guarantee-principle is to neutralize, for the property owner, the consequences of interference by public authorities in the form of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), by ensuring that the owner does not bear a disproportionately excessive burden associated with being deprived of property against their will. The formula for determining the equivalence of compensation must ensure that the owner is able to acquire comparable property under conditions of a free-market economy and, in addition, cover the necessary expenses incurred as a result of the interference, as well as reasonably foreseeable income lost as a consequence of the expropriation of the property.

**95.** Applying the analyses set out in paragraphs 58–60 of this Decision concerning the content of part 1 of Article 81 of the Constitution, the Constitutional Court emphasizes that the principle of "*adequate*" compensation, as an autonomous guarantee of the protection of property, is also encompassed within the substantive scope of part 5 of Article 60 of the Constitution by virtue of Article 1 of Protocol No. 1 to the ECHR, an international treaty ratified by the Republic of Armenia[32].

**96.** As regards the procedural background of the present Case, the Constitutional Court draws attention to the fact that the ECtHR has stated that, in all cases where the expropriated property constitutes a "*working tool*" (French: *l'outil de travail*), compensation cannot be regarded as adequate if, for any reason, no compensation is provided for the losses incurred by the owner as a

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[31] See paragraph 5.7 of Decision DCC-1699 dated 7 November 2023.

[32] *The Holy Monasteries* v. *Greece*, nos. 13092/87, 13984/88, § 71, 9 December 1994, Series A no. 301-A, *Platakou v. Greece,* no. 38460/97, § 51, ECHR 2001-I, *The Former King Of Greece And Others v. Greece* (just satisfaction) [GC], no. 25701/94, § 89, 28 November 2002, *Katona And Závarský v. Slovakia,* nos. 43932/19 43995/19, § 63, 9 February 2023, *Pincová and Pinc v. The Czech Republic*, no. 36548/97, § 53, ECHR 2002-VIII, *Gashi v. Croatia*, no. 32457/05, § 41, 13 December 2007, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 111, ECHR 2012, *Guiso-Gallisay v. Italy* (just satisfaction) [GC], no. 58858/00, § 103, 22 December 2009, *Moreno Diaz Peña and Others v. Portugal*, no. 44262/10, § 76, 4 September 2015.

result of the expropriation[33]. In the aforementioned judgment of 11 October 2018 in the case of *Osmanyan and Amiraghyan v. Armenia*[34], the ECtHR, reaffirming its position, stated that:

> "(...) there may be situations where compensation representing the market price of the real estate in question even with the addition of the statutory surplus, would not constitute adequate compensation for deprivation of property. In the Court's opinion, such a situation may arise in particular if the property the person was deprived of constituted his main, if not only source of income and the offered compensation did not reflect that loss (...)".

**97.** The Constitutional Court further notes that interference in the form of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) may also impose additional burdens on the right-holder and cause inconvenience thereto; consequently, the applicable formula for adequate compensation must also encompass the expenses that the property right-holder is necessarily required to incur in order to be relieved of the additional burden arising from the expropriation of the property. In this regard, the Constitutional Court considers that compensation paid to the owner upon the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) may be regarded as "*adequate*" within the meaning of part 5 of Article 60 of the Constitution if it also takes into account compensation for all reasonable expenses that the owner is necessarily required to incur as a consequence of the expropriation of the property.

**98.** In cases of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), the purpose of the requirement of prior compensation, as a principle-guarantee directly enshrined in part 5 of Article 60 of the Constitution, is to ensure that the property right-holder receives adequate compensation at the time of the expropriation. The guarantee of the prior nature of compensation for property is intended to secure the provision of adequate compensation, or compensation due to be provided, in such a manner that, at the moment of the expropriation of the property, the property right-holder possesses compensation equivalent to the value of the property and does not bear the adverse consequences of any delay in compensation, including possible subsequent market fluctuations to their detriment affecting either the economic value of the expropriated property or the amount of the expenses referred to in paragraph 97 of this Decision.

**99.** Consequently, both the laws governing the legal relationships regulated by part 5 of Article 60 of the Constitution and the law-enforcement practice applying those laws must be based, as a starting point, on the constitutional standards concerning the adequacy of compensation set out in paragraphs 94–98 of this Decision.

**100.** The Constitutional Court cannot also disregard the fact that, in addition to the judgments and decisions of the ECtHR listed in paragraph 5.10 of Decision DCC-1699 – which demonstrate that, in a number of cases concerning part 5 of Article 60 of the Constitution, the right guaranteed by Article 1 of Protocol No. 1 to the ECHR was not secured by the public authorities of the Republic of Armenia to the extent of protection required by that provision – violations of the same individual

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[33] See, *e.g.*, *Lallement v. France*, app. 46044/99, § 18, 11 April 2002.

[34] The quotation is taken from the official Armenian translation of the judgment in *Osmanyan and Amiraghyan v. Armenia* (Application no. 71306/11, § 18, 11 October 2018).

right have continued to be found in judgments and decisions of the ECtHR delivered in cases resolved through the application of the provisions of the Law HO-185-N of 27 November 2006 "On Expropriation of Property for the Purpose of Securing Overriding Public Interests". In particular, including but not limited to the following:

**(1)** In the case of ***Osmanyan and Amiraghyan v. Armenia***, the ECtHR held that compensation terms under the relevant legislation are material to the assessment of whether the contested measure respects the requisite fair balance and, notably, whether it imposes a disproportionate burden on the applicants[35]. Consequently, the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR on the ground that the interference with the applicants' property rights by the State had not been proportionate. The particular aspect, namely that in consequence of the expropriation the applicants had lost their main source of income, was not taken into account by the domestic courts in their decisions on the amount of the compensation due. The courts did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived.

**(2)** In a series of cases, namely ***Alikhanyan and Meliksetyan v. Armenia***[36]**,** ***Ramazyan v. Armenia***[37]**,** ***Levon Alikhanyan v. Armenia***[38]**,** ***Parsadanyan v. Armenia***[39]**,** ***Mashinyan and Ramazyan v. Armenia***[40]**,** ***Vardanyan and Hakhverdyan v. Armenia***[41]**, and** ***Mher Alikhanyan v. Armenia***[42], the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR on the ground that the interference with the applicants' property rights was not proportionate. In particular, the domestic courts did not address the issue whether the compensation granted would cover the applicants' actual loss involved in deprivation of means of subsistence or was at least sufficient for them to acquire equivalent land within the area in which they lived. Accordingly, the ECtHR found that the applicants had been required to bear an excessive individual burden.

**(3)** In the case of *Karine Khachaturyan v. Armenia*, the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR on the ground that the deprivation of the applicant's property was not carried out in compliance with "*conditions provided for by law*"

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[35] See *Osmanyan and Amiraghyan v. Armenia* judgment of 11 October 2018 (Application no. 71306/11), paragraphs 63, 69, and 70 (Armenian translation).
[36] *Alikhanyan and Meliksetyan v. Armenia* (judgment) [Committee], no. 4168/10, §§ 61–62, 14 March 2019 (Armenian translation).
[37] *Ramazyan v. Armenia* (judgment) [Committee], no. 54769/10, §§ 58–59, 14 February 2019 (Armenian translation).
[38] *Levon Alikhanyan v. Armenia* (judgment) [Committee], no. 6818/10, §§ 55–56, 14 February 2019 (Armenian translation).
[39] *Parsadanyan v. Armenia* (judgment) [Committee], no. 5444/10, §§ 72–73, 14 February 2019 (Armenian translation).
[40] *Mashinyan and Ramazyan v. Armenia* (judgment) [Committee], no. 65124/09, §§ 57–58, 14 February 2019 (Armenian translation).
[41] *Vardanyan and Hakhverdyan v. Armenia* (judgment) [Committee], no. 4178/10, §§ 55–56, 14 February 2019 (Armenian translation).
[42] *Mher Alikhanyan v. Armenia* (judgment) [Committee], no. 4413/10, §§ 55–56, 14 February 2019 (Armenian translation).

applicable at the relevant time. In particular, the Court noted that the applicant's flat had not been subject to expropriation under the applicable legislation, as confirmed by a final domestic court judgment. At the same time, having regard to the impossibility of restoring the situation existing prior to the violation due to the demolition of the property, the ECtHR, applying Article 41 of the ECHR, awarded the applicant compensation calculated in accordance with the formula for adequate compensation provided for under domestic procedures[43]. In the case of *Ghukasyan and Others v. Armenia*, the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR on the ground that the deprivation of [the fourth applicant's] possessions was not accompanied by sufficient *procedural safeguards* against arbitrariness […][44].

