

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

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**ON THE CASE OF CONFORMITY OF PART 2 AND CLAUSE 2 OF PART 10 OF  
ARTICLE 13 OF THE LAW OF THE REPUBLIC OF ARMENIA ON ENSURING  
ROAD TRAFFIC SAFETY WITH THE CONSTITUTION ON THE BASIS OF THE  
APPLICATION OF THE ADMINISTRATIVE COURT OF THE REPUBLIC OF  
ARMENIA**

Yerevan

October 1, 2019

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

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

the applicant: Administrative Court of the Republic of Armenia,

the respondent: K. Movsisyan, representative of the RA National Assembly, Head of the Legal Support and Service Division of the RA National Assembly Staff,

pursuant to clause 1 of article 168, part 4 of article 169 of the Constitution, as well as articles 22, 40 and 71 of the constitutional law on the Constitutional Court,

examined in a public hearing by a written procedure the case on conformity of part 2 and clause 2 of part 10 of article 13 of the Law of the Republic of Armenia on Ensuring Road Traffic Safety with the Constitution on the basis of the application of the Administrative Court of the Republic of Armenia.

The Law of the Republic of Armenia on Ensuring Road Traffic Safety (hereinafter – the Law) was adopted by the National Assembly on 8 July 2005, signed by the President of the Republic on 13 August 2005 and entered into force on 3 September 2005.

Part 2 of article 13 of the Law, titled: “**State registration, state record-registration and limitations on vehicles**”, stipulates:

**“The right of ownership originating from transactions involving the vehicle shall be subject to (shall be submitted for) state registration at the Road Police within 15 days from the day of signing the transaction by the parties, and where the vehicles are imported to the Republic of Armenia under “Importation for domestic consumption” customs procedure or imported by natural persons for free circulation within 15 days from the date of signing the declaration, except for cases of deregistration of a vehicle due to disposal of thereof. The state registration and state record of vehicles shall be conducted within one working day after submitting the vehicle (or the statement of information concerning data of the vehicle issued by the administrative unit of the Road Police or by the competent unit providing services at the location of the vehicle) and submitting the documents prescribed by legislation to the Road Police”.**

Clause 2 of part 10 of the same article stipulates:

**“State registration of vehicles shall be rejected, if:**

...

**2) the documents prescribed by legislation are not submitted”.**

After the adoption of the Law, article 13 was amended and supplemented by the Law HO-72-N of 21.02.2007, HO-36-N of 08.04.2010, HO-332-N of 08.12.2011, HO-186-N of 19.10.2016, HO-281-N of 21.12.2017.

The case was initiated on the basis of the application of the Administrative Court of the Republic of Armenia submitted to the Constitutional Court on 8 May 2019, which included the decision on “Terminating the proceedings of the administrative case and applying to the Constitutional Court” on the case VD/12584/05/18 of 29 January 2019.

Having examined the application, the written explanation of the respondent, as well as having analyzed the relevant provision of the Law and other legal acts, and other documents of the case, the Constitutional Court **FOUND:**

### **1. Applicant’s arguments**

The applicant considers that part 2 and clause 2 of part 10 of article 13 of the Law restrict the person’s right to property, and insofar as they do not delineate the transactions concluded on the

basis of an administrative act and do not define the consequences of their non-registration and do not meet the requirements of legal certainty prescribed in article 79 of the Constitution.

According to the applicant, the provisions of the Law under consideration relate to the registration of the right of ownership arising under transactions performed by the vehicle, while the transactions concluded in the spheres of public and private law have different legal prerequisites and have different legal consequences.

The Applicant claims that in case of failure to submit the concluded administrative act on the state registration of a transaction within the time period established by the Law, this leads to a situation deprived of legal certainty when, on the one hand, a transaction concluded on the basis of an administrative act is void and is not subject to the state registration, on the other hand, the administrative act is in force and there is a legitimate expectation with respect to the right of ownership (with the exception of acts with a condition).

In addition, the applicant notes that the challenged provisions of the Law, establishing a 15-day deadline for the submission of the right to state registration, do not provide any possibility for its restoration. Such a possibility is not also established in the Law of the Republic of Armenia on the Fundamentals of Administrative Action and Administrative Proceedings, which regulates administrative proceedings. According to the applicant, the absence of the possibility of restoration of the missed deadline violates the “constitutional right of people to the unhindered exercise of the right of ownership”.

