



Protection of Rights
Without Borders NGO



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**ISSUES RELATED TO THE
LEVY OF STATE DUTY
FOR LABOUR DISPUTES**



This policy document was prepared by the “Protection of Rights without Borders” Non-Governmental Organization (hereinafter referred to as the Organization) in the scope of the “EU4LabourRights: Increasing Civic Voice and Action for Labor Rights and Social Protection in Armenia” project (hereinafter referred to as the Project). The Project is implemented in collaboration with “OxYGen” Foundation, “Socioscope” NGO, “Asparez” Journalists Club NGO, Media Diversity Institute – Armenia and “Armenian Progressive Youth” NGO in partnership with the “Protection of Rights without Borders” NGO and Eurasian Partnership Foundation, respectively. The Project is financed by the European Union.

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The insurance of the protection of labor rights, including through courts, is considered one of the priorities of the Republic of Armenia Governmentⁱ.

The insurance of labor rights has been problematic issue in the Republic of Armenia for years, therefore it is important to ensure effective mechanisms for the protection of labor rights, including through access to court.

Despite the existing legislative guarantees, currently a number of problems are recorded in terms of access to judicial protection in terms of labor disputes, including the levy of state duty fee from the applicants for employment dispute cases, particularly at the Administrative Court, in regard to the evaluation of the main and derivative demands and their remuneration for state duty fee.

It should be mentioned, that the Court of General Jurisdiction in different composition, did not apply a unified approach in regard to the levy of state duty fee by the employment disputes with the same demands and the Court of General Jurisdiction and Administrative Court, respectively apply different approaches in cases of the similar demands.

In 2021, “Protection of Rights without Borders” non-government organization (hereinafter referred to as NGO) conducted a monitoring of administrative and civil judicial cases on labor relations.

In the scope of the monitoring, 496 cases on employment relations were monitored, from which 384 decisions on civil and 112 decisions on administrative cases, as well as 123 decisions on discontinuation of the caseⁱⁱ.

According to the outcomes of the monitoring:

- ✓ The courts levy state duty fee in a number of cases on labor disputes in case when the applicant is released from the obligation of paying state duty at courts.
- ✓ Evaluating the demand to provide a compensation in the amount of up to 12 times of the salary for the failure to restore to the previous job as a main demand and

levying state duty fee in this regard, under the conditions of recognizing the decisions on dismissal annul, when the person was not restored to the previous position.

Taking into consideration the importance of judicial protection and in order to ensure the access to court, the applicant is released from paying state duty fee. Thus, according to Part 1 of Paragraph 1 of Article 22 of the Republic of Armenia Law on “State Duty”, the claimants in regard to claims for charging of salary and other payments equivalent thereto and on other labor disputes are released from paying state duty fee. In a line with Article 263 of the Republic of Armenia Labor Code, a labor dispute is a disagreement between the employee and the employer that arises during the fulfilment of rights and obligations prescribed by the labor legislation, other regulatory legal acts, internal legal acts, the employment contract or collective agreement.

➤ *The levy of state duty fee from the applicant of labor disputes*

As shown by outcomes of monitoring, both the Republic of Armenia Courts of General Jurisdiction of First Instances and the Republic of Armenia Administrative Court did not apply a similar approach in terms of the levy of state duty by the same case and by the cases with the similar claims. The aforementioned relates both to the separation of main and derivative claims, that the applicant was released from the obligation of paying state duty fee and to the issues regarding the levy of the state duty in case of the derivative claims. By 11 (4%) cases out of 256 monitored civil casesⁱⁱⁱ, the Court did not consider that the applicant was legally released from paying the state duty fee, out of which 5 cases referred to the dismissal, including on disciplinary grounds, reduction of positions, reaching of retirement age and on the disagreement to the change of the essential conditions of employment, 4 case to the final settlement, the levy of the salary and other payments and the 2 cases related to the provision of decision on dismissal, respectively.

5 appeals by the mentioned 11 cases were rejected. By 28 cases out of the 87^{iv} cases monitored by the Administrative Court, the Court did not consider that the applicant was released from the obligation of paying state duty fee. 14 cases out of the mentioned 28 cases related to the release from public service and restoration to the previous job, 8 cases related to the payment of the salary and other relevant payments, 3 cases to the appealing of the decision on the appointment of disciplinary sanction, 1 case to the recognition of the competition results annul and 1 case to the obligation to provide the copies of the conclusion issued in the outcomes of the exam.