**(4)** In the case of *Naltakyan and Others v. Armenia*, the ECtHR found a violation of Article 1 of Protocol No. 1 to the ECHR on the ground that the domestic courts failed to address the applicants' argument that, as people living in a rural area, the land in question constituted a means of their activity and existence; this particular aspect was neither addressed by the domestic courts nor taken into account in their decisions on the amount of compensation in that they did not address the issue whether the compensation granted would cover the applicants' actual loss involved or *was at least sufficient for them* to acquire equivalent land within the area in which they lived. Accordingly, the ECtHR found that the applicants had to bear an excessive individual burden[45].

**101.** The analyses and conclusions set out in the judgments of the ECtHR in the above-mentioned cases indicate that the issue of ensuring adequate compensation in the context of interference with applicants' rights in cases of expropriation of property for the purpose of securing overriding public interests has been of a systemic nature. Although within the jurisdiction of the ECtHR, the issue of protection of individual rights of the applicants in the above-mentioned cases, as well as in the cases listed in paragraph 5.10 of Decision DCC-1699, was examined under Article 1 of Protocol No. 1 to the ECHR, in light of the position expressed by the Constitutional Court in paragraphs 57–59 of this Decision, the violations of Convention rights found also constitute violations of the right provided for under part 5 of Article 60 of the Constitution. It follows from the chronology of violations of rights established by the judgments of the ECtHR that such violations have occurred since the first half of the 2000s, without any meaningful prospect under domestic law for the elimination of their consequences.

**102.** In addition to the extensive temporal scope of violations of the right to protection of property, the processes characterised by systemic issues identified in the relevant judgments of the ECtHR directly concerned a wide circle of individuals. Thus, the Government, for the purpose of securing overriding public interests (for the needs of society and the State), adopted decisions on

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[43] *Khachaturyan v. Armenia* (judgment) [Committee], no. 22662/10, §§ 47–48, 54–57, 19 March 2020 (Armenian translation).
[44] *Ghukasyan and Others v. Armenia* (judgment) [Committee], no. 32986/10, § 23, 29 March 2022 (Armenian translation).
[45] *Naltakyan and Others v. Armenia* (judgment) [Committee], no. 47448/12, §§ 34–35, 4 July 2023 (Armenian translation).

expropriation of property which affected a large number of persons. In particular, but not limited to, the Government adopted:

**(1)** Government Decision No. 645 of 16 July 2001 "On Measures for the Implementation of the Yerevan Northern Avenue Development Project", pursuant to which the area of the expropriation zone in the central part of Yerevan for immovable property (land plots, buildings and constructions) to be acquired for State needs amounted to 82,700 sq. m.
**(2)** Government Decision No. 1151-N of 1 August 2002 "On Measures for the Implementation of Development Programmes within the Administrative Territory of the Kentron District of Yerevan", pursuant to which the area of the expropriation zone in the central part of Yerevan for immovable property (land plots, buildings and constructions) to be acquired for State needs amounted to 345,000 sq. m.
**(3)** Government Decision No. 411-N of 31 March 2004 "On Expropriation of Land Plots for State Needs for the Purpose of Implementing Development Programmes within the Administrative Territory of the Kentron District of Yerevan", pursuant to which the area of the expropriation zone in the central part of Yerevan for immovable property (land plots, buildings and constructions) to be acquired for State needs amounted to 49,944.8 sq. m.
**(4)** Government Decision No. 591-N of 21 April 2005 "On Expropriation of Land Plots for State Needs for the Purpose of Implementing Development Programmes in Areas Adjacent to P. Buzand Street of the Main Avenue of Yerevan", pursuant to which the area of the expropriation zone in the central part of Yerevan for immovable property (land plots, buildings and constructions) to be acquired for State needs amounted to 4,700 sq. m.
**(5)** Government Decision No. 108-N of 25 January 2007 "On Approving the Procedure for Drawing Up the Inventory Report of Property Objects Located in Certain Areas of Yerevan Declared to be of Exceptional Overriding Public Interest, and the Standard Form of Such Inventory Report".
**(6)** Government Decision No. 347-N of 1 March 2007 "On Declaring Certain Areas within the Administrative Territory of Yerevan to be of Exceptional Overriding Public Interest".
**(7)** Government Decision No. 1279-N of 1 November 2007 "On Declaring Exceptional Overriding Public Interest in Certain Areas within the Administrative Boundaries of the Rural Communities of Shnogh and Teghut of the Lori Marz (Region) of the Republic of Armenia and on Changing the Designated Purpose of Lands", pursuant to which 123 land plots from Shnogh community and 41 land plots from Teghut community (a total area of 81.483 hectares) were declared to be of overriding public interest.

**103.** The Constitutional Court cannot also disregard the fact that this is already the fourth constitutional dispute it has examined concerning legal relationships of the same nature, which, notwithstanding all their factual differences and particularities, share the common feature that all of the Constitutional Court's decisions in this regard have focused on the impermissibility of violating the principles of "*prior and adequate compensation*" for expropriated property. In particular:

**(1)** In Decision No. DCC-92 of 27 February 1998, the Constitutional Court stated[46]:

[46] See paragraphs 5 and 6 of Decision DCC-92 dated 27 February 1998.

"The Constitution stipulates that expropriation of property for the needs of society and the State may be carried out only in exceptional cases, on the basis of law, and with prior and adequate compensation. Thus, 'the needs of the State and society' are recognized as the grounds for expropriation of property, while the following are considered guarantees for the protection of the rights of the owner of the expropriated property: expropriation 'only in exceptional cases', expropriation 'on the basis of law', and expropriation 'with prior and adequate compensation for the expropriated property'.

The expressions 'the needs of the State and society' and 'only in exceptional cases', used in Article 28 of the Constitution, are concepts subject to evaluation. Since these concepts directly concern one of the most important constitutional rights of an individual – the right to property – the Constitution has provided that expropriation on such grounds may be carried out only on the basis of law, thereby establishing the necessary legislative safeguards.

(...)

Prior and adequate compensation is an action substantiated by an appropriate financial and economic assessment conducted by the executive authority and agreed upon with the owner, which is subject to judicial review".

**(2)** In Decision DCC-630 of 18 April 2006, the Constitutional Court stated[47]:

"8. (...) It follows from the constitutional and legal content of part 3 of Article 31 of the Constitution that:

(...)

- in the event of expropriation of property, prior compensation must be guaranteed;

- such compensation must be adequate.

(...)

The Constitutional Court finds that where compulsory expropriation of property for public needs takes place without clearly defining by law and taking into account in practice the constitutional requirements concerning the restrictions on expropriation, such interference with the right to property would be disproportionate.

9. (...) It follows from the provisions of part 3 of Article 31 of the Constitution that, in the context of these legal relations, the Constitution recognizes 'the needs of society and the State' as the basis for compulsory expropriation of property, while the following constitute guarantees of the property rights of the owner of the expropriated property: expropriation 'only in exceptional cases of overriding public interest', expropriation 'in accordance with

[47] See paragraphs 8, 9, and 11 of Decision DCC-630 dated 18 April 2023.

the procedure prescribed by law', and expropriation 'with prior and adequate compensation for the expropriated property'.

(...)

11. (...) The legal content of the constitutional provision is clear and concerns compulsory expropriation of property for a legitimate purpose. The notion of 'expropriation of property', interpreted in the context of this constitutional provision, implies the restriction or termination of ownership rights in respect of a specific object for the same legitimate purpose envisaged by the Constitution, provided that the person is granted in advance other equivalent property or compensation for that object, thereby ensuring the continuity of the protection of the right to property".

**(3)** In Decision DCC-1699 of 7 November 2023 (the quotation from paragraph 5.7 should be read in conjunction with the quotation reproduced in paragraph 50 of the present Decision), the Constitutional Court stated[48]:

"5.3. (...) Unlike cases of interference with the right to property under part 3 of Article 60 of the Constitution, where the means of ensuring proportionality are determined according to the general principle of proportionality enshrined in Article 78 of the Constitution and the choice of such means is left to the discretion of public authorities, in the case of interference with property under part 5 of Article 60 of the Constitution (expropriation of property), proportionality has already been balanced by the Constituent; and to ensure such proportionality, the chosen means is 'compensation', the qualitative requirements of which are the constitutional criteria of 'prior' and 'adequate'.

