

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

**ON THE CASE OF CONFORMITY OF PART 1 OF ARTICLE 60 OF THE RA
ADMINISTRATIVE PROCEDURE CODE AND PARAGRAPH 6 OF POINT “T” OF
PART 1 OF ARTICLE 22 OF THE RA LAW ON STATE FEE WITH THE
CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS OF THE
APPLICATION OF KAREN AVAGYAN**

Yerevan

10 July 2018

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

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

the representative of the applicant: T. Ghazaryan,

the respondent: A. Kocharyan, official representative of the RA National Assembly, the Chief
Legal Expert of the Legislative Expertise Division of the Legal Expertise Department of the RA
National Assembly Staff,

pursuant to Point 1, Article 168, Point 8, Part 4, Article 169 of the Constitution of the
Republic of Armenia, Articles 22, 40 and 69 of the Constitutional Law on the Constitutional
Court,

Examined in the open proceeding by the written procedure the case of conformity of Part 1 of
Article 60 of the RA Administrative Procedure Code and Paragraph 6 of Point “T” of Part 1 of

Article 22 of the RA Law on State Fee with the Constitution of the Republic of Armenia on the basis of the application of Karen Avagyan.

The Administrative Procedure Code of the Republic of Armenia (hereinafter - the Code) was adopted by the National Assembly on December 5, 2013, signed by the President of the Republic of Armenia on December 28, 2013 and entered into force on January 07, 2014.

The norm of Article 60 challenged in the present case, titled "Distribution of court costs between the parties to litigation", reiterates:

“1. The party, against whom the decision is adopted or the appeal is rejected, according to the Judicial Department of the Republic of Armenia carries responsibility for the reimbursement of the sums paid to the witnesses and experts, as well as an obligation to reimburse the litigation costs incurred by the other party to the extent that they were necessary for the effective exercise of the right to judicial protection. Any costs related to the measure of judicial protection that did not serve its purpose are assigned to the party using this measure, even if the decision is adopted in favor of this party.”

The RA Law "On State Fee" (hereinafter - the Law) was adopted by the National Assembly on December 27, 1997, signed by the President of the Republic on January 10, 1998 and entered into force on January 11, 1998. The challenged provision of Article 22 of the Law, titled "Concessions in respect of state fee in courts", reiterates:

“In courts from payment of the state fee are released:

...

i) non-profit organizations and individuals

...

- on appeals against decisions on the cases of administrative violations rendered by the relevant authorized bodies”.

The case was initiated based on the application of Karen Avagyan lodged to the Constitutional Court on February 15, 2018.

Having examined the application, written explanation of the respondent, as well as analyzing the relevant provisions of the Code and the Law, and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The applicant's positions

The applicant considers that the interpretation of Article 60 of the Administrative Procedure Code of the Republic of Armenia envisaged in the law enforcement practice, which in its turn is a consequence of the ambiguity of the legal norm enshrined in Part 2 of Article 22 of the RA Law on State fee, contradicts Articles 39 and 79 of the RA Constitution, as well as Part 1 of Article 10, Parts 1 and 3 of Article 60 of the Constitution.

In the Applicant's opinion, the possibility of exemption in respect of state fee on the basis of Paragraph 6 of Point "i" of Part 1 of Article 22 of the RA Law on State Fee equally applies also to those cases where the claim of the plaintiff is satisfied by the RA Administrative Court but subsequently, in response to the appeal lodged by the respondent against this decision, it is canceled by a higher judicial authorities.

According to the Applicant, the interpretation of the provisions in question in the law enforcement practice violates the constitutional right of ownership, imposing on the person the duty to pay a state fee in the case when the law does not provide for such a duty.

2. The respondent's positions

According to the respondent, the challenged provisions comply with the requirements of the RA Constitution with the following reasoning.

The legislator found envisaging the provisions of the constitutional legal dispute of the provisions arising from the theory of compensation for the caused damage as a legal basis by the concept of reasonable distribution of court costs, according to which the damage caused by statutory procedures is due to the expenses that a natural or legal person, whose rights are violated, must incur to restore his/her violated rights, including the loss and the damage to his/her ownership (property). In addition, the legislator grounded the provisions of Part 1 of Article 60 of the RA Administrative Procedure Code, as well as the provisions prescribed by Paragraph 6 of Point "I" of Part 1 of Article 22 of the RA Law on State Fee on the well-known principle of international law - restitution at integrum (restoration to original condition).

3. Circumstances to be clarified within the framework of the case

In the framework of the constitutional legal dispute of the present case, in assessing the constitutionality of the challenged norms the Constitutional Court considers it necessary to clarify:

- do the norms, enshrined in Part 1 of Article 60 of the Code, guarantee the full exercise of the constitutional right of a person to judicial protection in the systemic integrity with other norms of the Code, taken account the fact that the effectiveness and accessibility of the exercise of this right are objectively conditioned also by the legal possibility of incurring court costs by one or the other party (their fair distribution between the parties to the trial)?

- is the concession in respect of a state fee stipulated by Paragraph 6 of Point “i” of Part 1 of Article 22 of the RA Law on State fee in the context of the constitutional legal regulations of Article 61 (Part 1), Article 63 (Part 1), Articles 75 and 79 of the Constitution sufficiently acceptable in the applicable procedures and does it serve as an effective measure of exercise of the right to judicial protection in certain cases as follows from administrative and legal relations.

4. Legal positions of the Constitutional Court

4.1. A systematic analysis of Articles 2, 3, and 7 of the Law and other norms interconnected with them shows that the state fee is a statutory fee for certain services or actions for the exercise of the powers of state bodies, including those filed for legal action by natural and legal persons’ statements, applications, appeals and cassation appeals lodged against the judicial acts, as well as copies (duplicates) of the documents issued by the court, paid to the state budget of the Republic of Armenia and (or) municipal budgets by individuals and legal entities. Proceeding from the legal content and purpose of this fee prescribed by Law, the Constitutional Court reiterates that the establishment of the obligation to pay the state fee is aimed, first of all, to a certain extent to reimburse the expenses related to the provision of public services, including the implementation of justice, and in the case of the latter, also partially suppress the flow of obviously groundless statements, thereby contributing to an increase in the effectiveness of the implementation of justice, and prevention of possible abuse of the right to apply to the court.

Consequently, the Constitutional Court considers it necessary to state and at the same time finds that the fee to pay a state fee is intended to deprive a person of the constitutional right to judicial protection or to restrict the exercise of this right. The legislator, regulating relations of the state fee in courts, entrenched by the constitutional duties of establishing the organizational

mechanisms and procedures necessary for protection of the rights and freedoms of individuals and their implementation, guaranteeing the right of access to the court, which derives directly from the norms prescribed in Parts 2 and 3 of Article 3, Part 1 of Article 63, and Article 75 of the Constitution. The task of the state arising from these duties is to guarantee the appropriate balance, on the one hand, between the duty of the person to pay the state fee and, on the other hand, between ensuring the effectiveness of the constitutional right of a person to protect his/her rights and freedoms in court. The Constitutional Court considers that guaranteeing of such a balance with a legal orientation pursues a constitutional legal goal. Consequently, the mechanism of the state fee with its above-mentioned tasks aimed at the effective administration of justice pursues the goal of realizing the individual's right to judicial protection of his/her rights and freedoms by legal criteria stipulated in Articles 61 and 63 of the RA Constitution. Simultaneously, the Constitutional Court considers it necessary to note that the paid state fee can be reimbursed at the expense of the parties to judicial proceeding, in accordance with the procedure established by law, which is also conditioned by the nature of adversarial justice.

4.2. From the general content of the issues posed by the applicant, the analysis of the legal regulation of the challenged Law shows that the legislator has also established certain additional guarantees that are also aimed at ensuring the marked balance. In particular, according to Article 22 and Article 31 (Points "c", "c.1" of Paragraph 1 and Paragraph 4) of the Law, there are concessions for the individual payers or a group of payers in respect of state fee that are applicable either by virtue of law (Article 22), in fact excluding judicial discretion, or may be established by a court (Article 31 of the Law) for the certain cases specified in Article 9 of the Law, based on the property status of the parties. Moreover, the aforementioned concessions include, amongst others, the legal possibility of the full exemption from state fee.

The Constitutional Court considers that such a legal regulation within the scopes of the exercise of the right to judicial protection is aimed at creating the possibility of guaranteeing a fair balance between, on the one hand, the accessibility of the court, on the other hand, the constitutional and legal need to provide judicial protection in social matters or in certain cases of public interest, due to certain legal criteria.

Consequently, prescription of such concessions (or exceptions to general rules) within the scopes of the obligation to pay state fee pursues fair and effective exercise of the right prescribed by the Constitution.