It should be mentioned, that the Court of Appeal did not apply a similar approach in terms of the levy of the state duty fee from the respondent by labor disputes.

In one of the cases appealed at the Republic of Armenia Court of Appeal^v, the Court considered the issue of distribution of judicial expenditures solved, that the appeal was a subject of rejection and the applicants paid the state duty fee. In another case^{vi}, the Court of Appeal stated, that the claimant paid state duty fee in the amount of 4000 AMD, meanwhile according to the legislative demands of Article 22 of the Republic of Armenia Law on “State Duty”, the latter is exempt from paying the state duty fee at the courts in the cases of the payments of salary and other equal payments, therefore no legal expense for state duty fee is recorded.

According to the Court of Appeal, even though the applicant paid a state duty in the amount of 4.000 AMD, according to the legislative demands, the applicant, as envisaged by Article 22 of the RA Law on “State Duty”, is released from the obligation of paying state duty fee, therefore, pursuant to Parts 1 and 2 of Article 22 of the Republic of Armenia Civil Procedure Code, Paragraph “a” of Article 38 of the Republic of Armenia Law on “State Duty”, the money of the state duty fee should be returned to the applicant on the ground of extra payment.

In the second case, the applicant paid the state duty fee and the Court of Appeal noted, that the applicant was released from paying the state duty fee on the ground of

Point “a” of Article 22 of the RA Law on “State Duty”, therefore under the conditions of the rejection of the appeal, the issue should be considered as solved^{vii}.

Non-unified approaches were applied in 4 cases^{viii} (11%) out of 38 cases, respectively on the levy of salary and other payments and the RA Court of General Jurisdiction did not consider that the applicant was released from the obligation of paying the state duty fee. It is especially notable, that by one of the mentioned cases, the RA Court of Appeal mentioned, that in these cases, taking into account the fact that the state duty fee was respectively paid, as envisaged by the law, the appeal was satisfied and the judicial case was recognized annul and the case was forwarded to a new examination: the issue of distribution of judicial expenditure should be referred to during the new examination of the case^{ix}.

As it has been already mentioned, in contrast to civil cases, in a number of administrative cases, the Republic of Armenia Administrative Court recorded that the applicant was not exempt from paying the state duty fee.

It should be noted, that the Administrative Court did not apply a similar approach in terms of the issue, that in the above-mentioned cases, the applicant was not released from paying the state duty fee, as prescribed by the law.

Thus, in the monitored 8 (62%)^x cases out of 13 cases on the levy of the salary or other payments, the Court recorded that the applicant was not legally exempt from paying the state duty fee. For example, by 2 cases out of 6 monitored cases in regard to working on Saturdays without remuneration, the Court recorded that the applicant was legally exempt from paying the state duty fee, since according to point “a” of Article 22 of the RA Law on “State Duty”, the applicants are exempt from paying the state duty fee in the courts by the cases of the payments of salary and other equal payments^{xi} or in a line with point “a” of Article 22 of the RA Law on “State Duty”, while submitting the appeal, the applicant did not have an obligation to pay state duty fee, therefore no judicial expense for paying state duty fee was recorded^{xii}.

In the case N ՎԴ1/0079/05/19^{xiii}, related to the issue of working on Saturdays without remuneration, the applicant filed a motion to postpone the payment of the state duty fee, which was granted by the Court. The lawsuit of the mentioned case was satisfied and the Court adopted a decision, according to which the obligation for the compensation of the judicial expenses, state duty fee bears the Ministry of Defense and the latter is obliged to pay the state duty in the amount of 4000 AMD in favor of the state.

In 7 cases (19%)^{xiv} out of 36 monitored cases on the dismissal from work on non-disciplinary ground, the Court recorded, that the applicant was not legally exempt from paying the state duty fee.

A non-similar approach was applied by the Court also while examining the factual circumstances of administrative cases. For example, by the cases N ՎԴ/2521/05/19 and NՎԴ/2518/05/19, respectively, in one case the Court recorded that the applicant was exempt from paying state duty fee, while in the other case, applicant was obliged to pay state duty fee. It is also notable, that in 6 cases out of 7 cases, the appeal was satisfied.