(...)

5.5. (...) Nevertheless, the Constitutional Court notes that the Constitution contains an exhaustive list of fundamental rights in respect of which the choice of the means for ensuring the constitutional legitimacy of an interference is constitutionally prescribed and therefore falls outside the discretionary powers of public authorities, possessing the quality of a constitutional imperative endowed with the highest legal force. In particular, without limiting this observation thereto, compensation as a means of ensuring proportionality in cases of interference with a fundamental right has been directly chosen by the Constituent and constitutionally entrenched in three constitutional provisions; (1) part 5 of Article 60 of the Constitution provides for compensation in return for expropriation of property for the purpose of securing overriding public interests (the needs of society and the State).

(...) The Constitution envisages both the means of ensuring proportionality in cases covered by part 5 of Article 60 – namely compensation – and the qualitative requirements applicable thereto, namely that it be prior and adequate.

[48] See paragraphs 5.3, 5.5 - 5.7 of Decision DCC-1699 dated 7 November 2023.

5.6. In paragraph 5.5 of this Decision, while analysing the constitutional principle of proportionality enshrined in Article 78 of the Constitution, the Constitutional Court notes that by its substantive significance it is aimed at the 'limitation of restrictions (interferences)' with constitutional rights (to be interfered); and its purpose in legal application is to limit the discretion of public authorities to restrict or otherwise interfere with a fundamental right, as a primary guarantee for the protection of the individual's rights.

For the interference (expropriation) provided for by part 5 of Article 60 of the Constitution, the Constituent has established the guarantee-condition that such interference may be carried out 'only with prior and adequate compensation'; and by virtue of this guarantee, the owner of the expropriated property, having the right to claim 'prior and adequate compensation', is protected against the possibility of bearing a disproportionate burden as a consequence of such interference.

(...)

Thus, the choice of the means ensuring proportionality described in paragraph 5.5 of this Decision – that is, the means for 'limiting restrictions or other interferences' with a fundamental right – and the determination of its qualities have been enshrined by the Constituent in the Constitution, thereby removing their scope from the competence of public authorities, which serves as a guarantee for the protection of the individual against the broad possibilities of arbitrariness that may arise from balancing competing interests in cases of interference with fundamental rights; and unlike in the case of other fundamental rights, where the discretion to determine the components of the proportionality principle applicable to an interference and to define their characteristics is delegated to the legislature, in this legal relationship the Constituent has itself established the formula of proportionality under the protection of the stability and supreme legal force of the constitutional norm, excluding any interference by public authorities with respect to the ultimate outcome thereof – the means of 'prior and adequate compensation'.

Accordingly, the right to claim 'prior and adequate compensation' for expropriation of property for the purpose of securing overriding public interests (the needs of society and the State), as a proprietary right relating to a measurable economic value, falls outside the scope of the general rule governing restrictions on property rights under part 3 of Article 60 of the Constitution, since it also embodies the guarantee prescribed by part 5 of Article 60 of the Constitution, which establishes proportionality and serves to 'limit the restriction' of the right in order to prevent arbitrariness by public authorities in cases of interference with property.

Therefore, the purpose of excluding arbitrariness by public authorities in cases of interference with property is to predetermine the constitutional enshrinement of 'prior and adequate compensation' in part 5 of Article 60 of the Constitution, thereby excluding any competence of public authorities to interfere with that measure or with its qualitative requirements".

**104.** These findings are of decisive importance in the sense that, following the entry into force of the Constitution on 13 July 1995, the Constitutional Court has now, for the fourth time, addressed in a constitutional case the issue of the adequacy of compensation – the primary safeguard afforded in the course of expropriation of property for the purpose of securing overriding public interests (the needs of society and the State) – together with the findings of the ECtHR regarding violations of Article 1 of Protocol No. 1 to the ECHR in cases against Armenia concerning the same issue, and this directly demonstrates that shortcomings in the protection of owners' rights within the legal framework governed by part 5 of Article 60 of the Constitution are systemic in nature.

**105.** The Constitutional Court also recalls that the issue of the continuing violations of property owners' rights in the sphere of expropriation of property for the purpose of securing overriding public interests (the needs of society and the State) has likewise been addressed in the annual reports of the Human Rights Defenders of the Republic of Armenia, and among the continuing and systemic problems identified by them was the provision of inadequate compensation[49], and even the complete failure to provide compensation to rights holders[50], and in their reports covering at least the period from 2004 to 2023, they consistently emphasized the need for systemic protection of the aforementioned constitutional right.

**106.** At the same time, within the framework of the strategic objective of strengthening the rule of law through the use of transitional justice mechanisms by the executive branch, the need to collect information concerning widespread and recurrent human rights violations in the sphere of expropriation of property for the purpose of securing overriding public interests (the needs of society and the State), as well as to examine possibilities for restoring violated rights, was also

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[49] Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and on Violations of Human Rights and Fundamental Freedoms in the Country during 2004, subsection 3.18, pp. 43–44; Special Public Report of the Human Rights Defender of the Republic of Armenia (2005), "On Violations of the Rights to Property, Fair Trial and Judicial Protection", pp. 2–3, 20; Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and on Violations of Human Rights and Fundamental Freedoms in the Country during 2008, subsection 2.2.3, pp. 101–102; Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and on Violations of Human Rights and Fundamental Freedoms in the Country during 2009, subsection 2.2.3, p. 65; Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and on Violations of Human Rights and Fundamental Freedoms in the Country during 2013, pp. 334–335; 2019 Annual Communication on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 3, Chapter 2, Part 1, pp. 112–114.

[50] 2016 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, p. 49; 2017 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 3, Chapter 2, Part 3, p. 63; 2018 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 3, Chapter 2, Part 1, p. 102; 2019 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 3, Chapter 2, Part 1, pp. 114–115; 2020 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 3, Chapter 2, Part 1, pp. 180–181; 2021 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Chapter 2, Part 1, p. 161; 2023 Annual Report on the Activities of the Human Rights Defender of the Republic of Armenia and the State of Protection of Human Rights and Freedoms, Section 2, Chapter 2, pp. 73–75.

recognized in the 2019–2023 Judicial and Legal Reforms Strategy of the Republic of Armenia approved by the Government[51].

**107.** The 2022–2026 Judicial and Legal Reforms Strategy of the Republic of Armenia[52]**,** approved by the Government, states that, in the context of the recurrent mass violations of human rights that have occurred since the Declaration of Independence of the Republic of Armenia, particular study is required, *inter alia*, with respect to expropriations of property carried out for the purpose of securing overriding public interests, other manifestations of deprivation of property rights, and, where necessary, human rights violations in other areas that are systemically linked to those incidents and events; and such such examination is conditioned by the nature, scale, and consequences of those violations.

**108.** Following his visit to Armenia, the UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence devoted specific attention in his report on Armenia delivered to the Human Rights Council to the issue of restoring the rights of victims of violations committed in the course of property expropriation processes carried out for the purpose of securing overriding public interests, alongside a number of other types and forms of mass human rights violations[53], and referring to Constitutional Court Decision DCC-1699, the Special Rapporteur stated:

> "**9.** (…) The National Assembly also held public hearings on various issues, including the illegal expropriation of property carried out in the early 2000s and matters related to transitional justice, and during these hearings, the testimonies of victims and civil society representatives were also addressed.
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> **10.** In 2019, the Government adopted a judicial and legal reform strategy and action plan 2019–2023, by which it established an independent fact-finding commission to investigate human rights violations committed between 1991 and 2018, a period described by many interlocutors as autocratic. The Commission, which was envisaged as the only transitional justice measure in the strategy, was expected to investigate the systemic violations committed during that period, including the forced expropriation of property for the needs of the State and society (carried out from the 2000s onwards), other dispossessions (...).
>
> (...)
>
> **19.** Between 2001 and 2006, expropriations conducted on the basis of "supreme public interests" led to the violation of the property and housing rights of numerous private individuals, including hundreds of people left homeless. The concept of "supreme public interests", as contained in the law on expropriation of property for the purpose of securing overriding public interest, was misused by the Government to justify the illegal

[51] See Annex No. 1 to the Government Decision No. 1441-L of 10 October 2019 "On approving the Judicial and Legal Reforms Strategy of the Republic of Armenia for 2019–2023 and the action plans deriving therefrom".
[52] See Annex No. 1 to the Government Decision No. 1133-L of 21 July 2022 "On approving the Judicial and Legal Reforms Strategy of the Republic of Armenia for 2022–2026 and the action plan deriving therefrom, and declaring Government Decision No. 1441-L of 10 October 2019 of the Republic of Armenia as repealed".
[53] See A/HRC/57/50/Add.2: Visit to Armenia - Report of the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence.

expropriation of property, without due and timely compensation. Domestic courts have not upheld the rights of victims to reparations.

