



IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

**OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA
THE CASE ON CONFORMITY OF THE SECOND PARAGRAPH
OF PART 3 OF ARTICLE 36 OF THE LAW OF THE
REPUBLIC OF ARMENIA ON STATE PENSIONS
WITH THE CONSTITUTION OF THE REPUBLIC
OF ARMENIA ON THE BASIS OF THE APPLICATION
OF THE HUMAN RIGHTS DEFENDER
OF THE REPUBLIC OF ARMENIA**

Yerevan

14 October 2014

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

with the participation (involved in the framework of the written procedure) of the Applicant: the RA Human Rights Defender, K. Andreasyan,

Respondent: official representative of the RA National Assembly, head of the Legal Department of the RA National Assembly Staff, H. Sargsyan,

pursuant to Article 100, Point 1, Article 101, Point 1 and Point 8, Part 1, Article 101 of the Constitution of the Republic of Armenia, Articles 25, 38 and 68 of the Law on the Constitutional Court of the Republic of Armenia,

examined in a public hearing by a written procedure the Case on conformity of Second Paragraph of Part 3 of Article 36 of the Law of the Republic of Armenia on State Pensions with the Constitution of the

Republic of Armenia on the Basis of the Application of the Human Rights Defender of the Republic of Armenia.

Having examined the report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the Law on State Pensions of the Republic of Armenia and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on State Pensions was adopted by the RA National Assembly on December 22, 2010, signed by the RA President on December 30, 2010 and entered into force on 1 January, 2011.

Challenged in the present case Second Paragraph of Part 3 of Article 36 of the Law of the Republic of Armenia on State Pensions, titled "Payment of the outstanding amount of pension", provides: "The amount shall be paid upon submitting the application and necessary supporting documentation to the unit granting pensions within six months after the death of the a pensioner. Where the application is not filed within the set timeframe, the pension amount shall be subject to inheriting if the application and necessary documents are submitted to the unit of granting pension within twelve months after the death of a pensioner."

The challenged provision in the current edition was envisaged on March 19, 2012 by the Law LA ՀՕ-100-Ն "On Making Amendments and Addendum to the RA Law on State Pensions."

2. Challenging the constitutionality of the Second Paragraph of Part 3 of Article 36 of the RA Law "On State Pensions", the Applicant finds that the provision contradicts Articles 31 and 37, as well as Part 3 of Article 42 of the RA Constitution.

The Applicant states that concerning the inheritance of outstanding amount of pension, the RA Civil Code, unlike the challenged provisions, prescribes other regulations. According to the Applicant, from the regulations of the RA Civil Code it may be concluded that although law prescribes six months period for the acceptance of the inheritance it also prescribes that the inheritance may be accepted without applying to the court after the deadline of the prescribed time period if the consent of the other heirs who have accepted the inheritance is available, as well as possibility for applying to the court for recognizing the reasons

for missing the deadline for accepting the inheritance respectful. The challenged provision, by its regulation, restricts the right to receive the outstanding amount of the pension in case of death of a pensioner, and, therefore, contradicts both the regulations of the RA Civil Code and provisions of the RA Constitution.

The Applicant states that, although Article 64 of the former RA Law of 2002 "On State Pensions" prescribed six month period, it did not refer to inheriting the outstanding amounts, from which it becomes obvious that, in the case of inheritance, the legal relationship is regulated by general regulations of hereditary relations of the RA Civil Code. The new regulation of the challenged provisions of RA Law "On State Pensions" of 2010 leads to deterioration of the legal status of the person, and, therefore, also contradicts the provisions of Part 3 of Article 42 of the RA Constitution.

The Applicant considers that the challenged legal regulation blocks the effective enjoyment of the right to property of the person, as well as it does not derive from the requirements of the rule of law and gives rise to the issue of contradiction with both the constitutionality and international obligations of the Republic of Armenia.

3. The Respondent, opposing the arguments of the Applicant considers that the second paragraph of Point 3 of Article 36 of the RA Law "On State Pensions" complies with the requirements of Articles 31 and 37 and Part 3 of Article 42 of the RA Constitution.

According to the Respondent, the challenged provision for the inheritance of the mentioned amounts establishes terms not prescribed by the Civil Code of the Republic of Armenia, namely: a written request to the unit which grants pension for receiving the corresponding amount, which is beyond the regulation of the subject of the Law "On State Pensions".

The Respondent states that this issue does not contradict the Constitution of the Republic of Armenia, but there is a contradiction between the Civil Code of the Republic of Armenia and the RA Law "On State Pensions". Furthermore, according to the Respondent, this issue results in not unified enforcement practice, which should be corrected by removing existing contradiction between the challenged provision and the Civil Code of the Republic of Armenia as draft of the legislative amendment is already put in circulation.

According to the Respondent, in so far, as the challenged provision, by merits, contradicts the regulations prescribed by the RA Civil Code in the aspect of correlation of the law and the Code, the observations on its retroactive effect must be viewed in this context.

4. Stating within the constitutional legal dispute raised by this case that the challenged legal regulation concerns the legal relations related to inheritance of the unpaid amount of pension due to the death of a pensioner, also taking into account the legal position of the Constitutional Court expressed in its Decision DCC-649 of 4 October 2006 according to which "pension, as a means of social welfare, is also a form of property in accordance with the case-law of the European Court", the Constitutional Court finds it necessary to disclose the constitutional and legal content of the disputed legal regulation, especially in view of:

- a) The constitutional provisions on the right to property, its implementation, restriction and protection, as well as the legal positions expressed in the decisions of the Constitutional Court of the Republic of Armenia;
- b) The presence of specific guarantees for protection of the right to property and guaranteeing the legitimate expectations conditioned by the need to ensure the rule of law.