According to the applicant, although the period of application to the administrative authority provides legal predictability, and sustainability and reliability of legal relations, however, it cannot be non-restorable. The legislator must provide the administrative authority, and in the case of a judicial appeal, also the courts with the possibility to restore the period for applying if it is missed for a good reason.

As a result of the foregoing, the applicant concludes that there is a reasonable doubt regarding the constitutionality of the challenged provisions and requests to determine their conformity with articles 60 and 79 of the Constitution.

## **2. Respondent’s argument**

As a result of the analysis of the provisions of a number of legal acts regulating the mentioned sphere, the respondent argues that “... on the basis of the right of ownership and property rights, as

well as the principles of legal certainty, the legitimate expectation of a person and predictability of the provisions which are subject to this constitutional legal dispute, the legislator has **clearly established and regulated** the legal relations in connection with state registration, the state record of vehicle registration and the restrictions thereon”.

According to the respondent, by the relevant procedures for submitting movable property for state registration, in particular, by article 20 of the Law of the Republic of Armenia on Registration of Secured Rights to Movable Property, **the institution of extension of the state registration of movable property** is already envisaged, therefore, the challenged norms exclude the possibility of any violation of property rights from the perspective of both the legal certainty and predictability, and the legitimate expectations.

The respondent considers that part 2 and clause 2 of part 10 of article 13 of the Law are in conformity with the requirements of the RA Constitution.

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

In the context of the challenged provisions, the applicant in fact raises the issue of impossibility of restoring the time period for submitting the state registration of the right of ownership originating from transactions carried out with the vehicle if this deadline is missed, and the Constitutional Court considers it necessary to address this issue in the context of the legislative prescription of the mechanisms and procedures necessary for the effective realization of the right of ownership, guaranteeing of the principle of proportionality of restriction of rights, and the principle of certainty, as well as ensuring the right to proper administration (respectively articles 60, 75, 78, 79 and 50 of the Constitution). In this aspect, in the framework of the present case, it is necessary to establish the following:

- Does the restriction on the time period for submitting the state registration of the right of ownership based on transactions carried out with the vehicle pursue a legitimate purpose, and does it impede the realization of a person's property right?

- Is the recognition of a transaction over the vehicle void proportionate to aim pursued, in the event of failure to submit the transaction for state registration within the prescribed time period, without the possibility of restoring this period?

- Under the current legal regulations, is it possible to ensure the exercise of the property right of those persons who missed the time period prescribed by law for a good reason, regardless of their will?

#### **4. Legal assessments of the Constitutional Court**

**4.1.** The challenged legal provisions of the Law are interrelated with the relevant provisions of the Civil Code of the Republic of Armenia (hereinafter referred to as the Code), the RA Law on Public Auctions, the RA Law on the Fundamentals of Administrative Action and Administrative Proceedings, and the RA Law on Registration of Secured Rights to Movable Property, therefore, their constitutionality should be considered in the light of the aforementioned.

According to article 135 of the Code, **the rights to movable property shall be subject to state registration only in the cases provided for by law**, and the procedure for state registration of the rights to property and the grounds for rejection of the registration thereof shall be defined by the law.

According to article 301 of the Code, the rights arising from transactions made on movable property shall be subject to state registration in the cases provided for in this Code and other legal acts, and the procedure for state registration and the grounds for renouncing registration shall be defined by law.

According to article 134 of the Code, vehicles shall also be considered as movable property.

Article 13 of the Law covers the issues related to state registration, state record-registration and restrictions on vehicles. According to part 1 of this article, the lease rights over under property contract shall be subject to state registration.

Part 2 of the same article prescribes the **requirement** that the right of ownership originating from transactions over the vehicle **shall be subject to state registration** at the Road Police **within a period of 15 days** from the day of signing the transaction by the parties, and the state registration and record-registration of vehicles shall be conducted within one working day after presenting the vehicle (or the statement of information concerning data of the vehicle issued by the administrative unit of the Road Police or by the competent subdivision providing services at the location area of the vehicle) and submitting the documents prescribed by legislation to the Road Police.

According to parts 1 and 2 of article 35.1 of the RA Law on Public Auctions, coercive auctions organized by means of electronic systems are the auctions organized through the website of coercive auction of the Enforcement Service, which are organized and carried out by the Compulsory Enforcement Service of the Ministry of Justice of the Republic of Armenia pursuant to the executive act, and any movable or immovable property may become a lot of the coercive electronic auction. Part 6 of the same article provides a provision, according to which persons who opted to participate in a coercive electronic auction, shall, in the manner and terms specified in the notification published on the website, pay to the cash desk of the department of the Service or transfer to the deposit account or freeze a prepayment in the amount of 5% of the starting value of the lot and register in the system.