The verdict of the rejected case was appealed and as stated by the Court of Appeal, the applicant was exempted from the obligation of paying state duty fee^{xv}.

In 7 cases (39%) out of 18 cases on the dismissal on disciplinary ground, the Court recorded that the applicant was not exempt from paying the state duty fee^{xvi}.

In 3 cases (43%)^{xvii} out of monitored 7 cases, the Court did not consider, that the applicant was legally released from the obligation of paying state duty fee.

As we can see, both in civil and administrative cases, respectively, the courts do not apply a unified approach towards the applicants in regard to the issue of paying state duty for labor disputes, in case when the law directly envisages such privilege.

Besides, the practice of applying non-uniform approach in regard to making a note in the judicial acts about the return of the already paid state duty fee was recorded under the circumstances, when the applicant was exempted from the obligation of paying state duty fee.

Thus, only in one group of the cases, the Court clearly mentioned in the decision, that, even though the applicant paid state duty fee, however taking into consideration the fact, that in by point “a” of Article 22 of the RA Law on “On State Duty”, the applicants are exempt from paying the state duty fee in the courts for the cases of the payments of salary and other equal payments, as well as for labor disputes, the paid state duty fee is respectively subject to return^{xviii}.

And in another case, the Court mentioned, that the applicant paid the state duty fee in case, when the later was released from such an obligation, however, did not make an additional note that the state duty fee was subject to return^{xix}.

- *The levy of the state duty fee, in case when the applicant is exempted from such obligation*

As shown by the results of the monitoring, the First Instance Courts of General Jurisdiction and the Administrative Court applied different approaches in terms of the levy of paid state duty fee from the respondent in case, when the applicant is legally exempted from the obligation of paying state duty fee.

Thus, the Court of General Jurisdiction highlighted in the civil cases, that in cases when the applicant was legally exempted from the obligation of paying the state duty fee, however, the same privilege is not applicable in case of the respondent and charged the state duty fee^{xx}.

In contrast to civil cases, by the satisfied administrative cases, when the applicant was legally exempt from paying state duty fee and did not pay it, the Administrative Court did not levy the state duty fee from the respondent and stated, that the issue of the state duty fee should be solved and made a reference to the decision of the RA Court of Cassation, when the applicant was legally released from the obligation of paying state duty fee and did not pay it and the Administrative Court, as a rule did not levy the state duty fee

from the respondent and the Court recorded that the issue of the state duty fee should be considered as solved and made a reference to the verdict of the Court of Cassation (see decision number ՎԴ/1115/05/16 of the Court of Cassation, dated 30.11.2018)^{xxi}.

However, some cases were recorded^{xxii}, when the Administrative Court mentioned, that taking into account the circumstance, that the appeal is satisfied and the state duty fee was not paid by the applicant, conditioned by the circumstance of being exempt from paying state duty fee, money in the amount of 4.000 AMD was charged from the respondent and transferred to the State Budget as a state duty fee.

As it becomes clear, the Administrative Court, by the jurisdiction of its cases, the employer, state or community institutions who made a violation, is released from paying state duty fee, which softens the impact of the prevention of the judicial act on violation and creates unequal conditions for the private employer.

➤ *Levy of the state duty for derivative claims*

In a number of cases, the First Instance Court of General Jurisdiction did not differentiate the main and derivative claims, as a result of which while determining the amount of the state duty, the later applied 2% towards the overall sum of money subject to levy.

Such cases were recorded in regard to the compensation of the levy in the amount of average salary for the forced downtime^{xxiii}, for the impossibility to restore to the previous job and to other demands and in regard to other demands. By the satisfied cases on dismissal, besides the fixed amount of money to be paid for non-property requirements, the Court levied 2% of the penalty for the forced downtime and for the failure to restore to the previous job.

However, for this issue too, the Court of General Jurisdiction did not apply a similar approach. Thus, the Court applied a non-unified approach in terms of the levy of state duty

fee from the responded in terms of 2 cases with similar factual circumstances (non-paid salary, final settlement).