The Constitutional Court states that, in accordance with Paragraph 1 of Article 8 of the Constitution, "the Republic of Armenia recognizes and protects the right to property." The implementation of this constitutional provision is guaranteed by the Constitution of the Republic of Armenia, in particular, by Articles 31 and 43.

According to Parts 1-3 of Article 31 of the Constitution, " Everyone shall have the right to freely own, use, dispose of and bequeath the property belonging to him. The right to property shall not be exercised to cause damage to the environment or infringe on the rights and lawful interests of other persons, the society and the state.

No one shall be deprived of property except for cases prescribed by law in conformity with judicial procedure.

Private property may be alienated for the needs of the society and the state only in exceptional cases of prevailing public interests, in the manner prescribed by the law and with prior equivalent compensation."

Article 43 of the RA Constitution envisages, "Limitations on fundamental human and civil rights and freedoms may not exceed the scope

defined by the international commitments assumed by the Republic of Armenia.” In particular, Article 1 of Protocol 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms envisages, “Every natural or legal person is entitled to the peaceful enjoyment of his possessions”, Part 2 of Article 17 of the Universal Declaration of Human Rights prescribes, “**No one shall be arbitrarily deprived of his property.**”

The Constitutional Court of the Republic of Armenia referred to the issue of the right to property, to the issues of its implementation, restriction and protection in a number of its decisions. In particular, the legal positions expressed in the Decisions DCC-630 of 18 April 2006, DCC-741 of March 18, 2008, DCC-903 of July 13, 2010, DCC-1009 of February 24, 2012, are also applicable for the present case.

5. The Constitutional Court states that the second paragraph of Point 3 of Article 36 of the RA Law ՀՕ-243-Ն "On State Pensions" of December 22, 2010 in the edition of the RA Law on March 19, 2012 ՀՕ-100-Ն in force prescribes:

"This amount will be paid if the application and necessary documents are submitted to the unit granting a pension, within six months after the death of the pensioner. In the case of not submitting an application in this period the outstanding amount of the pension is subject to the inheritance." It derives from the mentioned past legal regulation that the relationship related to inheritance is governed by the Civil Code of the Republic of Armenia. It is worth noting that a similar regulation was provided in Part 7 of Article 64 of the RA Law on November 19, 2002 ՀՕ-519-Ն "On State Pensions".

The amended above-mentioned regulation of the RA Law "On Making Amendments and Addenda to the RA Law on State Pensions" of March 19, 2012 ՀՕ-100-Ն the second paragraph of Part 3 of Article 36 was redrafted as follows:" This amount is paid if the application and the necessary documents are submitted to the unit which grants the pension within six months period after the death of the pensioner. In case of not applying within six months, the unpaid amount of pension due to the death of the pensioner is subject to the inheritance, if the application and the necessary documents are submitted to the unit which grants the pension within twelve months period after the death of a pensioner."

Analysis of Part 3 of Article 36 of the RA Law "On State Pensions" shows that it regulates legal relations concerned with the payment of unpaid amount of pension due to the death of the pensioner, with the right of inheritance of this sum, as well as with the implementation of this law.

The Constitutional Court reiterates its legal position expressed in its Decision DCC-917 of 18 September 2010, which states that "by virtue of Part 1 of Article 42 of the RA Constitution, the State recognizes the right to inheritance, which includes not only the right to give it, but also the right to accept it. The right to inheritance protects the rights of the owner and, after his/her death, allows the continuity of its proprietary powers. At the same time for the heir it creates the constitutionally protected possibility of succession to the property of the deceased."

With regard to the legal regulation stipulated by the challenged legal provision concerning the right to inherit the unpaid pension due to the death of the pensioner, the Constitutional Court finds that in Law ՀՕ-100-Ն of 19.03.2012 the legislator prescribed new legal term according to which the exercise of the right of inheritance is being conditioned with the submission of the application and required documents to the unit which grants the pension, within twelve months after the death of the pensioner.

Any, especially new legal condition shall seek the legitimate goal to create more effective guarantees, which can not be realized due to the neglect of the constitutional and legal norms and principles. In case of this legal regulation, the new legal term of twelve month period restriction excludes the possibility to get the unpaid amount of pension due to the death of the pensioner in the case of missing this deadline for a good reason. By establishing a new legal term, the legislator does not provide an opportunity for recognizing the reasons of missing of the twelvemonth period justifiable, including in a judicial manner. The Constitutional Court considers **that the absence of such a legal regulation impedes the full exercise of the constitutional right to property, in particular, protection of this right in the relations connected with the terms of acceptance of the inheritance envisaged by Articles 18 and 19 of the RA Constitution.**

Governed by the above-mentioned and taking as the basis the legal

position of the Constitutional Court regarding the right to property, its restrictions, exercise and protection, as well as taking into account the legal regulation of the RA Law "On State Pensions", the results of the written explanation of the RA National Assembly engaged in the present case as a respondent, the Constitutional Court finds that the twelve-month time period limitation prescribed by the challenged legal regulation is not conditioned by the requirement of protection of the public values and as a result is not aimed at ensuring a reasonable balance between the rights of the owner and the others and the public interest. