

**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 104 OF THE LAW
ON PRINCIPLES OF ADMINISTRATIVE ACTION AND ADMINISTRATIVE
PROCEEDINGS OF THE REPUBLIC OF ARMENIA WITH THE CONSTITUTION OF
THE REPUBLIC OF ARMENIA ON THE BASIS OF THE APPLICATION OF LEVON
BARSEGHYAN**

Yerevan

7 November 2017

The Constitutional Court of the Republic of Armenia composed of G. Harutyunyan (Chairman), Justices K. Balayan, F. Tokhyan A. Tunyan, A. Khachatryan (Rapporteur), V. Hovhanissyan, H. Nazaryan, A. Petrosyan,

with the participation (in the framework of the written procedure) of A. Zeynalyan, Representative of the Applicant,

of the Respondent: S. Tevanyan, official representative of the RA National Assembly, Advisor of the Legal Department of the RA National Assembly Staff,

pursuant to Article 100, Point 1, Article 101, Part 1, Point 6 of the Constitution (with amendments of 2005) of the Republic of Armenia, Articles 25, 38 and 69 of the Law on the Constitutional Court of the Republic of Armenia,

conformity of Part 1 of Article 104 of the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia with the Constitution of the Republic of Armenia on the basis of the application of Levon Barseghyan.

The Case was initiated on the basis of the application submitted to the Constitutional Court of the Republic of Armenia by Levon Barseghyan on 7 June 2017.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, having studied of the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia (hereinafter Law) was adopted by the RA National Assembly on February 18, 2004, signed by the President of the Republic of Armenia on March 16, 2004, and came into force on December 31, 2004.

Article 104 of the Law, titled "Grounds and Procedure of Compensation for Non-property Damage" prescribes: "In cases of causing non-property damage to physical person by illegitimate administration through restriction of freedom, violation of security of home, private or family life, harming the person's honor, good name or reputation, the person shall have the right to claim monetary compensation or elimination of entailed consequences by the amount equivalent to the non-property damage caused."

The challenged provision of the law was amended in accordance with LA-10-N Law of the Republic of Armenia "On Making Amendments and Additions to the RA Law on Administrative Procedures and Administrative Proceedings", which was adopted by RA National Assembly on December 13, 2004, signed by the President of the Republic of Armenia, 2005 and came into force on January 29, 2005.

2. The procedural background of the case shall be as follows:

The Applicant and 11 people decided to hold a march on 21 September 2011 as a protest rally. According to the Applicant, at 9:55 am, "the policemen took arm in arm the Applicant and one of the participants and forced them to the Central Police Department of the RA Police. ... The Applicant was held at the Police until 13:05. The Applicant was in fact detained in the Police. "

On behalf of the Applicant, his representative filed a lawsuit against the RA Administrative Court against the Police on 8 November 2011. The Administrative Court satisfied the Applicant's claim by the July 15, 2013, judgment AC / 6895/05 / 11, recognizing the violation of the Applicant's rights and non-legitimacy of the police actions.

The aforementioned judgment was not been appealed and entered into legal force.

On behalf of the Applicant, his representative applied to the RA Police on "Damage Compensation Request" on 10 November 2014 demanding compensation for the property damage incurred by the Applicant - the amount of petrol used for participating in court sessions (87,000.00 (eighty seven thousand) AMD), the remuneration of the representative (470.000.00 (four hundred seventy thousand) AMD), intangible damage incurred by the Applicant (2000 (two

thousand) Euros plus any possible taxes payable on it), which, was rejected by the Police by Note 20378 of 09.12.2014.

Then, on behalf of the Applicant, on January 29, 2015 his representative filed a lawsuit to the Administrative Court of the Republic of Armenia against the Police requiring to oblige the Police to accept the administrative act of compensation, which was partially satisfied by the Administrative Court's decision AC / 0263/05/15 of March 10, 2016; the Letter N30/20378 of the Police of 09.12.2014 was invalidated and the Police was obliged to accept an administrative act of compensation for property and intangible damage of the Applicant at a rate of 200,000 AMD as a intangible damage caused by unlawful administration and 300,000 AMD as the representative's remuneration. Remaining part of the claim has been denied.

In the part of the judgment which partially satisfied the lawsuit, the Administrative Court concluded: "In fact, it is undeniable that the actions of the respondent administrative body violated Levon Barseghyan's right to freedom of expression, freedom of speech, association (freedom of assembly, freedom of movement, personal freedom and inviolability). It is also undeniable that for the damage compensation, the plaintiff first appealed to the body responsible for the damages to the defendant in this administrative case, which, however, denied the claim for damages. This serves as grounds for the claim of compensation for damage by victim"

The appellate complaints against the aforementioned judgment were filed by the Applicant's representative and the police, which were denied by the RA Administrative Court of Appeal on 15 November 2016, leaving the judgment of the Administrative Court of March 10, 2016 unchanged.

The Applicant's representative filed a cassation complaint against the above-mentioned decision of the Court of Appeal, but the RA Court of Cassation rejected to accept the proceeding of the case on 7 March 2017.

3. The Applicant disputes Article 104 § 1 of the Law in two perspectives. In the opinion of the Applicant, in the law-enforcement practice in the light of law and the challenged norm of the law the term "equivalent amount" from the perspective of illegitimate interpretation.

Referring to the legal positions of the Constitutional Court of the Republic of Armenia, the Applicant arguments the gap in law that, in contrast to the Civil Code of Armenia, the challenged norm of the law contains less rights, when in case of a violation, the person obtains the right to claim compensation for intangible damage. As a result, according to the Applicant, although by the judicial order it is stated that the administrative body had violated the Applicant's right to

freedom of expression, association (freedom of peaceful assembly), freedom of movement, personal freedom and inviolability, but from those rights s/he is provided with the intangible damage only for personal rights and freedoms violation as the law did not define the terms and procedure of compensation for intangible damage in the event of violation of the other three rights. Meanwhile, according to the Applicant, the European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the Convention) and the Constitution guarantee the right of intangible damage in the event of infringement of all rights under the Convention and obliges States to ensure those rights, in accordance with their legislation.

According to the Applicant, the absence of the terms and procedure for the compensation of intangible damage caused by the unlawful administration of freedom of expression, freedom of peaceful assembly and freedom of movement is a legal gap and contravenes to the RA Constitution, with undue limitation of effective judicial remedies, damages, rights and freedoms in respect of which the interference occurred regardless of the fact that the violation of these rights was recognized by public authorities.

Recalling a number of legal positions on the compensation of damage in the judgments of European Court of Human Rights (hereinafter referred to as the European Court), the Applicant argues the non-discriminatory interpretation of the term "equivalent amount" "in the law enforcement practice by the statement that in the in the law enforcement practice the challenged term "equivalent amount" is provided with an autonomous interpretation which essentially differs from the contents prescribed in Article 41 of the Convention of the European Court.

According to the Applicant, the compensation of damages should be defined by domestic judicial instances to the extent that the European Court has formulated in the jurisprudence practice, otherwise the person will retain the status of the "victim" in the meaning of Article 34 of the Convention as well as will have access to the European Court of Justice and the right to claim a fair compensation.

The Applicant considers that the extent of proportionality of the "equivalent amount" of "fair compensation" of the violates rights with the participation of Armenia is the amount prescribed by the judgments of the European Court, therefore, the term "equivalent amount", with the interpretation given in the law enforcement practice, contradicts Article 78 of the RA Constitution / coincidence principle/ .

4. The Respondent objects the Applicant's arguments and **recording the presence of the legal gap**, the Respondent asks to terminate the proceeding of the case.

In order to substantiate his request, the Respondent cites the legal positions prescribed in Decision DCC-864 of 5 February 2010 of the RA Constitutional Court on the issue of the overcoming the legal gap on the competence of the Constitutional Court and the legislative body and finds that the issue of the legal gap which in this case is conditioned with the fact that listing of non - proprietary rights protected by law is more limited than the rights prescribed by the Convention, and finds it is not in the jurisdiction of the Constitutional Court and are subject to overcoming by the legislature.

At the same time, the Respondent underlines: "... The Applicant does not stipulate the amount of compensation for the infringement of his violated rights, as well as the amount of compensation for intangible damage during judicial defense, with the assessment of the property equivalence of individual infringed rights; an adequate compensation acceptable to him for all infringed rights. "

In the Respondent's opinion, in fact, the amount of monetary compensation by the court was diminished not by the fact that the disputed provision of the law does not provide for compensation for all infringed rights, rather, based on the factual circumstances of the case and the amount and duration of the Applicant's violated rights. .

