DOI: https://doi.org/10.46991/SL/2025.100.026

CERTAIN ISSUES OF THE APPLICATION OF IMPERATIVE NORMS IN THE LAW ENFORCEMENT PRACTICE OF THE REPUBLIC OF ARMENIA

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Abstract. The reference to the institution of imperative norms established by the legislation of the Republic of Armenia in this scientific article is due to the inconsistent interpretation of these norms in the judicial practice of the RA. The precedent decision of the RA Court of Cassation in the administrative case VD/3882/05/22 directly contradicts the legal regulations of Section 12 of the RA Civil Code and may lead to undesirable consequences in both judicial and notarial practice. Notaries in the RA who refuse to accept powers of attorney issued abroad with a validity period exceeding three years and to perform legally significant actions based on them may face judicial appeals. In turn, judicial authorities will be guided by the precedent decision of the RA Court of Cassation in case VD/3882/05/22, issuing contradictory rulings. There is an urgent need to review the controversial precedent decision of the RA Court of Cassation and to contribute to the development of law as well as the unification of judicial, notarial, and overall legal practice. Legal science plays a significant role in addressing this issue, and from this perspective, the article attempts to scientifically substantiate the vulnerability of the court's decision and propose solutions to the existing situation.

Keywords: *globalization, international cooperation, conflict rule, super-imperative rule, cassation court, precedent decision, extraterritorial, civil code.*

1. Introduction

This scientific article addresses the institute of superimperative norms as enshrined in the legislation of the Republic of Armenia. The focus on this topic is motivated by the inconsistent interpretation of these norms in Armenian judicial practice, the adoption of a precedent-setting decision by the Court of Cassation of Armenia

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The article received 07 February 2025,
reviewed 21 February 2025,
accepted for publication 20 May 2025

regarding the application of superimperative norms, and the subsequent divergence of opinions and viewpoints in Armenian law enforcement practice as a result of this decision.

In Administrative Case No. VD/3882/05/22 reviewed by the Court of Cassation of the Republic of Armenia, the following circumstances were noteworthy:

At the time of the court application, the power of attorney issued to the lawyer by the citizen on February 21, 2019, had a term of 7 years, which at the time of submission to the court conflicted with the legal regulation of Article 322, Clause 1 of the Civil Code of the Republic of Armenia, which provides for a 3-year term. Moreover, the power of attorney was drawn up and issued to the representative by the principal in Ukraine, whose legislation does not impose a time limit on the validity of a power of attorney.

The legal regulations of Armenia and Ukraine regarding the term of validity of a power of attorney do not coincide. However, the Court of Cassation of the Republic of Armenia considered the issue of the term of validity of the power of attorney from the perspective of Ukrainian law and deemed such a power of attorney valid in Armenia. Consequently, it considered the legal actions performed on its basis in Armenia to be lawful.

The Court of Cassation of the Republic of Armenia, by reviewing judicial acts within the framework of the powers defined by law, ensures the uniform application of laws and other normative legal acts. The Court of Cassation ensures the uniform application of laws and other normative legal acts if there is a need for the development of law, or if a normative legal act has been applied differently or not applied in different cases by courts due to different legal interpretations (Article 29 of the Judicial Code of the Republic of Armenia).

Lower courts are obligated to follow the legal positions of the Court of Cassation of the Republic of Armenia, the purpose of which is to ensure the uniform application of laws and to form a unified judicial practice. In cases where a lower court gives an interpretation of a legal norm that differs from the interpretation given by the Court of Cassation in another case with similar facts, the lower court must justify its deviation from the Court of Cassation's interpretation of the law and other normative legal acts (Article 10 of the Judicial Code of the Republic of Armenia).

Before addressing the issues of the precedent approach formed in case No. VD/3882/05/22 of the Court of Cassation of the Republic of Armenia and the problems of judicial and law enforcement practice, we consider it necessary to present doctrinal approaches to imperative norms, which will allow us to discuss

the approaches formed in the Armenian law enforcement practice from a more understandable perspective.

2. The Main Research

In the context of modern globalization, active dialogue processes are taking place between the political, economic, social, cultural, and legal systems of different states. Broad prospects for cooperation have opened up, aimed at creating conditions for the common development of all. The Charter of Economic Rights and Duties of States, adopted by UN General Assembly resolution 3281, states: "**International cooperation is a duty and a common responsibility of all States**"[1]. In fulfilment of this "right and common responsibility", States undertake to eliminate as far as possible the economic, social, legal, and other factors that may impede the integration of States (Article 34).