With the exception of 20 cases in which the European Court of Human Rights ruled in favour of the victims, expropriation cases were routinely subjected to the application of statutes of limitations and victims who submitted claims to the courts received no compensation. In November 2023, the Constitutional Court issued a ruling outlawing the application of statutes of limitations for expropriation cases undertaken between 2001 and 2006 and established that the Parliament should not adopt legislation imposing such limitations for such cases in the future. The Special Rapporteur welcomes this decision. Despite such progress, in August 2023, civil society actors reported that in no instances had the courts ruled in favour of property owners and/or put in question the decisions of Government institutions".

**109.** While acknowledging the recognition by the Government and the Human Rights Defenders, respectively, of both the consequences resulting from violations of the right to compensation in the course of property expropriation processes carried out for the purpose of securing overriding public interests (for the needs of society and the State) and the prolonged and continuing nature of those violations, the Constitutional Court also considers it necessary to state that:

**(1)** The violations of the right to compensation of holders of property rights expropriated for the purpose of securing overriding public interests (for the needs of society and the State), as established in the judgments of the ECtHR listed in paragraph 100 of this Decision, concern the guarantee of proportionality of interference with the right protected under Article 1 of Protocol No. 1 to the ECHR; and a detailed interpretation of that guarantee had already been provided by the ECtHR in its judgment of *Lallement v. France*[54] on 11 April 2002, that is, prior to the ratification of the Convention by the Republic of Armenia on 26 April 2002. Accordingly, throughout the entire process of expropriation of the Applicants' property, the component of the proportionality principle under Article 1 of Protocol No. 1 to the ECHR requiring that compensation for expropriated property be adequate and necessarily include *compensation for losses arising from the fact that the property constituted the owner's means of work* was – by virtue of the second paragraph of Article 43 of the Constitution as amended in 2005 – part of the constitutional "*minimum threshold*" governing restrictions on the right to property.

**(2)** Furthermore, in the decisions listed in paragraph 103 of this Decision, beginning with Decision DCC-92 of 27 February 1998, the Constitutional Court has consistently addressed the adequacy of compensation for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), with unwavering consistency emphasizing the binding nature of the constitutional principle of "*adequate*" compensation for expropriated property. In other words, starting with Decision DCC-92 of 27 February 1998 and subsequently reaffirmed in Decision DCC-630 of 18 April 2006, the Constitutional Court conveyed, with the highest possible degree of clarity, "a message" to all public authorities that the adequacy of compensation for expropriated property constitutes an indispensable condition for the constitutional legitimacy of such interference

[54] *Lallement v. France*, app. 46044/99, § 18, 11 April 2002, final on 11 July 2002.

with the right to property. Consequently, the judicial acts ordering the expropriation of the Applicants' property (the review of which the Applicants have sought by filing applications on the basis of a new circumstance) were adopted in circumstances where the constitutional imperative of ensuring the adequacy of the compensation payable to them was not only expressly enshrined in the Constitution but the substantive scope of that requirement had also been at the core of at least two decisions of the Constitutional Court.

**110.** Consequently, at the time the judicial acts ordering the expropriation of the Applicants' property were adopted, the absolute right of the holder of property rights to receive adequate compensation, as guaranteed by part 5 of Article 60 of the Constitution, did not require any further elucidation through the development of the law, since it constituted both a direct constitutional imperative and an obligation arising under an international treaty ratified by the Republic of Armenia, binding on all public authorities, including the courts administering justice in the Applicants' cases.

**111.** The Constitutional Court also states that part 5 of Article 60 of the Constitution concerns an exceptional legal institution relating to interference with the right to property, specifically, interference manifested through the expropriation of property for the purpose of securing overriding public interests possesses a distinctive feature that fundamentally differentiates it from legal relations of a general nature concerning the protection of property rights, restrictions on property rights, and interference with such rights; namely, the "*exceptional*" nature of this interference with property rights (as expressly enshrined in the same constitutional provision) has itself been recognized by the Constituent. Precisely because of this exceptional character, the Constituent established a separate constitutional provision governing this form of interference with the right to property, and subjected its permissibility to special and more stringent conditions.

**112.** Nevertheless, the circumstances described in paragraph 100 of this Decision demonstrate that violations of the rights of owners of expropriated property – at least insofar as the right to adequate compensation is concerned – were not isolated incidents; rather, as evidenced by the assessments of the ECtHR, such violations were systemic in nature both in expropriation processes that took place before 2006 and during the subsequent period (also including the expropriation proceedings concerning the Applicants' property).

**113.** As noted in paragraphs 58 and 109 of this Decision, compensation for losses resulting from the expropriation of property constituting a person's means of work, as an element of the adequacy of compensation, was considered as an element of the "*minimum threshold"* for the permissibility of interference with the Applicants' property rights under the ECHR, at least in light of the judgment of the ECtHR in *Lallement v. France*, which became final on 11 July 2002.

**114.** The Applicants' property, in turn, was expropriated pursuant to Government Decision No. 1279-N of 1 November 2007, while the judicial disputes concerning the adequacy of compensation were initiated in 2008. Approximately one hundred cases were examined by the courts of the Republic of Armenia concerning compensation for property expropriated under Government Decision No. 1279-N of 1 November 2007 "On Declaring Exceptional Overriding Public Interest in Certain Areas within the Administrative Boundaries of the Rural Communities of Shnogh and

Teghut of the Lori Marz (Region) of the Republic of Armenia and on Changing the Designated Purpose of Lands".

**115.** The Constitutional Court notes that, in none of those cases, no court of the three-tier judicial system indicated that – where property constituting a person's means of work or subsistence is expropriated – the compensation awarded must be sufficient either to cover the losses resulting from that circumstance or to enable the acquisition of other equivalent property possessing the same characteristics. Moreover, no judge delivered a separate opinion acknowledging the necessity of taking these considerations into account when determining the amount of compensation in those cases.

**116.** In particular, the cases examined by the ECtHR and referred to in paragraph 100 of this Decision – *Osmanyan and Amiraghyan v. Armenia***,** *Alikhanyan and Meliksetyan v. Armenia***,** *Ramazyan v. Armenia***,** *Mher Alikhanyan v. Armenia***,** *Mashinyan and Ramazyan v. Armenia***,** *Parsadanyan v. Armenia***,** *and Levon Alikhanyan v. Armenia* – concerned the inadequacy of the compensation amounts determined by domestic courts for property expropriated under the same Government Decision No. 1279-N of 1 November 2007; where such inadequacy stemmed from the failure to take into account, when calculating compensation, the need to cover the actual losses associated with the deprivation of a means of subsistence or work, or the need to acquire equivalent land within the area in which they lived. There were also numerous cases that were not brought before the ECtHR, in which claims filed by the acquirers of the expropriated property were upheld, and appeals against the judgments were dismissed; see, in particular, though not limited to, the decisions rendered in 2009 by the Civil Court of Appeal in civil cases Nos. LD/1135/02/08**,** LD/0954/02/08**,** LD/1290/02/08**,** and LD/1304/02/08, in which the compensation amounts approved by the court of first instance were accepted as the basis for the appellate decisions.

**117.** In light of the foregoing, the Constitutional Court finds that, with regard to compensation for property expropriated under the aforementioned Government Decision No. 1279-N of 1 November 2007, a uniform approach was developed throughout the three-tier judicial system, and, in practice, that approach effectively deprived property owners of any reasonable prospect of successfully vindicating their property rights before higher judicial instances in so far as the adequacy of compensation was concerned.

**118.** The conclusions concerning the systemic issue affecting the effectiveness of the protection of the individual right guaranteed by part 5 Article 60 of the Constitution in disputes relating to the principle of compensation for property expropriated for overriding public interests (for the needs of society and the State) are equally applicable to cases that arose prior to the entry into force of the Law "On Expropriation of Property for the Needs of Society and the State", and the evidence of this is provided by the numerous judgments of the ECtHR finding violations of property rights, as well as by the direct acknowledgment of this circumstance by the executive branch (see paragraphs 106–107 of this Decision and paragraph 5.10 of Decision DCC-1699).