According to the Respondent, it is evident that if the amount of the amount subject to compensation by the court corresponds to the claim submitted by the Applicant, the latter will hardly raise the issue of the legal gap or absence of legal regulation in the disputed law.

Taking into consideration the above-mentioned circumstance, as well as the circumstance that the Applicant has already received monetary compensation for the infringement of his intangible rights and that the Applicant is concerned not about the absence of a number of mechanisms for the protection of conventional rights, but the amount of monetary compensation as defined by the final judicial act, the Respondent finds that the Applicant is pursuing a goal of reviewing the adopted judicial act.

In that regard, the Respondent cites the legal position stipulated in the Decision DCC-21 of the Constitutional Court of 17 March 2009, where, the Applicant, formally disputing the issue of constitutionality of the law, raises the issue of the jurisprudence of application of that provision or pursues other purposes, then such applications are subject to rejection.

5. The Constitutional Court finds that in the context of the first case raised by the Applicant, in addition to the law, in the context of the analysis of the civil and administrative law on compensation for intangible damage, it should be clarified if in the current legal regulation

whether the person was guaranteed the exercise of the constitutional right to compensation for intangible damage.

The right to compensation for damage (including intangible damage) has been found in both international and domestic law. In particular, the European Convention for the Protection of Human Rights and Fundamental Freedoms (attached Protocols) defines not only fundamental rights and freedoms, but also the right to fair compensation in case of their violation.

Chapter 2 of the Constitution of the Republic of Armenia defining the basic rights and freedoms of human being and the citizen also enshrines the right to compensation. In particular, according to Article 62 of the Constitution, everyone shall have the right to compensation for damage inflicted through a non legitimate action or inaction of state and local self-government bodies and officials, whereas in the cases prescribed by law — also the right to compensation for damage inflicted through legitimate administration. The conditions and procedure for compensation for damage shall be prescribed by law.

Until 2014, the Civil Code of the Republic of Armenia did not have legal regulations related to compensation for intangible damage. On November 5, 2013, the Constitutional Court, according to the Decision DCC - 1121, recognized Article 2, Part 2 of the Civil Code of the Republic of Armenia unconstitutional, as long as it did not consider the moral damage as a type of damage and did not ensure the possibility of compensation for moral damage by blocking a person's effective enjoyment of the rights of the court and the right to fair trial, while simultaneously hampering the conscientious performance of the international obligations of the Republic of Armenia.

By the abovementioned Decision, the Constitutional Court expressed the following legal position: "At the same time, due to the need to ensure the full protection of human rights and freedoms, the Constitutional Court finds that the general criteria and procedure for the material compensation of moral damage should be clearly stipulated in the legislation so as to guarantee adequate reasonable and just satisfaction of moral damage, ensuring the effective implementation of human rights and freedoms guaranteed by the RA Constitution and not to hinder the conscientious performance of the international obligations undertaken by the Republic of Armenia. It follows from the aforementioned that the Constitutional Court considered the possibility of reimbursement of moral damage from the viewpoint of the rights and freedoms guaranteed by the Constitution, as well as from the viewpoint of implementation of the international obligations assumed by the Republic of Armenia, and has not limited by stating

certain rights as the protection of rights and liability are considered not only in case of violations but also in case of compensation of the damages due to these violations. Only in this case the system of protection of rights and freedoms will be full and effective.

After the aforementioned decision, by the RA Law "On Making Amendments and Addenda to the RA Civil Code" LA-21-N of May 19, 2014 and the Law of the Republic of Armenia "On Making Amendments and Addenda to the RA Civil Code" LA-184-N of December 21, 2015, the Civil Code of the Republic of Armenia introduced the institute of monetary compensation in case of intangible damage.

After the mentioned amendments Article 17 of the RA Civil Code prescribes:

“1. A person whose right has been violated may require full compensation for the damages caused thereto, unless lesser amount for the compensation of damages is provided for by law or by contract.

2. Damages shall comprise expenses, incurred by the person whose right has been violated, which have been or must be covered by said person in order to restore the violated right, the loss of or harm to the property thereof (actual damage), unearned income that this person would have received under the usual conditions of civil practices had the right thereof not been violated (lost benefit), as well as intangible damages”.

Simultaneously, Part 1 of Article 162.1. prescribes that intangible damage is physical or mental suffering caused as a result of a decision, action or omission encroaching on tangible or intangible assets belonging to a person from birth or by virtue of law or violating his or her personal property or non-property rights.