One of the key components of state integration is the active cooperation of legal systems, expressed through the harmonization and unification of national legal systems.

The global community's aspirations for dialogue and cooperation between the legal systems of different states date back to the 17th century when the prominent Dutch jurist P. Vout put forward the following thesis: "When the state wants to follow the customs of a neighbouring state, and if it does not cause significant harm to the following state, then it must be prepared for the fact that its laws may have certain limitations"[2]. P. Vout considered it possible to apply the laws and customs of neighbouring states, but clearly noted that as a result of such application, its own laws could be limited. Furthermore, the sovereignty of the state in question could suffer some damage as well.

The idea of P. Vuti was further developed by the prominent Dutch jurist U. Huber, who, in his work "On the Collisions of the Laws of Different States", developed the theory of *comitas gentium* - international comity, according to which the laws of a sovereign state retain their force everywhere, provided that they do not harm the sovereignty of another state"[3].

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[1] https://www.un.org/ru/documents/decl_conv/conventions/rights_and_duties.shtml

[2] Международное частное право: современные проблемы, отв. ред. М. М. Богуславский. М. 1994 [International Private Law: modern issues], pg. 37

[3] Вольф М. Международное частное право. М., 1948 (Wolf, M. International Private Law. Moscow, 1948), pg.43;
Donald Earl Childress III. Comity as Conflict: Resituating International Comity as Conflict of Laws, UC Davis Law Review. Vol. 44. November 2010).

National legal systems regulating civil circulation establish both dispositive and imperative norms, which may or may not coincide with similar regulations in the legal systems of other states. While dispositive norms can always be bypassed and norms that coincide with the legal regulations of a foreign state can be applied, the same cannot be said for national imperative norms, which establish specific rules of conduct for participants in civil circulation and oblige them to comply with these requirements unconditionally. The requirements of imperative norms are determined not only to ensure the interests of the parties, but also to ensure public interests, the interests on which the stability of the civil circulation of a given state depends, and, accordingly, the policy pursued by the state[4]. It is precisely these imperative norms, which are different in different states that do not allow for a dialogue between legal systems and the requirements of these imperative norms exclude the application of foreign norms regulating similar relations.

In the scope of international private law the subject of our discussion are not ordinary imperative norms, but rather a special type of norm within the framework of imperative norms - superimperative norms[5]. To start with, when private relations are not burdened with a foreign element and there is no possibility of applying foreign law norms to them, ordinary and superimperative norms are not distinguished in the mass of domestic imperative norms; they are all considered to be the same type of imperative norms, which must be strictly observed by persons of a given state. The institute of superimperative norms arises only when a private relationship is burdened with a foreign element, and the national collision norm chooses a foreign law for application. Superimperative norms limit the choice of collision norms in terms of their own superimperative norms and give national substantive norms an **extraterritorial nature**[6]. Here, we would like to specifically note that the issue of superimperative norms does not arise when collision norms are unilateral, that is, when, in relation to a private relationship burdened with a foreign element, the law of one's own state is chosen. The issue of superimperative norms arises only in the case of the application of bilateral collision norms, when they choose foreign law.

The concept of superimperative norms is not defined in the Armenian legislation. The Civil Code of the Republic of Armenia dedicates one article, that is

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[4] Раапе Л.Международное частное право. М. 1960. pg. 434

[5] Садиков О.Н. Императивные нормы в международном частном праве //Московский журнал международного права. 1992. No 2; Звеков В.П. Международное частное право. М. 1999. pg. 143-150

[6] Международное частное право: Учебник /отв.ред. Г.К.Дмитриева. 2-е изд. М. Проспект. 2004. Pg.188-194

Article 1259 (**Imperative norms**), to these types of norms, where an attempt is made to provide a descriptive formulation for superimperative norms: "**The rules of this Section shall not refer to the application of the imperative norms of the law of the Republic of Armenia which, by virtue of their special significance of ensuring the rights and interests of participants in civil practice, exclude the possibility of application of any other law**". As we can see from the cited article, superimperative norms are not called by that term in Armenian legislation, they are called "Imperative norms", which does not fully reflect the special role of these norms in international private law. Article 1259 of the Civil Code of the Republic of Armenia only emphasizes the fact that imperative norms:

- **have a special significance in ensuring the rights and interests of participants in civil circulation, and**
- **exclude the possibility of application of any other law , selected by collision norms under Chapter 12 (International Private Law) of the Civil Code of the Republic of Armenia.**

Both circumstances mentioned in Article 1259 of the Civil Code of the Republic of Armenia do not "shine" with their certainty: the legislator does not establish any other criteria due to which super-imperative norms acquire "a special significance in ensuring the rights and interests of participants in civil practice", how they should be formulated in order to differ from ordinary imperative norms, what range of issues super-imperative norms should be addressed to, etc. The second formulation also gives rise to misunderstandings: "**they exclude the possibility of applying any other law**". This formulation creates an impression from the outside that super-imperative norms completely exclude the application of the selected foreign law. This may identify the institute of super-imperative norms with the institute of preserving public order, while, despite their similarity, they are different institutions[7].

