

Report Examination of the Judicial Cases Filed against the RA Ministry of Labour and Social Affairs

Summery

“The Protection of Rights without Borders” NGO, with the financial assistance of the National Democratic Endowment (NED) has been implementing the Project on “Improvement of Judicial Reforms: Improvement of Public Administration Quality: Is Armenia Creating a New Reality”.

In the scope of the Project, an examination of the judicial acts adopted by the RA Administrative Court against the state and local self-government bodies have been conducted, one of the aims of which is to raise the systematic problems related to the systematic administration related problems. Particularly, 40 decision out of 42 decisions filed and registered in the court during 2019 and 2020 respectively and adopted until June 30 of 2020, as well as 9 discontinuation decisions by 13 appeals have been analysed in the scope of the Project.

By the monitored cases, 27 cases have been satisfied completely, 2 cases partially and 11 cases have been rejected respectively.

The appeals related to the issues of appointment of pension and recalculation of the professional working experience, appointment of childbirth benefits and their recalculations.

70 % of the cases related to pension have been satisfied completely.

By 36 cases, the RA Ministry of Finance was involved as a third party, from which in case of 29 cases on the initiative of the Court and in case of 7 cases on the ground of the application.

2 cases out of 4 cases, without the involvement of the RA Ministry of Finance, related to the provision of childbirth pension and the 2 cases to the recalculation of the pension respectively.

During the examination of 3 cases, a decision to conduct a written trail was adopted.

As shown by the examination of the decisions, the judges conducting the examination of the cases did not demonstrate similar approach in regard to the issue of the applicant being released from the payment of state duty fee.

Thus, by the 4 monitored cases, the Court stated, that the applicant was legally released from the obligation to pay the state duty fee. By the mentioned cases, issues related to the child pension (2 cases), calculation of professional working experience, which should be included in the remuneration of the pension (1 case) and remuneration of pension (1 case).

By the monitored 12 cases, the court recorded, that the factual and legal ground to adopt it into the administrative act were not properly included and reasoned.

In regard to the monitored 20 cases, the court recorded, that the administrative body did not carry out comprehensive, complete and objective examination of the factual circumstances.

8 appeals out of 32 satisfied appeals respectively related to the recalculation of the pension appointed to the judge.

By these cases, the court recorded, that while calculating the amount of the pension, before its legally entry into force (01.07.2014), the amount of the salary for the last position as a judge should be calculated only in case, if the amount of the calculated salary is bigger, than as the amount of the pension calculated based on the RA Law on “Remuneration of Persons Holding Public Office”, based on the legal approach of the Decision number U¹Ω-1302 of the RA Constitutional Court.

According to the statement of the Court, in those cases, when the right of the citizen to pension was ceased on the ground of Part 5 of Article 9 of the RA Law on “Ensurance, Service and Social Guarantees of the Activities of Public Officials”, if a state official after being appointed to pension gets into military service, has been appointed in the positions of penitentiary servant, servant of investigative committee, servant of the RA Special Investigation Service or in the position of a judge respectively, after the elimination of that ground, the pension of the latter is a subject to recalculation after the termination of the right to pension with the relation to the calculation of the professional working experience.

The Court confirmed, that the decrease of the amount of pension in extrajudicial order is not acceptable.

It is worth mentioning, that in terms of considering the notes made in the workbook by the respondent as unreliable the Court mentioned, that in order to question the fact presented by the Applicant it should at least be confirmed, that the notes made in regard to the working experience in a certain place are not reliable and the lack of data in the relevant places can not be an evidence for the reliability of data.

By the cases on childbirth allowance, the Court confirmed, that every parent can apply for the pension.

In this regard, taking into account the interest of the child, the legal practice should be guided by an approach, that no essential difference should be separated in regard to the issue whether the childcare was carried by the father through the decision of the court or by mutual agreement with the mother of the child.