According to Part 2 of the abovementioned Article: “A person or, in case of his or her death or in case he or she lacks active legal capacity, his or her spouse, parent, adoptive parent, child, adoptee, guardian, curator shall have the right to claim, through judicial procedure, compensation for intangible damage, where the criminal prosecution body or court has confirmed that the following fundamental rights of that person guaranteed by the Constitution of the Republic of Armenia and the Convention for the Protection of Human Rights and Fundamental Freedoms have been violated as a result of a decision, action or omission of a state or local self-government body or official: (1) right to life; (2) right to freedom from torture and inhuman or degrading treatment or punishment; 114 (3) right to personal liberty and inviolability; (4) right to fair trial; (5) right to respect for private and family life, inviolability of residence; (6) right to freedom of thought, conscience and religion, freedom of expression; (7) right to freedom of assembly and association; (8) right to effective remedy; (9) right of

ownership.” According to Part 5 of the mentioned Article, intangible damage caused as a result of unlawful administrative actions shall be compensated as prescribed by the Law of the Republic of Armenia "On fundamentals of administrative action and administrative proceedings".

The Civil Code of the Republic of Armenia, based on the international legal principles of realization of the right to fair compensation for the damage caused to the person, as well as the legal provisions prescribed by the RA Constitution in the sphere of human rights protection, defines the rights to which the individual has the right to claim damages, defining the order of compensation for intangible damage caused by legitimate administration to the regulation of the law. According to Article 1 and Part 1 of Article 2 of the relevant Law, the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia regulates “...the fundamentals of administrative action, regulates the relations pertaining to adoption of administrative acts, appealing administrative acts, actions and inaction of administrative bodies, execution of administrative act, administrative expenses,” as well as those arising between administrative bodies and natural or legal persons in relation to compensation for the damage inflicted as a result of administrative action. In order to protect the rights of persons related to the damage caused by the administration, the procedure for appealing administrative acts (including the general court) is prescribed by the provisions of Articles 69, 70 and Chapter 10 of Chapter 4.

Therefore, the constitutional Court states that while regulating the relations related to the damage (property and non-property) caused to a person conditioned with the activity of the public bodies, the contents and general legal principles of implementation and defense guaranteed by Article 62 of the RA Constitution are taken as the primary grounds, in particular

- Everyone shall have the right to compensation for damage inflicted through a non legitimate action or inaction of state and local self-government bodies and officials, whereas in the cases prescribed by law — also the right to compensation for damage inflicted through legitimate administration. The conditions and procedure for compensation for damage shall be prescribed by law,

- The terms and procedure of compensation of the damage are regulated by the Law,
- Individuals have the right to appeal administrative acts to protect their rights,
- An administrative act may be appealed in administrative or judicial order.

6. Reflecting on the constitutionality of the legal regulation of the case on the compensation of damage caused by the administration, the Constitutional Court attaches importance to the disclosure of the constitutional legal content of the term "caused damage" and the need for its correct, uniform and complete perception not only in regulatory legal regulation, but also in the field of law enforcement. In particular, as it follows from a comprehensive analysis of Chapter 7 of the Law, the legislator prescribes a prerequisite for claiming compensation for damage caused by unlawful administration, that is, the legal act, action or inaction of the administrative body which may, in accordance with the statutory provisions of Article 100 comply with the requirement of compensation for the body that caused the damage caused by the administration. That is, the right of claim is acquired by the person in the legal act, action or inaction of the administrative body in which the person was damaged if it was recognized as unlawful in accordance with the established procedure. The Constitutional Court finds that such a normative provision pursues a legitimate legal purpose and is intended to create favorable legal conditions (prerequisites) for the compensation of damages (administrative or judicial) caused by the constitutionally guaranteed right.

At the same time, Paragraph 1 of the challenged Article 104 of the Law directly implies that a person obtains the right to claim intangible damage caused by unlawful administration, if his or her freedom, immunity, indivisibility of personal or family life have been violated, discredits his/her honor, good reputation or dignity. In other words, the right to compensation for intangible damage caused by unlawful conduct is envisaged by a limited number of violations of the constitutional rights (articles 23, 25, 27, 31 and 32 of the Constitution of RA). In this case, a question arises as how a person's right to compensation should be exercised, if not legitimate administration violates such constitutional rights that are not prescribed in the disputed norm.:

Moreover, Part 2, Article 162.1 of the Civil Code of the Republic of Armenia enshrines the number of rights that a person has the right to demand compensation for the intangible damage caused to him/her by the decision of the state or local self-governing body or an official.