According to part 4 of article 35.2 of the same article, the frozen amount of the prepayment of the winning bidder of the coercive electronic auction shall be transferred to the deposit account of the Service; according to part 6 of this article, the winning bidder of the auction must pay the value of the lot to the cash desk of the department of the Service or transfer to its deposit account within three banking days after the auction, with the prepayment deduction. Part 7 of the article prescribes a provision, according to which **within three days** after the winning bidder pays the purchase price, s/he and the enforcement agent or her/his representative shall sign a contract of sale; and according to part 8 of the article, proceeds on sale of the lot shall be transferred or passed to the creditor within three days after signing the contract.

The background to the present case indicates that as a result of the auction held as part of the enforcement proceedings, the person, under the contract of sale, purchased a car from the Compulsory Enforcement Service. The state registration of property rights originating from the said contract was rejected with such motivation that the buyer of the car violated the requirement to submit the vehicle for state registration at the Road Police within the prescribed time.

In this case, from the perspective of the civil law (article 176 of the Code), the citizen did not acquire the right of ownership, since the right of ownership of the vehicle was the subject to registration, but it was not registered. Nevertheless, there is an administrative act on the basis of which the vehicle was purchased.

In the standpoint of the Constitution, as well as the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter - the Convention), the right to property is an autonomous concept. According to part 1 of article 60 of the Constitution, both the legally acquired

property and the legitimate expectation are deemed to be property. It follows from the case law of the European Court of Human Rights (hereinafter - the ECHR) that the term “property” means not only the “existing possessions”, but also the possessions (rights and interests) in respect of which the applicant may have at least reasonable or legitimate expectations (Van der Mussele v. Belgium, judgment of 23 November 1983, Series A no. 70, p. 23, para. 48; Pine Valley Developments LTD and Others v. Ireland, judgment of 29 November 1991, Series A no. 222, p. 23, § 51, and Pressos Compania Naviera S.A. and Others v. Belgium, judgment of 20 November 1995, Series A no. 332, p. 21, para. 31).

In terms of legitimate expectation, the ECHR considered that it is based on a reasonably justified reliance on a legal act (Kopecky v. Slovakia, no. 44912/98, § 47, ECHR 2004-IX). In the present case, the vehicle was purchased legally, i.e. on the basis of a filled in protocol based on the results of an auction held by the administrative authority, which fully justifies the legitimate expectation of the citizen.

**4.2.** According to article 79 of the Constitution, in case of restriction of fundamental rights and freedoms, the laws shall define the grounds and scope of restrictions and be sufficiently certain for the holders of such rights and freedoms and the addressees to be able to engage in appropriate conduct.

The Constitutional Court considers that the challenged legal regulations are reasonably defined, i.e. the consequences of the conduct of the person are completely predictable; therefore, the person concerned must independently take all the actions and fulfill the requirements that are necessary to complete the process of state registration of rights.

According to the ECHR, “the right to protection of property is not absolute, and **in terms of certain conditions**, states are enabled to intervene in property rights, including the possibility of deprivation of property. Intervention in property rights can be compatible with the general norm prescribed in the first sentence of clause 1 of article 1 of Protocol No. 1 to the Convention only if a “**fair balance**” is ensured between the requirements to protect the common interests of society and the fundamental rights of the individual. A “fair balance” is ensured “only when it is established that the interference meets the requirement of legality and is not arbitrary” (Iatridis v. Greece [GC], 03.25.1999; app. No. 31107/96, para. 58).

In each specific case, the ECHR, considering the issue of a fair balance, finds out the legitimate aim pursued by the application of this measure, which follows from the public interest.

Any interference with the right to property must be “appropriate to achieve the aim pursued and equal to that aim”. The reasonable correlation of proportionality and the necessary balance between the requirements of protection of property rights and common interest is violated to the detriment of the protection of the individual’s rights if, as a result of the measure restricting the right to property, the person is required to bear “an individual and excessive burden” (J.A. Pye (Oxford) Land LTD v. UK, G.C. 30/08/2007; app. No 44302/02).

The state may exercise control over property by requiring a natural or legal person to take certain actions. The requirement to register a car is considered as a similar permissible limitation by the ECHR (Yaroslavtsev v. Russia, judgment 02/12/2004, app. No. 42138/02, Sildedzis v. Poland, judgment 24/05/2005, no. 45214/99).

