

DETERMINING THE STATUTE OF LIMITATIONS FOR COUNTERCLAIMS IN CIVIL PROCEDURES

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To overcome the obstacles in adjudication, on December 31, 2021, the Chief Justice of the Supreme People's Court issued Decision 594/QD-CA in 2021 on publication of precedents. Civil and criminal areas cover the 9 precedents published in this Decision. Among these precedents is Precedent 44/2021/AL on determining the statute of limitations for initiating lawsuits of counterclaims.

The precedent comes from Cassation Decision 10/2021/KDTM-GDT dated September 14, 2021 of the Superior People's Court in Ha Noi on the commercial case "Dispute on design consultancy contract", between H Joint Stock Company (plaintiff) (hereinafter referred to as Company H) with P Design and Construction Company Limited (defendant) (hereinafter referred to as Company P), in which Company P filed a counterclaim against Company H. Regarding the statute of limitations for the counterclaim, the Court of Appeal stated that the counterclaim was not limited by the statute of limitations for initiating a lawsuit. However, when conducting the cassation trial, the Economic Court of the Supreme People's Court stated that the Court of Appeal's judgment was incorrect, reasoning that pursuant to Civil Procedure Code 2004 and Civil Procedure Code 2015, a counterclaim is a request that is not included in the plaintiff's petition and can be resolved in an independent case; however, the settlement of counterclaims in the same case with the plaintiff's petition helps to settle the case more accurate and faster. Therefore, it is necessary to determine that a counterclaim is also a petition to initiate a lawsuit, so it must comply with the provisions on the statute of limitations for initiating a lawsuit. Consequently, in the case that there is a counterclaim and a litigant in the case proposes to apply the statute of limitations for initiating a lawsuit, the first-instance court, the court of appeal must determine whether the statute of limitations for initiating a lawsuit of the counterclaim has expired or not in accordance with the laws.

COMMENTS AND RECOMMENDATIONS

Civil Procedure Code 2004 and Civil Procedure Code 2015 both have no clear regulation on the statute of limitations for counterclaims. Therefore, before promulgation of this precedent, there have been many different opinions and interpretations on whether or not the statute of limitations for counterclaims should be determined. One opinion states that counterclaims are also considered as lawsuit petitions; thus they must be applied with the same statute of limitations as that for lawsuit petitions. On the contrary, there is another point of view that counterclaims are always filed after lawsuit petitions, only when there is a petition to initiate a lawsuit will a counterclaim arise. Additionally, no provision in Article 200 of Civil Procedure Code 2015 on the defendant's right to request counterclaim stipulates that counterclaims should be applied with the statute of limitations for petitions. Thus, the promulgation of Precedent 44/2021/AL has solved the problem and unified the point of views of the courts on the statute of limitations for counterclaims.

Enterprises should study and update the court's opinions on adjudication in the precedents issued under Decision 594/QD-CA to ensure their legitimate rights and interests and minimize unnecessary legal risks.