Consequently, the Constitutional Court finds that the necessary procedures for reimbursement of the damage caused to a person as a result of unlawful administration, that is, as well as the restoration of other constitutional rights that have been violated as a result of that damage, were not provided by the legislator in the framework of the examined subject matter and, in particular, within the framework of disputed legal regulation, as a result of which full realization and protection of the rights provided for in Articles 50 and 62 of the Constitution of the Republic of Armenia were not guaranteed and in such a case the person cannot expect

compensation of intangible damage caused to him/her as a result of unlawful administrative proceedings and non-pecuniary damage caused by infringement of constitutional rights not envisaged in Article 104 (1) of the law, as well as judicial compensation.

Thus, according to the Constitutional Court's assessment, as a result of the legal regulations of Part 1 of Article 104, the legal capacity of a person to claim intangible damage caused by a breach of his fundamental rights is substantially limited to the fact that a person is entitled to such a right at the constitutional level. Consequently, the task of the legislator is to establish by law the appropriate legality of both administrative and judicial procedures of restitution of the violated constitutional rights of persons as a result of unlawful administration of public authorities and officials, as well as just satisfaction of non-pecuniary damage.

7. The Constitutional Court considers it necessary to consider the aforementioned issue in the context of a fair satisfaction with the European Convention on Human Rights and Fundamental Freedoms (the Protocols), as well as in the context of the right to compensation for damage and contradictory norms stipulated and directly enshrined in the Constitution.

Article 41 of the Convention, titled "Just Satisfaction" prescribes: "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

As a result of the analysis of the aforementioned norm, the Constitutional Court argues that it guarantees the right to compensation for property damage (property and non-property) as a result of **all** violations prescribed by the Convention and the Protocols thereto, thus deriving from ensuring the provisions prescribed in Article 81 of the Constitution (Basic Rights and Freedoms and International Legal practice) and taking into consideration the legal positions expressed by the Constitutional Court in Point 6 of this Decision, it is necessary to ensure by the legislation the right to compensation for damages resulting from the violation of all the rights enshrined in the Convention.

Article 62 of the RA Constitution states that the term "damage" includes property and non-pecuniary damage, and the right to compensation is extended to property and non-pecuniary damage caused by the violation of the rights and freedoms prescribed by the Constitution, in all cases when the rights and freedoms enshrined in the Constitution are violated, the person unconditionally acquires the right to claim compensation for the damage caused to them as a result of those violations. This is evidenced by the complex analysis of Articles 62 and 81 of the

Constitution, as a result of which the Constitutional Court states that the right to compensation for damage covered by the Constitution includes both the damage caused by the violation of **all** fundamental rights enshrined in the Constitution and international legal acts. Such a conclusion is conditioned by the fact that, with the definition of each person's right, it should not only guarantee its realization, protection, inevitability of legal liability in case of infringement, but also the guarantee of compensation for damages (including moral) caused by the violation of the right. While defining the right to compensation for damage, the Constitution prescribed the definition of terms and conditions of compensation for the regulation of the law, but any regulation prescribed by law should be consistent with the rights granted to a person under international and domestic legislation and ensure compensation for the damage caused to them, otherwise, these rights will acquire purely formal and declarative nature.

The need for a clear regulation of the non-pecuniary damage institution stems from the general content of the human and citizen's basic rights and freedoms guaranteed by the Constitution of the Republic of Armenia and its constitutional and legal principles (Articles 61, 63 of the RA Constitution), as well as the international obligations of the Republic of Armenia, in particular the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms (the Protocols) and from the legal practice of the European Court of Human Rights.

According to Article 81 of the Constitution, when interpreting the provisions contained in the Constitution on fundamental rights and freedoms, the practice of bodies ratified by the Republic of Armenia, based on international human rights treaties, shall be taken into consideration. The European Court of Human Rights in a number of judgments made in participation of the Republic of Armenia (*Khachatryan and Others v. Armenia* / complaint No. 23978/06, 27.11.2012 /, *Poghosyan and Baghdasaryan v. Armenia* / complaint No. 22999/06, 12.06.2012 / etc) assessed non-provision of material compensation for moral harm to the person as a result of the actions of public authorities and officials as violation of relevant provisions defined in the European Convention on the Protection of Human Rights and Fundamental Freedoms (by Protocols). It is also worth mentioning that the European Court of Human Rights adopted a number of judgments to compensate for the infringement of rights not provided for in the present case under the disputed norm (e.g., *Sapeyan v. Armenia*, Complaint No. 35738/03, 13.01.2009, *Gasparyan v Armenia*, Complaint No. 35944/03 and other cases, the ECtHR established compensation for the violation of freedom of assembly and association).

In the context of the above mentioned, the Constitutional Court considers it necessary to refer to Article 75 of the RA Constitution titled " Organizational Mechanisms and Procedures for the Exercise of Basic Rights and Freedoms", which in particular specifies: " When regulating basic rights and freedoms, laws shall define organizational mechanisms and procedures necessary for effective exercise of these rights and freedoms”.

In the context of Article 75 of the Constitution, the Constitutional Court states that the legal capacity to claim non-pecuniary damage caused by unlawful administrative proceedings is limited to a limited number of violations of rights until the clarification of the respective legal regulations and the elimination of the gap of the legal regulation by the RA National Assembly, deriving from the legal content of Article 62 and the application of the institute of compensation for damages in accordance with the constitutional-legal necessity, the right to non-pecuniary damage caused by a fraud or unlawful administration in the law enforcement practice should be recognized both in the case of violation of the rights granted to the person under international and domestic law (including the Constitution).

8. In the context of the subject matter of the present case, the Constitutional Court attaches importance to the Recommendation Rec(2004) of the Committee of Ministers of the Council of Europe to member states on judicial review of administrative acts and its explanatory memorandum dated December 15, 2004, No. (2004) 20 which defines primary objectives of effective judicial supervision over administrative acts (a) restoration of violated legality (Para. 87); and (b) both pecuniary and moral damage as a result of violation of the right (paragraph 89).

Thus, in paragraph 87 of the aforementioned recommendation, States Parties to the Committee of Ministers of the Council of Europe are encouraged “... to guarantee that a tribunal may take the necessary measures to restore a lawful situation. It covers provisional measures, procedural and substantive decisions, i.e. the power to prevent potentially prejudicial material actions,’ meanwhile, the power to order the adoption of a material action which should have been but was not adopted, particularly in connection with enforcing administrative decisions already taken; the power to order the adoption of administrative acts and decisions, in the case of limited discretion; and the possibility of preventing the adoption of decisions in cases of limited discretion, where the Administration has acted *ultra vires*.

Paragraph 89 of the same Recommendation defines that this principle recognizes that the tribunal has jurisdiction not only to deal with the substance of a complaint, but also, **where the complainant is successful, to award some form of redress.** Where appropriate,

compensation for both pecuniary and **non-pecuniary damage** resulting from a violation must in principle be possible. In general, compensation is made by setting the decision aside.”

The Constitutional Court finds that the disputed legal regulation is applicable adequately to the constitutional-legal principles in the cases when the above provisions of the Recommendation of the Committee of Ministers of the Council of Europe No. 15 (2004) 20 of 2004 are observed in practice.

9. In the light of the interpretation given in practice of the term "equivalent size" present in the challenged norm and regarding the Applicant's claim on the compliance of the judgments of the European Court of Human Rights against Armenia, the Constitutional Court states that the main concern of the Applicant in this matter is that In establishing the amount of compensation for non-pecuniary damage, the RA Administrative Court reasoned with the Applicant's reference to the ECHR judgments and in the framework of the procedural prehistory of this case, the fact that the existing factual circumstances were not identical, decided to set the amount of compensation as 200,000 (two hundred thousand) AMD.

The study of the legislation of the Republic of Armenia proves that the term "equivalent amount" is used in various legislative acts, but none of them is the exhaustive interpretation of that term. In general, the term "equivalent" means the same amount or is of the same meaning.

