

# Russia's Constitutional Court has resolved how limitation periods should be applied to claims regarding property obtained through corruption being appropriated by the state

*FAO heads of companies' legal, compliance and security departments*

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**Pepeleiev Group advises that, in its Resolution dated 31 October 2024, the Russian Constitutional Court concluded that the Russian Civil Code's provisions regarding limitation periods do not apply to anti-corruption claims asserted by public prosecutors.<sup>1</sup>**

## **How did it all start?**

The Kanevsky District Court of Krasnodar Territory upheld claims of the Russia's General Prosecutor's Office seeking to have appropriated by the state property that had been obtained as a result of acts of corruption committed by an individual, K., as well as property which the above individual had acquired subsequently using the proceeds of corruption. The offence was committed in 2001-2004 when the individual K. held a public office. Based on the judgment that has been handed down, shares and membership interests in the issued capitals of 22 business entities with a total value of over RUB 9 billion are coming into the ownership of the Russian state.

When the case was considered in the first-level court, the defendant, among other things, claimed that the limitation period had already expired in relation to the claims that the prosecutor was asserting.

Refuting these arguments, the court held that no such limitation periods applied to acts of corruption. In their appeals to the Krasnodar Territory Court, the defendants continued to insist that the prosecutor's office had missed the limitation period.

The Krasnodar Territory Court put a stay on the proceedings and applied to the Constitutional Court (the 'Court') asking whether the following provisions

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<sup>1</sup> <https://doc.ksrf.ru/decision/KSRFDecision791923.pdf>

of the Russian Civil Code comply with the Russian Constitution: articles 195, 196, 197(1), 197(2) and 208.<sup>2</sup>

### **The Court's position**

The Court explained its decision by the need to protect the constitutional values and the democratic system. The Court held that the absence of the limitation period in relation to the prosecutor's office's claims under consideration "adequately reflects public needs against the backdrop of a specific historical context".<sup>3</sup> In the Court's opinion, the legislature may decide not to introduce any restrictions. However, if the legislature believes such restrictions necessary, they should considerably exceed the already established limitation period (which does not exceed 10 years). The Court has stated that special rules should be established for how such limitation periods run.<sup>4</sup>

The Court noted that, although limitation periods 'were abolished', prosecutors were still obliged to prove the fact that the person performed the activity for personal gain and derived income from it. Should property or income derived as described above have been converted into other assets, the fact of such conversion must also be proved.

The Court further stressed that the conclusion that the limitation period does not apply extends only to anti-corruption claims of a prosecutor's office, and "*does not extend to a matter being resolved of whether the limitation period applies to other claims asserted by a prosecutor's office that are aimed at property being transferred to public law entities or at the ownership title being recognised to such property, including claims that are based on the privatisation process having been violated*". Nor should this procedure affect any third parties which were not involved in corruption schemes and were unaware of the corruption part when they entered into legal relationships with the corrupt official and/or persons affiliated with such official.

### **Opinions and commentaries**

The commissioner of the Federation Council at the Constitutional Court, Andrey Klishas, supported the decision that was made. "*It is important to safeguard the public order and, therefore, private law provisions cannot be automatically applied to public law provisions*"<sup>5</sup>, said Mr Klishas. He also stated that disputes in this area are a result of a gap in legislation that must be eliminated.

State secretary and vice president for legal regulation and law enforcement of the Russian Union of Industrialists and Entrepreneurs (in Russian, abbreviated to 'RSPP'), Alexander Varvarin, has pointed out that the Court's decision

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<sup>2</sup> <https://ksrf.ru/ru/News/Pages/ViewItem.aspx?ParamId=3891>

<sup>3</sup> <https://doc.ksrf.ru/decision/KSRFDecision791923.pdf>

<sup>4</sup> <https://www.kommersant.ru/doc/7267699>

<sup>5</sup> [https://www.rbc.ru/politics/31/10/2024/672390c29a79470dde341760?from=column\\_1](https://www.rbc.ru/politics/31/10/2024/672390c29a79470dde341760?from=column_1)

*"reflects a number of other approaches in relation to which there was not much certainty previously".<sup>6</sup>*

The legal community has been actively discussing this new twist in the court practice as well. Many lawyers are concerned that this practice could be extended to other categories of cases, such as claims relating to tax and other offences that infringe public interests.

A conflict of law has been established with regard to how limitation periods apply to property-related claims that result from corruption offences and that are asserted by prosecution authorities on behalf of the state. In the opinion of the defendants, those claims were way beyond their limitation periods and, for that reason, they could not have been asserted by the prosecutor's office and upheld by the courts.

The judgment that the Constitutional Court has adopted resolves the established conflict of law in favour of some courts' approaches being correct that it was permissible for such claims to be upheld.

It can be presumed that, by virtue of the Constitutional Court's Resolution No. 49-P dated 31 October 2024 ('Resolution No. 49-P'), all judgments similar to the above will stand up in higher courts to the extent of there being such arguments. Meanwhile 'negative' court judgments, if adopted on this ground, will be reconsidered.

We further believe that a legislative initiative might be put forward to improve the provisions of the Civil Code which have been recognised as not complying with the Constitution in terms of making them meet the requirements of anti-corruption legislation.

We highlight the ambiguous nature of the reservation made in Resolution No. 49-P regarding the guarantees of rights of third parties who were unaware of and were not involved in corruption practices but acquired property which was associated with such activity. Considering the unrestricted limitation period for the state's claims in relation to property and property rights that have been acquired within the scope of corruption practices, it becomes next to impossible to resolve the task of establishing whether the title to such property is clean from a legal perspective for a good-faith buyer. It appears to be extremely difficult to examine the chain of sale transactions involving the property which reaches back to the past. It is also daunting or even impossible to find a corruption element in such a chain. Therefore, good-faith buyers will be exposed to the risk of an involuntary loss of the property they have acquired which has been involved in corruption.

Resolution No. 49-P does not affect the procedure of re-nationalisation, regarding which it contains a specific reservation. According to a number of estimates, privatisation in 1990s was conducted in violation of the established

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<sup>6</sup> <https://www.rbc.ru/politics/31/10/2024/67236ccf9a7947426cca7ca8>

procedures and, hence, could have run counter to the interests of the state and of the public.

The Constitutional Court has marked a new direction of how limitation periods are assessed from the perspective of whether they comply with the Constitution when claims are asserted for property to be seized which has been obtained with an abuse of legal procedure and as a result of activity that infringes upon the interests of the state and of the public (with corrupt practices being classified as falling under the definition of such activity). Taking this trend into account, one must not rule out that limitation periods under re-nationalisation claims of the prosecutor's office could be also extended or might be ignored by courts.

We remind you that, starting from 2022, eighty-four cases have been recorded in Russia of a compulsory loss of control over their businesses by Russian and foreign individuals and companies. This resulted in the ownership or control of these companies being transferred to the state.<sup>7</sup> Some claims under those cases concerned property being appropriated because of corruption-related charges.

### **What to think about and what to do**

Companies operating in the Russian market may need a professional qualified assessment of business decisions they are making and of other organisational and legal actions in the context of economic activity, including in a situation when they are acquiring property complexes and production assets.

### **Help from your adviser**

Pepeliaev Group's lawyers are available to analyse your company's activities and procedures with respect to risks of property being forfeited on corruption-related or other associated grounds. They will also assess risks that may arise when you have dealings with law enforcement authorities.

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<sup>7</sup><https://www.forbes.ru/biznes/518787-s-2022-goda-v-rossii-proveli-84-dela-po-nacionalizacii-castnyh-kompanij?ysclid=Izr4qy3qme6750467>