**119.** As regards the courts' reliance, in the Applicants' cases, on the non-exhaustion of domestic remedies as a ground for rejecting their requests for the review of final judicial acts on the basis of a new circumstance, the Constitutional Court observes that the interpretation adopted by the courts in the Applicant's cases cannot be regarded as an unreasonable interpretation of the contested

provision in judicial practice and, as a general rule, is consistent with both the content of the contested provision and the purpose of the limitations established thereby. Nevertheless, extending that interpretation to legal relations governed by part 5 of Article 60 of the Constitution, in the circumstances established by this Decision (see paragraphs 110–118), amounts to nothing other than the imposition of excessively formalistic and unduly stringent standards on the Applicants, or on any person in a comparable situation, while disregarding the purpose and the substantive legal meaning of the requirement to exhaust domestic remedies under Article 35 of the ECHR.

**120.** In particular, the purpose of the requirement to exhaust domestic remedies under Article 35 of the ECHR is to ensure the effective functioning of the fundamental mechanism reflecting the subsidiary nature of the ECHR system, namely, the obligation to prevent violations of the individual rights and freedoms guaranteed by the ECHR shall rest, pursuant to Article 1 of the ECHR, with the High Contracting Parties having jurisdiction; and the fulfilment of that obligation necessarily requires that domestic systems of legal protection (first and foremost, the courts) be afforded the opportunity to provide such protection[55]. This fundamental principle of the ECHR system is based on the presumption that the domestic legal protection system is capable of securing protection against violations of individual rights and freedoms[56]. However, with regard to the principles of compensation guaranteed by part 5 of Article 60 of the Constitution, the Constitutional Court's overall systemic analysis of the deficiencies in the domestic protection framework (see paragraphs 112–118 of this Decision) does not allow blind reliance on such a presumption where there exist weighty circumstances, identified in this Decision, that seriously call that presumption into question.

**121.** In view of all the foregoing, the Constitutional Court finds that requiring, as a mandatory condition for the review of the judicial acts rendered in the Applicants' cases on the basis of a judgment or decision of the ECtHR – that those judicial acts must first have been challenged before higher judicial instances, despite the fact that the Applicants had no reasonable prospect of success in protecting the right at issue – constitutes excessive formalism. This approach of the Constitutional Court is likewise reflected in the case-law of the ECtHR, namely, while having repeatedly encountered situations involving violations of individual rights or freedoms, and repeatedly reaffirming the fundamental importance of the exhaustion of domestic remedies for the effective operation of the ECHR system, the ECtHR has nevertheless stated, in highly exceptional circumstances, that the requirement to exhaust all domestic remedies is not merely a formal one; and where a particular remedy offers no reasonable prospect of success from the standpoint of its effectiveness – including where the outcome of an appeal is forseeable in light of established

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[55] *Gherghina v. Romania* (dec.) [GC], no. 42219/07, §§ 84-89, 9 July 2015, *Mocanu and Others v. Romania* [GC], nos. 10865/09 and 2 others, § 221, ECHR 2014, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, *Selmouni v. France* [GC], no. 25803/94, §74, ECHR 1999-V, *Kudła v. Poland* [GC], no. 30210/96, § 152 ECHR 2000-XI, *Andrášik and Others v. Slovakia*, nos. 57984/00 and six others, ECHR 2002-IX.

[56] *Demopoulos and Others v. Turkey* (dec.) [GC], nos. 46113/99 and 7 others, §§ 69 and 97, ECHR 2010, *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, §§ 69-77, 25 March 2014, *Akdivar and Others v. Turkey* [GC], no. 21893/93, § 65, ECHR 1996-4.

domestic practice – the failure to pursue such a remedy cannot constitute an obstacle to the admissibility of the relevant application before the ECtHR[57].

**122.** The Constitutional Court further finds that, for the reasons set out in this Decision, the conclusions regarding the non-exhaustion of judicial remedies, within the meaning of the contested provision, in disputes concerning the principles governing compensation for property expropriated for overriding public interests (for the needs of society and the State) are equally applicable to cases that arose prior to the entry into force of the Law "On Expropriation of Property for the Needs of Society and the State".

***As Regards Article 74 of the Constitution***

**123.** While reaffirming the positions set out in paragraph 5.7 of its Decision DCC-1699 of 7 November 2023 regarding the nature of the right to compensation under part 5 of Article 60 of the Constitution, the Constitutional Court finds it necessary to address the distinction between the present Case and the legal realities examined in that same Decision, namely that the expropriations carried out for the purpose of securing overriding public interest and relevant to each of these constitutional disputes were effected under different legal regulations.

**124.** In particular, under the legal regulations in force during the period covered by the constitutional dispute resolved by Decision DCC-1699 of 7 November 2023 (*i.e.*, prior to 30 December 2006), only state administrative authorities were vested with the authority to apply to a court in the process of expropriating property for the purpose of securing overriding public interest (for the needs of society and the State). Meanwhile, the present constitutional dispute concerns a period governed by legal regulations, under which, pursuant to part 1 of Article 6 of the Law No. HO-185-N "On Expropriation of Property for the Needs of Society and the State" (hereinafter also the "Law": adopted by the National Assembly on 27 November 2006 and entered into force on 30 December 2006), the acquirer of the expropriated property may be not only the State but also a municipality or an organization.

**125.** Pursuant to parts 3 and 4 of Article 6 of the Law, where the acquirer is not the State, the acquirer shall, through the prescribed procedure, submit to the Government an application for the expropriation of property or for a preliminary examination of the property subject to expropriation; and the application shall specify the justification for the overriding public interest, information regarding the sources of funding or guarantees for compensation for the expropriated property within the framework provided by part 5 of Article 60 of the Constitution, for ensuring the expropriation procedure and covering other expenses arising from the expropriation, as well as for carrying out, after the expropriation, the activity intended to serve the overriding public interest, together with any other necessary information.

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[57] *Akdivar and Others v. Turkey* [GC], no. 21893/93 , §§ 68-69, ECHR 1996-4, *Khashiyev and Akayeva v. Russia*, nos. 57942/00 and 57945/00, §§ 116-117, 24 February 2005, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 119, ECHR 2015.

**126.** At the same time, pursuant to part 3 of Article 7 of the Law, where the acquirer is not the State, the Government decision declaring an overriding public interest shall be attached with an agreement concluded between the competent state administration body in the relevant field and the acquirer, defining the rights, obligations, and liabilities of the State and the acquirer during the expropriation process. Where the acquirer is not the Yerevan community and the property subject to expropriation is located within the administrative territory of the City of Yerevan, the Government is entitled to delegate to the Mayor of Yerevan the authority to conclude such an agreement on behalf of the State. That agreement shall enter into force simultaneously with the Government decision declaring an overriding public interest.

**127.** It follows from parts 1, 3, and 4 of Article 10 of the Law that prior to the final deadline for commencing the expropriation process established by the Government decision declaring overriding public interest, the acquirer is obliged to duly send to the owners of the property subject to expropriation and to any holders of property rights in respect thereof a draft property expropriation contract (hereinafter referred to as the "expropriation contract"). The owner of the property subject to expropriation and any holders of property rights therein are entitled to submit written objections or proposals regarding the draft expropriation contract in due form. The acquirer is entitled to conduct negotiations with the owner of the property subject to expropriation and with any holders of property rights therein for the purpose of concluding the contract. The property may be expropriated pursuant to a contract concluded between the acquirer and the owner of the property subject to expropriation. In such case, the amount, form, procedure, time limits, conditions of the adequate compensation to be provided for the expropriated property, as well as the liability of the parties, shall be determined exclusively by mutual agreement. Where there are holders of property rights in respect of the property subject to expropriation known to the acquirer, the holders of property rights in respect of the property subject to expropriation shall also be parties to the expropriation contract.