By one of the cases^{xxiv}, the Court, among other issues, obliged the respondent to forfeit the levy of execution on penalty as defined by Article 198 of the Republic of Armenia Labor Code. However, according to the Court a fixed amount of money is subject to levy in favor of the RA State Budget (in the concrete case 7.282.18 AMD), in cases when by the other case^{xxv}, the Court made a decision, according to which a state duty fee in the amount of 2% of the amount of money subject to levy in favor of the applicant should be levied.

It is notable, that in a certain civil cases, the Court, in case of availability of certain demands, including recognizing the decision on dismissal annul, restoration of the previous job and compensation of the average salary, considered the later as 3 separate demands, including: 1 cases related to the compensation of money from the respondent in the amount of 8000 AMD and 2%^{xxvi} of the levied money, in other case recognized the demand to recognize the decision as main, and the demand for restoration to previous job as derivative, for which 4000 AMD was confiscated, however, the demand on the levy of the forced downtime was again recognized as a main monetary claim: in this regard it was decided to levy 2%^{xxvii} of it and in other cases the claims on the levy of forced downtime were considered as derivative from the demand to recognize the decision annul and by levying 4.000 AMD^{xxviii}. By the case N ԵԴ/8476/02/19^{xxix}, the Republic of Armenia Court of Appeal referred to the issue of the levy of the state duty fee.

Taking into consideration the circumstance, that the RA Court of Appeal evaluates the claim for the compensation of the money for the forced downtime as a derivative claim, the Court recorded that the state duty fee was not subject to payment for filing of the appeal.

As for the compensation in the amount of up to 12 times of the salary for the failure to restore to the job, as envisaged by the Court verdict, the latter is not a derivative claim,

since it is envisaged as a compensation for the failure to be restored to the employment, when it is impossible to be restored to the job by the judicial act.

Therefore, a state duty fee in the amount of up to 12 times of the salary for the failure to restore to the job, as envisaged by point “a” of paragraph 6 of the Article 9 of the Republic of Armenia Law on “State Duty” should be levied from the claimant.

In case of the availability of derivative claims, including also the compensation of forced downtime, in contrast to civil cases, the Administrative Court did not levy the 2% of the money, which was subject to levy.

The Administrative Court considers the requirements for the levy of recognizing the decision on dismissal annul, obligation to restore the application to the previous job (position) as a result, the levy of the average salary for the whole period of forced downtime as one main demand, as well as demands derived from the latter^{xxx}.

However, some cases were recorded when the Court considered the aforementioned requirements as three separate demands and levied state duty^{xxxi}.

In fact, the practice of applying to the courts in regard to the employment disputes is not definite, as a result of which, in case of the failure to be released from paying the state duty, both parties can face difficulty: in one case, a demand to pay more state duty can be presented, in other case, certain percentage can be levied from the respondent as a compensation, depending on the fact in which judicial composition the case is being examined.

Besides, though in case of the administrative cases there is a peculiarity in terms of the relations to public services, however, employment related issues are being discussed both in civil and administrative cases, therefore the later are subjected to unequal approach in terms of the access to court, taking into consideration the fact in which court the employment related dispute is being examined.

Therefore, the mentioned issue is more highlighted, taking into account also the irrelevant increase of the amount of state duty fee for submitting the appeal to the courts,

as envisaged by the Republic of Armenia Law on “State Duty”, which can cause inconvenience to the aforementioned people, moreover limit their right to access to court.

Taking into consideration the circumstance, that the legislation in this regard is clearly envisaged and the recorded problems arise during the judicial practice, in order to exclude the above-mentioned problems, as well as to ensure the right of the parties to fair trial, the right to access to court, we recommend:

- Ensure a unified practice both at the Court of General Jurisdiction and at the Administrative Courts in regard to the issues, when the applicant is released from the obligation of paying state duty fee in employment disputes, practically including all the issues of employment dispute and other relevant issues in accordance to the Republic of Armenia legislation.

- Ensure a unified approach while evaluating the main and derivative claims, employment disputes, as well as calculating the state duty fee based on it.

- Ensure a unified approach in regard to the levy of the state duty from the respondent by the satisfied appeals, when the applicant is released from the obligation of paying state duty fee.