The exercise of the right of ownership of a vehicle has own characteristics, since it concerns such property-possession, which present a greater risk and may endanger the life and health of people during the operation. For this very reason, the use by a person of a vehicle, belonging to him by right of ownership, depends on state registration and record-registration at the Road Police.

**4.3.** The Constitutional Court expressed an assessment in the Decision DCC-1448 of 19.03.2019 that “...by establishing the obligation of state registration of rights arising from transactions with immovable property, causing the registration of rights to be registered by the state, the legislator pursued a legitimate goal”, and this assessment also applies to transactions with movable property, in particular the vehicles. In this case, the state registration of rights to property is especially aimed at providing the necessary guarantees for the exercise and protection of a person’s right to the certain property-possession.

Based on the legal content of the institution of state registration of rights to a vehicle, the Constitutional Court considers that the requirements of state registration of property rights arising from transactions with a vehicle, the submission of necessary documents, as well as registration within a specified period of time pursue a lawful aim. They are aimed at concretization of the person who owns the vehicle, ensuring, inter alia, guaranteeing and protecting property rights.

By establishing the mandatory requirement for state registration of rights relating to the transactions with a vehicle, the legislator also envisaged the legal consequences of non-fulfillment of the requirement to register the rights related to these transactions. In particular, according to part 5 of article 13 of the Law, failure to comply with the requirement of state registration shall lead to

the invalidity of the transaction (such a transaction is void), but this provision, however, has not been challenged by the applicant.

Along with the pursuit of a legitimate goal, the legal regulation should be consistent with the principle of proportionality prescribed in article 78 of the Constitution, according to which the means chosen for restricting fundamental rights and freedoms have to be suitable and necessary for the achievement of the aim prescribed by the Constitution. The challenged provisions are means suitable for achieving the mentioned aim, and, being proportionate to the significance of the right to property, minimally interfere with the right to property of a person.

**4.4.** According to article 50 of the Constitution, everyone has the right to an impartial, fair hearing by the administrative authorities of matters concerning him within a reasonable time. A fair trial by an administrative authority, among other things, implies that a person should not be deprived of his right in cases where the formal requirement of the law was not complied with for reasons beyond his/her control.

Having examined the constitutionality of similar regulations of the Law of the Republic of Armenia on State Registration of Rights to the Property in the Decision DCC-1448 of 19 March 2019, the Constitutional Court also referred to the alienation of property carried out on the basis of administrative acts, considering that **the state's duty is to establish effective mechanisms for regulating the alienation of property that will minimally burden the acquirers of property right with respect to conclusion of contracts and state registration of rights arising from the latter, and noted that the consolidation of the acquisition of the right of ownership on the basis of an administrative act may be carried out "by combining ... functions when one body takes over all actions aimed at providing an administrative act to a person"**<sup>1</sup> and this assessment is reiterated in this Decision.

The Constitutional Court states that in case of failure to submit the documents established by the legislation for the state registration at the Road Police of the right of ownership related to transactions with the vehicle within the established time period, the Law **does not provide for the possibility of restoring the missed time period.**

The provisions challenged in this case are interrelated with the legislative regulations declared contradicting the Constitution by the Decision DCC-1448, by virtue of which the right of ownership of a person ownership right was not registered and was not recognized by the state, based on the

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<sup>1</sup> Decision DCC-1448 of the Constitutional Court of 19 March 2019.

time limitation of application for state registration. Unlike the legal regulations in connection with the registration of immovable property, when missing the time period was established as a direct basis for the refusal of registration (part 6 of article 24 and part 1 of article 30 of the Law of the Republic of Armenia on State Registration of Rights to Property), that is, there was a norm prohibiting the registration of a transaction even if the time period was missed for a good reason and not depending on the will of the person; however, the provisions challenged in the present case do not establish such a direct prohibition on the registration of transactions over the vehicle, **and in accordance with the principle of the rule of law, for ensuring the protection of the person's constitutional right to property, the missed time period can be restored if there are good reasons.**

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

1. As regards to submitting the right of ownership arising out of transactions over the vehicle for registration within a 15 day period, part 2 of article 13 of the Law of the Republic of Armenia on Ensuring Road Traffic Safety is in conformity with the Constitution with the interpretation that, for ensuring the protection of the person's constitutional right to property, the failed time limit for the state registration of vehicles may be restored for good reasons.

2. Clause 2 of part 10 of article 13 of the Law of the Republic of Armenia on Ensuring Road Traffic Safety is in conformity with the Constitution.

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

**Chairman**

**H. Tovmasyan**

October 1, 2019

DCC -1479