

Summary

The Protection of Rights without Borders NGO (Organization) has implemented the Project “Public Administration System Reforms: Is Armenia Creating a New Reality” from 1 March 2020 to 31 March 2021, with the financial assistance of the National Endowment for Democracy (NED).

In the framework of the Project, the Organization examined all 10 judgments as well as 40 decisions out of 47 decisions on the discontinuing the proceeding in regard to appeals filed with the Administrative Court (Court) of the Republic of Armenia against the Armenian Ministry of Defense pronounced in the period of 2019 and until 30 June 2020.

The Court fully granted the appeals on four cases (40%), 1 case was granted partially (10%) and five appeals were dismissed (50%).

The granted cases filed against the Ministry of Defense related to the following issues:

- Issues related to the service, for example, related to the disciplinary sanctions. The Court found that the administrative body in charge of examining the case did not take into account that fact that the internal investigation should aim to reveal the nature of the disciplinary violation, the causes and reasons for that action, its circumstances and outcomes, the degree of guilt of the serviceman and to determine the type of the disciplinary sanction, therefore the internal investigation should not be carried out incompletely or with bias. In this regard, the circumstances mitigating or aggravating the liability, as well as a reference to the relevant provisions of the Armenian Law on “Disciplinary Code of the Armed Forces of the Republic of Armenia” should be included in the conclusion.
- In regard to two cases, the court ruled that the administrative body violated the principle of legality by exceeding its powers. In particular, the Ministry of Defense ignored the administrative acts adopted by another administrative body. The Ministry attempted to eliminate the administrative act as a “superior”, meanwhile, the illegal administrative act can be recognized invalid only by the same administrative body, superior administrative body and by the court respectively.

- In regard to three cases, which related to the leave which was not paid and compensation for working on Saturdays, the Court found that the administrative body failed to take into account the position expressed in the ruling ՍՊ-1424 of the Constitutional Court of the Republic of Armenia on the final calculation of the salary and unused leave days. According to the ruling, ensuring the legal regulation for the above mentioned compensation regulations is the positive obligation of the state.
- One of the cases related to the issue of eligibility to conscription. The Applicant was in the Republic of Armenia as a foreigner on the ground of a permanent residence, without having the citizenship of the Republic of Armenia. However, the Ministry of Defense notified the Applicant, that he was a conscript and had the obligation to do the compulsory military service. Moreover, a criminal case was instituted against him on the ground of avoiding the military service. The Court found that the administrative body did not conduct a proper examination on the given legislation as of the period, when the Applicant obtained a citizenship of another country, particularly Article 14 of the Armenian Constitution, Article 1 of the Armenian Law on “Citizenship of the Republic of Armenia”, pursuant to which, an Armenian citizen cannot be a citizen of another country. The Armenian citizenship of the Applicant after obtaining citizenship of another country should have been terminated. The Armenian Law on “Citizenship of the Republic of Armenia” did not regulate the order of determining the citizenship of a child citizen.

The dismissed cases related to the legality of the penalties set for avoiding compulsory military service, allocation of military pension, recognizing the competition for holding a position during the military service illegal. In these cases, the Court found no violations on part of the administrative body.

The inaction and exceeding of the powers can be considered as the main, key problem of the Ministry of Defense. Particularly, the analysis of the case-law demonstrates that the Ministry of Defense has not examined the applications filed by servicemen or the Ministry failed to take into account administrative acts adopted by other competent authorities.

In some cases, the Ministry of Defense, while carrying out its administration, applied repealed legal acts or their provisions. Some workload could have been avoided, if the Ministry acted upon the applications filed by the servicemen or examined them so that the application were granted not after the submission of the appeals to the court, but before.

It should be stressed that unlike other administrative bodies monitored by the Organization, the Ministry of Defense demonstrated complete inaction rather than failure to ensure complete, objective and comprehensive examination of the case.

In light of the above-mentioned, we can conclude that it is possible to avoid overburdening the Court , if the applications filed to the Ministry of Defense are examined properly pursuant to the relevant legislation and if the legislation regarding the applicants are respectively taken into account by the relevant bodies.