The similarity between superimperative norms and the institutions of public order reservation is that both limit the application of foreign law. The institution of public order reservation is based not on specific norms, but on fundamental principles of law, such as, for example, equality of rights, justice, good faith, humanism, and from the standpoint of these principles blocks the application of the law of a foreign state in its entirety, while superimperative norms block the operation of only individual specific legal norms of foreign law that relate to the sphere of regulation of superimperative norms. In this case, the formulation of

[7] Толстых В.Л. Коллизионное регулирование в международном частном праве. М. СПАРК. 2002. Pg. 112

Article 1259 of the Civil Code of the Republic of Armenia, according to which superimperative norms "exclude the possibility of applying any other law", is problematic.

Thus, the public order reservation is applied only in the case when the principles underlying foreign law contradict the principles underlying the legal order of the Republic of Armenia, and superimperative norms are applied in the case when the selected norms of foreign law are fully acceptable from the point of view of combination with national legal norms, and only those norms that contradict superimperative norms of national law, which do not tolerate any other legal regulation than those provided for by the superimperative norms themselves, are not applied from the point of view of combination with national legal norms.

Superimperative norms differ from ordinary imperative norms in their "**special significance in ensuring the rights and interests of participants in civil circulation**". Imperative norms also have the significance of ensuring the rights and interests of participants in civil circulation, but the significance of superimperative norms "**rises from the level of the ordinary to the level of the special**". The still well-known method of specifying this special significance by the legislator is the special formulation of the superimperative norm, which in itself gives the impression to participants in civil circulation that there is no alternative to the manifestation of appropriate behavior, that the established rule of behavior has not only private, but also public significance. Superimperative norms express the originality of civil circulation in each specific state, the peculiarities of public consciousness and public psychology, historical, national, religious, traditional peculiarities, the description of the public psyche, and many other similar factors[8]. For example, Article 879, paragraph 1 of the Civil Code of the Republic of Armenia defines: "The lender shall be entitled to receive interest on loan amount from the borrower unless otherwise provided for by the loan contract. The loan contract shall clearly prescribe the amount of interests and procedure for calculation thereof. At the time of conclusion of the loan contract **the amount of the interest may not exceed** the double the bank rate of the Central Bank of the Republic of Armenia". The wording of the underlined expression in the cited norm gives the impression that exceeding the interest rate is extremely undesirable for the legislator, that such an excess is fraught with serious consequences for civil circulation not only in the private, but also in the public sphere. Such concern of the legislator was conditioned by the difficult socio-economic situation of the 90s, when there was no limit on the amount of interest, lenders took advantage of their

[8] Niederer W. Einfuhrung in die allgemeinen Lehren des IPR. Zurich. 1956. S.331

economically strong positions, dictated high interest rates and received super-profits, and borrowers found themselves under a heavy financial burden, interest rates exceeded the principal amount by several dozen times. All this brought with it human and social unrest and very often led to an aggravation of the criminal situation, which threatened the security of not only individuals, but also the entire legal system. In the conditions of this sad statistics, the RA legislator provided for a limit on interest rates in paragraph 1 of Article 879 of the Civil Code, moreover, also considered the excess of such interest rates as a crime[9]. In such a situation, legal practice should definitely consider the norm enshrined in Article 879, Paragraph 1 of the Civil Code of the Republic of Armenia as a super-imperative norm, which, in the case of applying a foreign law to loan relationships burdened with a foreign element, should not allow the application of a foreign norm that would provide for the freedom to set interest rates.