4.3. Turning to the issues raised by the applicant about the constitutionality of the regulation and interpretation in the law enforcement practice within the framework of the exercise of the right to judicial protection of the mechanism of concessions in respect of the state fee and its application at various stages of the judicial process, the Constitutional Court considers it necessary to examine the issue in the context of both the legal regulations and other norms interrelated with the challenged norms of Article 22 of the Law and Article 60 of the Code , and in the context of legal positions and criteria expressed in Decisions of the Constitutional Court established in the case law practice of the European Court of Human Rights.

From the general content of the provisions of Chapter 10 of the Code, titled "Court costs", and the rules of the Law interrelated therewith, as follows:

- court fees are an objective precondition and consequence of the administration of justice, the parties in the trial can hold these costs as the obligation to reimburse at various stages of the trial, including judicial review;

- the state fee is a form of court expenses (Article 56 of the Code), which is a prerequisite for the exercise of the right to judicial protection in the cases which are exhaustively prescribed (Article 9 of the Code);

- the relations linked with the sum of the state fee, with the exemption from its payment, deferral or installment in respect of the state fee and reduction of its size are regulated by the Law (Article 57 of the Code);

- in administrative cases other than state fees judicial proceeding fees may include other expenses - payments to witnesses, experts, representatives of the parties, expenses related to the implementation of court requirements and court orders, etc. (Article 58 of the Code).

Thus, the Constitutional Court reiterates that the legislator, specifying the single composition of the court fees, regulating the relations connected with these expenses in the framework of administrative proceedings, was guided both by the general principle of compulsory payment of the state fee, and by the general principle of exemption from this payment (establishment of a concession) prescribed in the Law, and the features are due to the nature of some administrative cases (paragraph 6 of Point "I" of Part 1 of Article 22 of the Law). The principles of applying these mechanisms to individuals are also common (Article 31 of the Law).

At the same time, the legislator specified the regulation of the distribution of court fees. In particular, Article 60 of the Code envisages exhaustive preconditions, conditioned by the outcome of the consideration of a case or by one or another procedural process under which these expenses are reimbursed at the expense of the obliged legal entity, including the paid state fee. With regard to the challenged regulation of the above-mentioned Article of the Code on the reimbursement of court fees, the legislator was guided by the assumptions of adversarial justice under which:

- the party against which the decision is taken or whose appeal is rejected ("loses" in a legal dispute), bears the obligation to reimburse the sums paid to witnesses and experts, as well as the obligation to reimburse the court fees incurred by the other party to the extent necessary for the effective exercise of the right to judicial protection;

- expenses related to the measure of judicial protection that did not serve its purpose are imposed on the party using this measure, even if the decision is rendered in favor of this party.

Thus, in special cases caused by the above-mentioned circumstances, the legislator with respect to distribution court fees objectively identified in particular the outcome of the judicial process, considering the **effectiveness** as an assessment criterion, and, accordingly, established the obligation to reimburse the court fees for the legal entity, whose court protection of rights and legitimate interests were objectively ineffective.

Therefore, the provision of such a principle of legal regulation of the distribution (compensation) of court fees pursues a legitimate objective that meets the criteria for the exercise of the right in accordance with Articles 61 (Part 1), 63 (Part 1) of the Constitution, it is sufficiently defined (Article 79 of the Constitution) so that specific parties in the administrative court proceedings are able to foresee the legal consequences arising from the outcome of the trial related to the discharge of a possible duty to reimburse court costs.

4.4. The Constitutional Court in its Decision DCC-758 of September 9, 2008, expressed the legal position that as a result of the implementation of the function of each court, the court protection of the person's rights acquires a new quality, the judicial act adopted as a result of each of the judicial instances exercising its functions has an independent role in the entire process of exercising the right to judicial protection. Developing the noted legal position in the scopes of the present case, the Constitutional Court considers that the act adopted by the lower court as a result of a new examination on the basis of an act of a higher court also pursues an

independent goal, creating new possible legal consequences for the parties in the process of considering the given case. Consequently, as a result of such a judicial act, new legal relations also occur related to the appeal of this act, under which the judicial act adopted as a result of the judicial process is a new object of control by a higher court. And in this connection, the higher court, exercising monitoring over the judicial act of the lower court, containing the alleged judicial error, performs an action that, in the sense of the law, is an independent object of collecting the state fee. Moreover, the state fee, recovered in the disputable situation, **serves the same purposes as this institution has in general, namely, to reimburse the expenses caused by the consideration of the case in a higher court.**