However, in order to make a decisive decision in a specific case, it is necessary to disclose the meaning and significance of the concept of "adequate" in the context of the examination of each specific case, based on the circumstances of the case in which the exhaustive list of the law is objectively impossible. The interpretation of the mentioned term should be made within the framework of a law enforcement practice, which is unambiguously justified by the fact that the term is substantially legal. This view is also confirmed by the European Court's case-law. In particular, in the judgment of *Busuioc v. Moldova*, of 21 December 2004, the European Court ruled that “Whilst certainty in the law is highly desirable, it may bring in its train excessive rigidity and the law must be able to keep pace with changing circumstances. Accordingly, many laws are inevitably couched in terms which, to a greater or lesser extent, are vague and whose interpretation and application are questions of practice.”

The Constitutional Court also finds it appropriate to state that in accordance with Part 5 of Article 1087.2 of the RA Civil Code, the amount of compensation for non-pecuniary damage is determined by the court in accordance with the principles of reasonableness, equitableness and proportionality.

Part 6 of the same Article provides that when determining the amount of non-pecuniary damage, the court takes into account the nature, degree and duration of the physical or mental suffering, the consequences of the damage, the guilt of causing the damage, the personality of the person who suffered non-pecuniary damage, as well as other relevant circumstances.

The Civil Code of the Republic of Armenia also stipulates maximum compensation for non-pecuniary damage, in particular, the amount of compensation may not exceed:

- three thousand times of the minimum salary, in the case of violation of the rights provided for in subparagraphs 1 and 2 of part 2 of Article 162.1 of the same Code, as well as the third part of the same article,

- two thousand times of the minimum salary - in case of infringement of the rights stipulated by Article 162.1 (2) (3) (9) of the same Code; Article 1087.2, part 7).

At the same time, the mentioned article also states that the amount of compensation for non-pecuniary damage may, in exceptional cases, exceed the maximum limit provided for in Part 7 of the Article if severe consequences have arisen.

It follows from the aforementioned that the legislator has authorized the court to define the equivalent amount of compensation for non-pecuniary damage in each particular case, at the same time stipulating the highest standards in Article 162.1 (the maximum amount of compensation) to which the court should be guided by the case review. Consequently, the Constitutional Court finds that the specific content of the "adequate amount" of compensation for non-pecuniary damage, based on the legal regulation of Article 62 of the Constitution, should be disclosed as a result of lawful activity.

In the context of Article 75 of the Constitution, at the same time the Constitutional Court concludes that, under the conditions of non-enforcement in the challenged Law, the maximum amount of monetary compensation for the intangible damages and the relevant criteria, prior to specifying the appropriate legal regulations by the RA National Assembly and overcoming the legal regulation gap, when considering the issue of monetary compensation for non-material damage caused to a person as a result of unauthorized administration, the administrative authority is obliged to take as the basis maximum amounts of pecuniary compensation for non-material damage prescribed by Articles 162.1 and 1087.2 of the Civil Code of RA, as well as those criteria that must be taken into account when determining the amount of monetary compensation for non-material damage caused to a person.

Proceeding from the results of examination of the case and ruled by Article 100(1), Article 102 of the Constitution of the Republic of Armenia (2005), Articles 63, 64 and 69 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia HOLDS:

1. Part 1 of Article 104 of the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia is in conformity with the Constitution of the Republic of Armenia with such a constitutional legal context, according to which the possibility of compensation for intangible damage due to illegitimate administration in case of violation of all basic human rights shall be ensured in accordance with the international treaties ratified by the Republic of Armenia and the Constitution of the Republic of Armenia until the clarification of the relevant legal regulations and overcoming of the legal gap by the RA National Assembly.

2. The term "equivalent amount" prescribed in Part 1 of Article 104 of the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia is in conformity with the Constitution of the RA with such a constitutional – legal context, according to which the considered provision until the clarification of the relevant legal regulations and overcoming of the legal gap by the RA National Assembly includes the maximum amount of intangible damage prescribed in Articles 162.1 and 1087.2 of the Civil Code of the Republic of Armenia as well as the relevant criteria which shall be considered in determining the amount of pecuniary compensation for intangible damages caused to a person by the administrative body.

3. Based on the requirements of Article 69 of the Law on the Constitutional Court, as well as Part 1 of Article 104 of the Law on Principles of Administrative Action and Administrative Proceedings of the Republic of Armenia, the final judgment of Applicant adopted due to new circumstances is subject to review in accordance with the order prescribed by law.

4. In accordance with Article 102(2) of RA (with amendments of 2005) Constitution this decision is final and enters into force from the moment of its announcement.

Presiding

G. Harutyunyan

7 November 2017
DCC-1383