**128.** It follows from parts 1 and 3 of Article 12 of the Law that if, within three months after the draft expropriation contract has been sent to the owner of the property subject to expropriation and to the holders of proprietary rights over such property, an expropriation contract is not concluded, the acquirer shall be obliged, within one month, deposit with the court or a notary an amount not less than the compensation determined in accordance with the procedure prescribed by the Law for the expropriation of the property, while duly notifying the owner of the property subject to expropriation and the holders of proprietary rights over such property known to the acquirer within three days thereof. The compensation amount must be calculated based on a date no earlier than one week before the deposit of the funds. At the same time, the expropriation contract shall be deemed concluded under the conditions specified in part 6 of Article 13 of the same Law, if, after the acquirer has notified the owner of the property subject to expropriation and the holders of proprietary rights over such property of the deposit of the compensation amount, and before the court renders a judgment on the expropriation of the property, all owners of the property subject to expropriation and all holders of proprietary rights over such property receive the deposited amount in accordance with the prescribed procedure. Moreover, a certificate issued by a judge or notary confirming the withdrawal of the funds deposited in the deposit account shall constitute the legal basis for the expropriation of the property.

**129.** Pursuant to Article 13 of the Law, if, within seven days after the acquirer deposits the compensation amount, the expropriation contract is not concluded, or if the property is not expropriated in accordance with Article 12 of the same Law, the acquirer shall be obliged to file a claim with the court for the expropriation of the property within one month. In such a situation, the court may only examine the issue of the amount of compensation (part 1 of Article 13 of the Law). A final court judgment in legal force determining the amount of compensation for the property subject to expropriation shall serve as the basis for the expropriation of the property at the amount of compensation established by the court and under the conditions prescribed by part 6 of the same Article (part 3 of Article 13 of the Law). Property shall be deemed expropriated through judicial proceedings under the following conditions: **(a)** the acquirer shall be obliged to deposit any additional compensation amount determined by the court, if such amount exists, within seven days after the court judgment enters into legal force; and **(b)** the owner shall be obliged to transfer the expropriated property to the acquirer within five days after the court judgment enters into legal force and after the acquirer has deposited the additional compensation amount (if the court awards such amount) into the deposit account (or, in the case of immovable property, within the period specified in part 2 of Article 14 of the same Law) (part 6 of Article 13 of the Law). If the former owner fails to transfer the expropriated property to the acquirer within the period prescribed by point "b" of part 6 of the same Article, the former owner shall be evicted from the immovable property, or the expropriated property shall be seized from the former owner and delivered to the new owner in accordance with the procedure prescribed by law (part 7 of Article 13 of the Law).

**130.** Although the version of the Law in force at the time of the Applicants' expropriation of property was subsequently amended, the amendments made to the Law do not create any distinction for the purposes of the Constitutional Court's analysis in the present dispute.

**131.** An analysis of the above-mentioned provisions of the Law, as well as other provisions systematically interconnected therewith, demonstrates that the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) constitutes the imposition of the unilateral will of public authority upon the holder of property rights, resulting in the termination of that person's property right and the transfer of the property to the State, a community, or any organization.

**132.** A community or organization acting as an acquirer under the Law does not engage with the owner on the basis of the principles of equality of participants in civil circulation, autonomy of will, or freedom of contract. Pursuant to the Law and by virtue of the Government decision (which predetermines both the object of expropriation and the acquirer), the acquiring community or organization unilaterally imposes the will of the State to expropriate the property; the expropriation may be carried out either through the conclusion of the relevant agreement or through the deposit of the compensation amount, with the amount of compensation being subsequently confirmed by a court.

**133.** Based on the foregoing, the Constitutional Court finds that the acquiring organization, in the process of expropriation, acts as an entity exercising public authority with respect to the expropriation of property. Pursuant to part 2 of Article 3 of the Constitution, the respect for and protection of the fundamental rights and freedoms of the human being and the citizen shall be the

duties of the public authority. Under part 3 of the same article, the public authority shall be limited by fundamental human and civil rights and freedoms that are directly applicable rights. By virtue of part 2 of Article 3 of the Constitution, the public authority bears the obligation to respect and protect fundamental rights and freedoms and is directly constrained thereby. In other words, unlike persons who do not act from a position of public authority, public authority is not vested with the fundamental rights and freedoms guaranteed by the Constitution.

**134.** The Constitutional Court has already addressed the nature of legal relations governed by part 5 of Article 60 of the Constitution in its Decision DCC-1699[58] of 7 November 2023, stating that the latter:

> "(...) are clearly distinguished from other types of property-law relationships regulated by civil law, taking into account [...] the nature of the legal relationship in question, where the provisions of civil legislation governing the latter constituted an exception to the general principles underlying civil legislation, namely the autonomy of will and proprietary independence of participants in regulated relations (part 1 of Article 3 of the Civil Code)".

**135.** Consequently, by virtue of Article 74 of the Constitution, the fundamental rights and freedoms guaranteed by the Constitution cannot extend to entities that are vested with, and exercise, public-authority powers within the legal relationships concerning expropriation of property under part 5 of Article 60 of the Constitution (*i.e.*, entities that impose the will of public authority upon the owner), since the essence of the public-authority power aimed at acquiring property in the course of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) cannot be equated with any fundamental human or civil right or freedom provided for in Chapter 2 of the Constitution, nor can it be applied to such entities in that capacity.

**136.** Based on the foregoing, the Constitutional Court finds that legal relationships concerning the review of final judicial acts in cases of the same nature, affecting persons who did not apply to the international court, on the basis of a judgment or decision of an international court establishing a violation of the constitutional fundamental right of a property owner in a case concerning expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), do not fall within the scope of the principle of the finality of judicial acts (*res judicata*), which forms a component of the right to a fair trial guaranteed by part 1 of Article 63 of the Constitution.

***Analysis of the Restrictions Prescribed by the Contested Provision***

**137.** In addressing the analysis of the restrictions prescribed by the contested provision, the Constitutional Court considers it necessary to determine the extent to which the provisions of the Code governing the review of cases on the basis of a new circumstance are compatible with the absolute nature of the substantive right subject to protection, namely, the right to receive "prior and adequate compensation".

[58] Paragraph 4.1 of Decision DCC-1699 dated 7 November 2023.

**138.** It follows from point 2 of part 1 of Article 419 of the Code that, for a judicial act to be reviewed on the basis of a judgment of the ECtHR, it is necessary that either: (**1**) the international court's judgment establishes a violation of the rights of a person who participated in the proceedings; or (**2**) at the time the ECtHR judgment establishing a violation entered into force, a person who had participated in the proceedings but had not applied to the ECtHR still had the opportunity to do so in compliance with the requirements of the ECHR. Accordingly, the contested provision allows the review of a judicial act on the basis of the "*horizontal*" effect of a new circumstance, that is, also in situations where the ECtHR judgment does not individually concern a violation of the rights of the person participating in the proceedings, provided that, at the time the ECtHR judgment establishing the violation became final, that person still possessed, in accordance with the requirements (time limits) of the ECHR, the right to lodge an application with the ECtHR.

**139.** At the same time, the Constitutional Court notes that the contested provision, which does not provide for any distinction based on the specific nature of the legal relationships governed by part 5 of Article 60 of the Constitution, implies that final judicial acts concerning disputes related to the payment of "*prior and adequate compensation*" for property expropriated for overriding public interests (for the needs of society and the State) may be reviewed only in the following cases: (**1**) where an ECtHR judgment establishes a violation of the rights of a party who participated in the relevant proceedings; or (**2**) where, at the time the ECtHR judgment establishing the violation was delivered, a participant in the proceedings who had not applied to the ECtHR still retained, in accordance with the requirements (time limits) of the ECHR, the opportunity to do so. In other words, violations of rights established by ECtHR judgments and decisions (the factual findings of which make it possible to conclude that Convention rights have been violated in analogous cases) do not constitute grounds for the review of a final judicial act rendered in a person's case for the purpose of protecting that person's right to receive "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), if that person did not apply to the ECtHR or, at the time the ECtHR judgment was delivered, did not have the right to apply to the ECtHR in accordance with the requirements (time limits) of the ECHR.

**140.** With regard to the protection of the right guaranteed by part 5 of Article 60 of the Constitution, the Constitutional Court stated, *inter alia*, in Decision DCC-1699[59]:

> "(...) The purpose of the obligation imposed on public authorities under part 2 of Article 3 of the Constitution to respect and protect the fundamental rights and freedoms of the human being and the citizen is to oblige public authorities not only to ensure the protection of each enshrined right, but also to provide compensation for damages caused in the event of a violation thereof (Constitutional Court Decision DCC-1383 of 7 November 2017).
>
> The effective enjoyment of a fundamental right requires public authorities not only to refrain from interfering with the exercise of that right but, owing to the necessity of ensuring its effective realization, also imposes certain positive obligations upon them.