Another example:

Article 975 of the Civil Code of the Republic of Armenia, in particular, provides: "Conditions restricting the rights of parties under the franchise contract shall be considered null and void, by virtue whereof: (1) the franchisor has the right to determine the price of goods sold by the franchisee or work performed, service rendered by the franchisee or the upper or lower limit of these prices, (2) the franchisee has the right to sell goods, to perform works and render services exclusively for a specified group of purchasers (customers) or for purchasers (customers) having a registered office (place of residence) on the territory determined by the contract."With this norm, the legislator leaves the parties no alternative but to provide that the user must sell goods, perform works or provide services to all potential purchasers (customers) regardless of their location (place of residence), that is, there can be no discrimination based on the national, religious, racial, ethnic, professional and other affiliation of the buyers, regardless of any circumstances indicating the existence of discrimination. With this super-imperative norm, the legislator reaffirms the localization of the constitutional fundamental principle of equality of all before the law to civil circulation, any deviation from which must be excluded by the requirement of super-imperative norms. The constitutional principle of equality of all before the law forms a sense of social justice, healthy competition, and legal protection among the participants in civil circulation, which are necessary components for the normal development of

[9] The act, as usury, was criminalized and was provided for by Article 213 of the Criminal Code of the Republic of Armenia, which entered into force on 01.08.2003, however, the current Criminal Code, which entered into force on 01.07.2022, decriminalized it.

the market and the strengthening and stabilization of the economic foundations of the state.

We can go on with examples; however, perhaps this is enough to understand the special mission of superimperative norms in the legal system of the state.

The entire burden and responsibility for considering an imperative norm superimperative is and should be borne by the court, which must carefully discuss the role and significance of the imperative norm from the perspective of civil circulation and the entire legal system. That is why such great importance is given to judicial practice, and there are such high expectations from the judicial practice, and at the same time, that is why the judicial practice must be extremely careful and insightful when orienting itself on such a significant issue.

By upholding the requirements of national superimperative norms, the Court ensures not only the stability of civil circulation, but also high respect and trust towards the national law and the legal system.

Under the light of all the aforementioned, we would like to return to the administrative case VD/3882/05/22 examined by the RA Court of Cassation and try to subject the legal position expressed therein to scientific examination.

Article 1282 of the RA Civil Code establishes: "The form and validity period of a letter of attorney shall be determined by the law of the state where the letter of attorney was issued".The power of attorney was issued in Ukraine, the legislation of which does not have a term limit, therefore the power of attorney issued in Ukraine for a period of 7 years fully complies with the requirements of the law of the place of issuance, therefore, according to the logic of Article 1282 of the RA Civil Code, it is valid in the Republic of Armenia.

The RA Court of Cassation, however, completely ignored the requirement of Article 1259 of the RA Civil Code, where "The rules of this Section shall not refer to the application of the imperative norms of the law of the Republic of Armenia which, by virtue of their special significance of ensuring the rights and interests of participants in civil practice, exclude the possibility of application of any other law". The RA Civil Code, cited by the Court of Cassation, Article 1282, is included in the "rules of this section," which could not be applied in this case, and thus foreign law (in this case, the law of Ukraine) could not be chosen, since with regard to the term of the power of attorney, Article 322 of the RA Civil Code provides for a super-imperative norm, where "The term of validity of the power of attorney cannot exceed three years." But why do we consider this norm to be super-imperative, which cannot be circumvented under any circumstances and in relation to which no other foreign law can be applied?

Firstly, from the wording of the cited legal provision, the legislator's emphasis is already noticeable: "it cannot be more than three years". Further, The RA legislator considers representation relations for Armenian civil circulation as fiduciary relations, that is, relations that are based on a high level of trust between the parties, and in order for the legislator to be sure that a higher than usual level of trust between the parties is maintained, it has set a legislative requirement to re-confirm this trust between the parties by issuing a new power of attorney every three years. It is no coincidence that the RA Civil Code Article 324, Part 2, stipulates that "The issuer of the letter of attorney may at any time abolish the letter of attorney or the reauthorisation, and the recipient of the letter of attorney may renounce it. An agreement on renouncing these rights shall be null and void". This is evidence of fiduciary duty (high trust), and each of the parties may revoke the power of attorney or renounce it at any time when they consider that a high level of trust is no longer present in the relationship between them.

Moreover, Article 324, paragraph 1 of the Civil Code of the Republic of Armenia provides the power of attorney will terminate, where:

- the legal person, on behalf whereof the letter of attorney has been granted, has terminated;
- the legal person, in the name whereof the letter of attorney has been granted, has terminated;
- the issuer of the letter of attorney has died or has been declared as having no or limited active legal capacity or missing;
- the recipient of the letter of attorney has died or has been declared as having no or limited active legal capacity or missing.

These grounds also indirectly indicate that in the event of the termination or death of the principal or the authorized person and in the other cases mentioned above, the power of attorney should be terminated in order to provide an opportunity for successors or new representatives to raise the issue of fiduciary duty and draw up a new power of attorney. The legislator does not imagine issuing a power of attorney without a time limit, which would be valid even in the event that the principal may die, or be recognized as incompetent, or be recognized as missing and so on.