Taking into account that in the situation indicated by the applicant in the present case, the party, which lodged an appeal, based on the content of the challenged legal regulation under Article 22 of the Law, continues to use such legislative guarantees that are aimed at excluding the possibility of preventing the exercise of the right to access to a court by the obligation to pay a state fee, the Constitutional Court considers that the aforementioned challenged provision in such an interpretation given to it in the law enforcement practice, according to which in the procedures on judicial acts issued in the framework of administrative proceedings, the concessions in respect of the state fee are not granted to the person who benefitted from this concession, in the aspect of the alleged violation of the right to access to a court, raises the issue of constitutionality. It follows from the content of the challenged legal regulation of the above-mentioned Article of the Law that when establishing a concession as an exemption from of the state fee with respect to appeals against the decision taken by the relevant authorized bodies with respect to administrative offenses, the legislator did not provide for any restriction or exception related to the continued application this concession in the scopes of the possible further appeal of the judicial acts. However, the Constitutional Court considers that, within the scopes of the joint application of the challenged norms of Article 22 of the Law and Article 60 of the Code, the rules for the distribution of court fees cannot be interpreted in such a content per se, these expenses were collected from a person which benefits from the concession for a state fee, including also the sum paid for state fee. In the cases, when with respect to the unfavorable outcome of a court proceeding or under a specific reasoning provided by law, the subject-participant of the proceedings, which by virtue of the law enjoyed a concession regarding the

payment of a state fee, the court decision may incur the obligation to reimburse court fees on the reasoning prescribed by the Law.

The Constitutional Court reiterates that the law enforcement practice should be guided by this perception of the challenged provisions, ensuring the full exercise of the right to judicial protection also in the procedures for judicial review. Meanwhile, when holding the decision N ՎԴ/3146/05/16, dated 13.09.2017, the Administrative Court of Appeal of the Republic of Armenia, based on Article 60 of the Code (including the challenged provision of the mentioned Article), recovered the corresponding sum from the Applicant in favour of the other party in the amount prescribed in complaint, which is the reimbursement of the state fee paid in advance.

4.5. Turning to the practice, approved by the case law of the European Court of Human Rights, within the framework of the legal regulation challenged in the present case, the Constitutional Court considers it necessary to identify the following positions according to which:

“...further, the Court reiterates that, where appeal procedures are available, the High Contracting States are required to ensure that physical and legal persons within their jurisdictions continue to enjoy the same fundamental guarantees of Article 6 before the appellate courts as they do before the courts of first instance” (see: Case of Paykar ev Haghtanak LTD v. Armenia, § 45, 20 December 2007, <http://hudoc.echr.coe.int/eng?i=001-84119>);

“... Moreover, restrictions which are of a purely financial nature and which are completely unrelated to the merits of an appeal or its prospects of success should be subject to a particularly rigorous scrutiny from the point of view of the interests of justice” (see *Podbielski and PPU Polpure v. Poland*, no. 39199/98, § 65, 26 July 2005).

Based on the review of the Case and governed by Point 1 of Article 168, Point 8 of Part 1 of Article 169, Parts 1 and 4 of Article 170 of the Constitution of the Republic of Armenia, Articles 63, 64 and 69 of the Constitutional Law on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. Part 1 of Article 60 of the Administrative Procedure Code of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia in such a constitutional legal

interpretation that, in cases where a party of legal proceedings has benefited from the concession to the state fee by virtue of law, by the court decision s/he may incur court costs which cannot include the amount of state fee provided by this concession.

2. Paragraph 6 of Point "i" of Part 1 of Article 22 of the Law of the Republic of Armenia on State fee is in conformity with the Constitution of the Republic of Armenia in such a constitutional legal interpretation, according to which, in courts, non-profit organizations and individuals are exempt from payment of state fees in respect of complaints against decisions in cases of administrative offenses issued by the relevant authorized bodies at all stages of judicial appeal.

3. In accordance with the requirement of Part 10 of Article 69 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, in accordance with Points 1 and 2 of the operative part of this Decision, the final judicial act on the basis of the newly revealed circumstances shall be reviewed in accordance with the procedure established by law.

4. Pursuant to Part 11 of Article 69 of the Constitutional Law of the Republic of Armenia on the Constitutional Court, the aforementioned right to review the final judicial act made against a person on the basis of a newly revealed circumstance also applies to those persons who, at the date of registration of the appeal of the present case at the Constitutional Court still retained their right to apply to the Constitutional Court on the same issue, but they did not apply to the Constitutional Court.

5. Pursuant to Part 2 of Article 170 of the Constitution of the Republic of Armenia this Decision shall be final and shall enter into force upon its promulgation.

Chairman

H. Tovmasyan

10 July 2018

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