[59] Paragraph 5.9 of Decision DCC-1699 dated 7 November 2023.

In light of the above, the Constitutional Court states that the primary procedural guarantee for the effective implementation of the right, provided for in part 5 of Article 60 of the Constitution, to claim "prior and adequate compensation" for the expropriation of property is to ensure its protection through the respective mechanisms of the right to a fair trial".

**141.** In the same Decision DCC-1699, the Constitutional Court stated, in particular:

"(...) While acknowledging the importance of the protection of the right to property for the constitutional order of the Republic of Armenia, the Constitutional Court also notes that the right to property is not absolute and is subject to constitutionally legitimate restrictions; *i.e.*, any interference with the right to property by way of its restriction must comply with the following general conditions prescribed by part 3 of Article 60 of the Constitution:

- the right to property may be restricted only by a law complying with the requirements of Article 79 of the Constitution;

- the right to property may be restricted only for the protection of public interests or the fundamental rights and freedoms of others;

- the restriction of the right to property must comply with the constitutional principle of proportionality provided for in Article 78 of the Constitution;

- the restriction of the right to property may not exceed the limitations established by international treaties ratified by the Republic of Armenia.

5.3. The norm stipulated by part 3 of Article 60 of the Constitution operates as the general rule (lex generalis) governing interference by public authorities with the right to property.

At the same time, for the purpose of regulating two particularly severe forms of interference with the right to property – deprivation of property and expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) – special provisions have been established in part 4 of Article 60 and part 5 of Article 60 of the Constitution, respectively; these provisions operate as special norms (lex specialis) in relation to part 3 of Article 60 of the Constitution and, in view of the degree of severity of the interference and the nature of the legal relationships concerned, prescribe additional special and mandatory conditions for the constitutional permissibility of interference with the right to property.

In particular, alongside the general conditions provided for in part 3 of Article 60 of the Constitution, a necessary condition for the constitutional legitimacy of deprivation of property is the observance of the 'judicial procedure' required by part 4 of Article 60 of the Constitution, as well as the requirement that the grounds for deprivation of property be 'prescribed by law'.

Furthermore, in the case of interference with the right to property through expropriation of property for the purpose of securing overriding public interests (for the needs of society

and the State), the general conditions established by part 3 of Article 60 of the Constitution are further tightened by part 5 of Article 60 of the Constitution through the following qualitative requirements:

- Unlike the constitutionally legitimate aim under part 3 of Article 60 of interference with the right to property for the constitutionally legitimate aim of 'protection of public interests or the fundamental rights and freedoms of others,' the constitutionally legitimate aim of interference through expropriation under part 5 of Article 60: (1) does not include the 'protection of the fundamental rights and freedoms of others'; and (2) is limited, within the broader category of 'protection of public interests', exclusively to what qualifies as 'overriding public interests,' thereby narrowing the range of constitutionally legitimate objectives of interference for the purpose of securing overriding public interests;

- Unlike the legal basis for constitutionally legitimate interference under part 3 of Article 60) – namely, a 'law' meeting the indispensable qualitative requirements of Article 78 of the Constitution – the legal basis for expropriation under part 5 of Article 60, in addition to complying with the requirements imposed on a 'law' under part 3 of Article 60 of the Constitution, must necessarily also: (1) define the 'exceptional cases' in which such interference is permitted; and (2) establish the 'procedure' for expropriation;

- Unlike the situation under part 3 of Article 60, where proportionality is assessed according to the general principle laid down in Article 78 of the Constitution and the choice of means to ensure proportionality is left to the discretion of public authorities, in the case of interference with the right to property (expropriation of property) under part 5 of Article 60 of the Constitution, proportionality has already been balanced by the Constituent, and the means chosen to ensure such proportionality is 'compensation,' which must comply with the constitutional qualitative requirements of being 'prior' and 'adequate'[60]".

**142.** Reaffirming the above-mentioned positions, as well as its legal positions regarding the right to "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State) (see paragraphs 92–98), the Constitutional Court emphasizes that:

- the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) only on the condition that the individual is provided with "*prior and adequate compensation*" shall constitute an unconditional promise of the Constituent;

- the constitutional guarantee that property may be expropriated for the purpose of securing overriding public interests (for the needs of society and the State) only upon the provision of "*prior and adequate compensation*" entails an unconditional and unqualified commitment on the part of public authorities to ensure that a person receives "*prior and adequate compensation*" whenever their property is expropriated; and, at the same time, the provision of such compensation constitutes a mandatory condition for any interference with the right to property.

[60] See paragraphs 5.2 and 5.3 of Decision DCC-1699 dated 7 November 2023.

**143.** The absolute nature of the right subject to protection, which entails a direct obligation to establish effective institutional mechanisms and procedures for the protection of that right and, where violations occur, for their remedy, constitutes for the Constitutional Court a particularly weighty consideration capable of counterbalancing the principle of the finality of judicial acts. Moreover, it is not the only factor placed on the scale opposite the value protected by the principle of finality of judicial acts. In assessing the proportionality of the restrictions imposed by the challenged provision on the Applicants' ability to seek review of judicial acts in their cases on the basis of a new circumstance, the Constitutional Court cannot disregard the following:

**(a)** The right to "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), although constitutionally guaranteed and protected under an international treaty ratified by the Republic of Armenia, has been subject to widespread and persistent violations in legal practice (see paragraphs 100–108 of this Decision);

**(b)** Although, since the ratification of the ECHR, violations arising in the context of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) have consistently been found in judgments of the ECtHR and in unilateral declarations submitted by the Government to the ECtHR, such violations have continued to occur and have primarily concerned the proportionality of the interference; and in cases where the principal findings concerned the lawfulness of the expropriation itself, the ECtHR, together with finding a violation, expressly emphasized the incompatibility of the compensation system for expropriated property with the requirements of Article 1 of Protocol No. 1 to the ECHR (see paragraph 100 of this Decision)[61];

**(c)** Apart from the present case, the Constitutional Court has on several occasions since the entry into force of the Constitution addressed the issue of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) in its decisions (DCC-92, DCC-630, and DCC-1699), consistently stressing the imperative of ensuring the guarantee of "*prior and adequate compensation*" as a mandatory precondition for the constitutionality of expropriation. The Constitutional Court's continuous attention to the constitutional guarantees and conditions governing expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), coupled with the ECtHR's repeated findings of violations of property rights due to the failure to ensure those conditions, demonstrates the existence of a systemic problem in the protection of property owners' rights within the legal relationships governed by part 5 of Article 60 of the Constitution (see paragraphs 100–102 and 103–104 of this Decision);

**(d)** Since 2004, the Human Rights Defender has consistently drawn attention in annual reports to violations of the right to adequate compensation for expropriated property, highlighting the systemic need to protect this constitutional right. Likewise, in the Judicial and Legal Reform Strategies of the Republic of Armenia for 2019–2023 and 2022–2026, the Government identified expropriations of property for the purpose of securing overriding public interests (for the needs of

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[61] *"Minasyan and Semerjyan v. Armenia"* (Just Satisfaction), Application No. 27651/05, §§ 17–20, 7 July 2011 (Armenian translation).

society and the State) as one of the spheres involving mass violations of human rights (see paragraphs 105–107 of this Decision);

**(e)** International bodies have likewise recorded the prevalence in the Republic of Armenia of past violations of property owners' rights in the sphere of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) and have emphasized the importance of restoring the right to adequate compensation (see paragraph 108 of this Decision);

**(f)** Violations relating to compliance with the principle of adequacy of compensation for expropriated property have been multiple and continuous in nature and have not been remedied within the three-tier domestic judicial system. The ineffectiveness of domestic remedies ultimately resulted in numerous ECtHR judgments finding violations of property owners' rights (see paragraphs 114–120 of this Decision);

**(g)** Expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) is, by its very nature, a legal relationship involving interference with the right to property, and for this reason, it has been expressly regulated by the Constitution itself, which establishes special and more stringent conditions for such interference, distinct from the general rules governing interference with property rights, and only strict compliance with those conditions may render the interference constitutionally legitimate (see paragraph 111 of this Decision);

**(i)** In the context of expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State), property is taken from its owner and transferred either to a public authority or to an acquirer designated by that authority. Given that expropriation occurs through the exercise of public power, within the framework of the expropriation process the sole bearer of fundamental rights (regardless of whether the property is acquired by a public authority or by a person designated by it) may be the owner of the expropriated property, whose fundamental rights define and limit the scope of public authority action (see paragraphs 129–133 of this Decision);

**(j)** Under part 5 of Article 60 of the Constitution, the lawfulness of interference with the right to property for the purpose of securing overriding public interests depends upon the provision of "*prior and adequate compensation*" for the expropriated property. Failure to guarantee the right to "*prior and adequate compensation*" ultimately results in a disproportionate interference with the right to property, and public authorities have no competence to allow additional departures from these requirements or to impose further restrictions concerning the latter (DCC-1699, in particular paragraphs 5.6–5.7).