A very logical question may arise - how come many countries do not impose such a special fiduciary requirement between the parties, why are we the ones doing so? The answer is very simple - this is called the diversity of legal systems, different nations and states have different ideas about the description of the relationship between their citizens and their own society, the national psyche, the

moral system, the formed traditions, the fundamental categories of justice and good faith. It is not correct identify rights or wrongs in this context. We simply need to record the requirement of the legislator, understand the spirit and the context of the law and defend the requirement of our own law, whatever it may be.

We find it appropriate to also note that the legal regulation of the term limitation of the power attorney validity was provided for in exactly the same wording in Article 67 of the previous 1964 Civil Code of the Armenian SSR: "The term of validity of a power of attorney cannot exceed three years". This was a general Soviet approach, which was later borrowed by the CIS Model Civil Code. All post-Soviet states provided for similar norms, some of which later revised their approach and removed the term limitation of the power of attorney. This was the case in Ukraine, and in Russia. For example, Article 186 of the Civil Code of the Russian Federation initially provided for: "The term of validity of a power of attorney cannot exceed three years"[10], but the same article was amended and currently has the following wording: "A power of attorney, in which its term of validity is not specified, retains its force for 1 year". From this wording it is obvious that there is no term limitation, and the parties can provide for any term of validity for the power of attorney.

As we notice, the approaches are changing in the post-Soviet space, and perhaps the Republic of Armenia will also reconsider its strategies in the interests of regional cooperation, however, under the current legal regulations, we have no alternative but to consider that limiting the validity period of a power of attorney is one of the imperative requirements of our civil circulation, which cannot be circumvented under any circumstances.

The precedent decision of the RA Court of Cassation in the administrative case VD/3882/05/22 is in direct contradiction with the legal regulations of Section 12 of the RA Civil Code, and may have undesirable consequences in both judicial and notarial practice.

Those notaries of the Republic of Armenia, who refuse to accept powers of attorney issued abroad and with a validity period exceeding 3 years and to perform legal actions based on them, may find themselves in a whirlpool of judicial appeals. The judicial instances will be guided by the precedent decision of the Court of Cassation of the Republic of Armenia VD/3882/05/22 and will make decisions contrary to notarial approaches. Meanwhile, Article 23, paragraph 1 of the RA Law on Notaries stipulates that "a notary is obliged to refuse to perform a

[10] Гражданский кодекс Российской Федерации. Части первая, вторая, третья. /по состоянию на 20 апреля 2008г/Проспект. 2006. [Civil Code of the Russian Federation], pg.75

notarial action if it contradicts the laws of the Republic of Armenia or other legal acts or international treaties". Moreover, Article 17, paragraph 1 of the same law stipulates that "a notary shall be dismissed from office if within one year he has ratified transactions or approved documents that contradicted the mandatory rules established by law at the time of ratification or approval".

It is highly possible that notaries may be repeatedly called upon to perform notarial acts in cases involving persons represented by foreign powers of attorney issued abroad, and with a term exceeding three years. Notaries will involuntarily find themselves in a targeted situation if they perform these actions, since in that case they will violate the requirements of the RA legislation regarding super-imperative norms.

3. Conclusion

This study has demonstrated that the precedent-setting decision of the Court of Cassation of the Republic of Armenia has introduced interpretative and practical inconsistencies into the domestic legal framework, particularly with respect to the regulation of powers of attorney. In its current form, the decision poses a risk of destabilizing the established norms governing legal representation and civil turnover.

Two primary solutions appear viable:

1. Judicial Revision – The Court of Cassation may reconsider its position and align the contested ruling with the mandatory norms enshrined in the Civil Code of the Republic of Armenia. This would preserve the long-standing rule that limits the duration of powers of attorney to a maximum of three years, thereby maintaining legal certainty and continuity;
2. Legislative Reform – The National Assembly may undertake targeted amendments to the Civil Code, drawing upon the legal models of countries such as the United States, the Russian Federation, and Ukraine, where the duration of a power of attorney is not subject to statutory limitation and may instead be determined by the will of the parties.

In light of Armenia's legal history and the importance of systemic coherence, this paper argues in favor of the first approach. The Armenian legal system has, over decades, developed and matured within a framework that prioritizes normative predictability and procedural stability. Abrupt legislative departure from this model could generate unnecessary legal ambiguity and expose civil circulation to heightened risks and inefficiencies.

Conflict of Interests

The author declares no ethical issues or conflicts of interest in this research.

Ethical Standards

The author affirms this research did not involve human subjects.

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