- Ensure both at the Courts of General Jurisdiction and at the Administrative Court, respectively a unified approach in the practice of making a note in the judicial acts in regard to the cases when the state duty fee is subject to return and when the applicant was exempt from paying state duty by employment disputes in order to facilitate the procedure of the return of state duty.

- ⁱ See, for example https://www.moj.am/storage/uploads/CEPA-Roadmap_ENG-Draft_June-2018.pdf
- ⁱⁱ More details in the Report on «Examination of the judicial practice by employment cases», Yerevan, 2022, PRWB, available <https://bit.ly/3MeDFeR>
- ⁱⁱⁱ 114 case out of the overall 384 cases related to the confirmation of the legal work experience and 14 cases to the compensation of the damage caused to the employee in the context of the civil legal relations.
- ^{iv} 25 cases out of the monitored 112 cases related to the appeal of the decisions on the appointment of pension.
- ^v ԵՂ/6992/02/20, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204017841
- ^{vi} ԱՎՂ3/0803/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=27303072741042959
- ^{vii} ԿՂ1/1705/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=16325548649303429
- ^{viii} By 4 cases, the applicant presented the following claims on the application of the consequences of the invalidity fictitious deal and the obligation to issue a final settlement, on the payment of less salary based on the service contract and the levy of the percentages. ԵՂ/22484/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203958540, ԱՂՂ1/4667/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38843546786171895, ԵՂ/7789/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203927547, ԵՂ/36304/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203984140
- ^{ix} ԵՂ/36304/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203984140
- ^x The mentioned 8 cases related to the working on Saturdays without remuneration, the compensation of the unused vacation, the levy of the penalty calculated for the forced downtime, the levy of the unpaid salary.
- ^{xi} ՎՂ/4022/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809934143
- ^{xii} ՎՂ/2805/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809932804
- ^{xiii} ՎՂ1/0079/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809935621
- ^{xiv} This group cases related to the reduction of the position as a result of reorganization, restoration to the previous position at the Police Service after the decision on dismissal was recognized annul, failure to appoint to another position after the citizen was registered in the personnel reserve, dismissal from administrative position at the discretion of the supervisor. ՎՂ/3774/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809946308, ՎՂ/2382/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809932378, ՎՂ/1278/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809931186, ՎՂ6/0060/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809936372, ՎՂ/2518/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809932551, ՎՂ/6331/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809936617, ՎՂ/3236/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809933252, ՎՂ/2985/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809932982, ՎՂ/6487/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809936782
- ^{xv} ՎՂ/3236/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809933252
- ^{xvi} ՎՂ/0929/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809943124, ՎՂ/7004/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809937328, ՎՂ/11076/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809941636, ՎՂ/2313/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809932301, ՎՂ/8446/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809938888, ՎՂ6/0142/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809947340, ՎՂ/7108/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809937447
- ^{xvii} ՎՂ/7077/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809937406, ՎՂ/0139/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809929924, ՎՂ5/0134/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809937298
- ^{xviii} ԱՂՂ1/5004/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38843546786173061; ՎՂ/0087/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809929850; ՎՂ/5626/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809935864
- ^{xix} ՎՂ/2346/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809944678
- ^{xx} See, for example ԱՂՂ1/0370/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38843546786157957; ԵՂ/30081/02/20, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204074654; ԵՂ/24905/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203962438
- ^{xxi} See, for example ՎՂ/3387/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809945878 ՎՂ/5648/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809935843

xxii See, for example ቅጥ/7113/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809949980,
ቅጥ5/0082/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809933094

xxiii See, for example ጉጥ/6992/02/20, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421204017841

xxiv ጉጥ/22366/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203958558

xxv ጉጥ/22484/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203958540

xxvi ሊጥጥ1/0370/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38843546786157957

xxvii ጉጥ/24905/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203962438

xxviii ጉጥ/30081/02/20, http://datalex.am/?app=AppCaseSearch&case_id=45880421204074654

xxix ጉጥ/8476/02/19, http://www.datalex.am/?app=AppCaseSearch&case_id=45880421203929502

xxx ቅጥ/0929/05/20, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809943124

xxxi ቅጥ/7004/05/19, http://www.datalex.am/?app=AppCaseSearch&case_id=38562071809937328