**144.** The Constitutional Court also notes that the challenged provision, namely point 2 of part 1 of Article 419 of the Code, fails to take into account the specific characteristics of the guarantee enshrined in part 5 of Article 60 of the Constitution, namely the right to receive "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interest (for the needs of society and the State); instead, upon the general rule governing restrictions on the right to property prescribed by part 3 of Article 60 of the Constitution, it establishes the

same prerequisites and reservations for the review of judicial acts on the basis of a new circumstance across all types of civil-law relationships. In other words, point 2 of part 1 of Article 419 of the Code does not reflect the constitutional guarantee of inviolability, deriving from the absolute nature of the right to "*prior and adequate compensation*" prescribed by part 5 of Article 60 of the Constitution (see also paragraphs 5.3–5.8 of Constitutional Court Decision DCC-1699 of 7 November 2023), with respect to both its substantive and procedural components, including protection through the relevant mechanisms of the right to a fair trial, among them the review of judicial acts on the basis of a new circumstance.

**145.** Summarizing the foregoing, and once again reaffirming its previously expressed positions, the Constitutional Court states that the expropriation of property for the purpose of securing overriding public interests (for the needs of society and the State) constitutes, by its very nature, an exceptional form of interference, and this has been expressly recognized by the Constituent, which, through a special constitutional provision, has explicitly prescribed the conditions under which such interference is permissible; only strict compliance with those conditions can ensure the proportionality of the interference, and this, in turn, endows the right to "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding interests (for the needs of society and the State) with the character of an "*absolute right*"[62].

**146.** On the basis of the foregoing, the Constitutional Court reaches the non-alternative conclusion that, in all cases concerning the principles constituting the legal substance of the right to "*prior*" or "*adequate*" compensation guaranteed by part 5 of Article 60 of the Constitution, where the violation of those principles has been established by a judicial act of an international court constituting a new circumstance, the principle of the finality of judicial acts cannot prevail over the imperative of restoring the rights of other victims of similar violations and ensuring the protection of an individual constitutional "*absolute*" right, since the analyses set out above directly demonstrate the existence of such substantial and compelling circumstances as constitute sufficient grounds for overcoming the principle of the finality of judicial acts.

**147.** Taking as a basis its previously expressed positions regarding the absolute nature of the right to "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), as well as the entire background of the problematic developments relating to that right as presented in this Decision, the Constitutional Court considers that, as a matter of principle, a "*window of legal opportunity*" for obtaining protection of the right to "*prior and adequate compensation*" must remain open to individuals.

**148.** Consequently, the Constitutional Court considers that, in all cases where the principles constituting the legal substance of the constitutional guarantees of "*prior*" or "*adequate*" compensation under part 5 of Article 60 of the Constitution are at issue, and where a judicial act constituting a new circumstance has established a violation of any of those principles, restricting the possibility of reviewing, on the basis of a new circumstance, judicial acts rendered in respect of other victims of similar violations, and thereby limiting the possibility of restoring their rights, constitutes a disproportionate interference with the individual's fundamental rights to property and

[62] See paragraph 5.7 of Decision DCC-1699 of the Constitutional Court dated 7 November 2023.

to a fair trial, contrary respectively to part 5 of Article 60 and part 1 of Article 63 of the Constitution.

**149.** The above legal position of the Constitutional Court, and the conclusion drawn on its basis, do not preclude the legislature from exercising its discretion to establish, within the legal relations governed by part 5 of Article 60 of the Constitution, restrictions on the submission of applications for review based on a new circumstance in cases involving violations of the principles of "*prior and adequate compensation*"; which would be reasonably compatible with the nature of the constitutional right concerned and take into account the specific characteristics of that right (see, in particular, paragraphs 137–148 of this Decision).

**150.** Having established that, where the principles of "*prior*" or "*adequate*" compensation provided for in part 5 of Article 60 of the Constitution are at issue, and a judicial act constituting a new circumstance has found a violation of one of those principles, other victims of similar violations must likewise have the right to seek review of judicial acts rendered in their cases on the basis of a new circumstance, the Constitutional Court – taking into account that point 4 of part 1 of Article 420 of the Code prescribes a time limit for the submission of applications based on a new circumstance under point 2 of part 1 of Article 419 of the Code – does not consider it necessary, pursuant to part 10 of Article 68 of the Constitutional Law "On the Constitutional Court", to examine the constitutionality of the restriction stipulated in point 4 of part 1 of Article 420 of the Code systemically interrelated to the challenged provision, since, in adopting that provision, the legislature intended the time-limit restriction to apply exclusively to those persons who, under the challenged provision, had the possibility of lodging an application based on a new circumstance up to the date of this Decision, namely: **(1)** persons whose rights were found to have been violated by an act of an international court; and **(2)** persons who had not applied to the ECtHR by the time a judgment finding a violation had been delivered by an international court, but who still had the possibility of doing so in accordance with the requirements (time limits) of the ECHR. Accordingly, the restriction contained in point 4 of part 1 of Article 420 of the Code cannot, in general, apply to applications based on a new circumstance submitted by persons who did not participate in proceedings before a court operating under an international treaty ratified by the Republic of Armenia, or who, at the time the judgment or decision of that court was delivered, did not have the opportunity to exercise their right of application to that court in compliance with the requirements (time limits) established by the relevant international treaty, even though the international court's act concerns a violation of their rights of the same nature, namely, a violation of one of the principles of "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State), as prescribed by part 5 of Article 60 of the Constitution.

**151.** Based on the legal positions expressed in this Decision of the Constitutional Court and following the legal impact of the finding that the restrictions established by the challenged provision are invalid, the right to lodge an application based on a new circumstance must also be ensured for those persons who, although they did not participate in proceedings before a court operating under an international treaty ratified by the Republic of Armenia and, at the time the judgment or decision of that court was rendered, did not have the opportunity to exercise their right of application to that court in accordance with the requirements (time limits) prescribed by the relevant international treaty, are nevertheless affected by an act of the international court

concerning a violation of rights identical in nature to their own, namely, a violation of one of the principles of "*prior and adequate compensation*" for property expropriated for the purpose of securing overriding public interests (for the needs of society and the State) under part 5 of Article 60 of the Constitution. At the same time, the present position of the Constitutional Court does not preclude the legislature from exercising its discretion to establish time-limit restrictions for this category of persons as well, provided that such restrictions are reasonably compatible with the specific characteristics of the right guaranteed by part 5 of Article 60 of the Constitution (see, in particular, paragraphs 137–150 of this Decision).

Based on the results of the examination of the Case and being guided by part 1 of Article 167, point 1 of Article 168, point 8 of part 1 of Article 169, and parts 1 and 2 of Article 170 of the Constitution, as well as Articles 63, 64, and 69 of the Constitutional Law "On the Constitutional Court", the Constitutional Court **DECIDED:**

**1.** To declare the restriction provided for in point 2 of part 1 of Article 419 of the Civil Procedure Code – concerning the opportunity to submit an application for the review of a judicial act on the basis of a new circumstance in cases where a person did not participate in proceedings before a court operating under an international treaty ratified by the Republic of Armenia, and at the time the judgment or decision of that court was delivered, that person did not have the opportunity to exercise the right to apply to that court in accordance with the requirements (time limits) established by the relevant international treaty, where a court operating under an international treaty ratified by the Republic of Armenia has subsequently found a violation of any principle of prior and adequate compensation for expropriation of property for the purpose of securing overriding public interests, as guaranteed by part 5 of Article 60 of the Constitution – as contradicting part 5 of Article 60 and part 1 of Article 63 of the Constitution, and as invalid.

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

**PRESIDING JUSTICE** *[seal]* **A. DILANYAN**

11 February 2026

DCC-1769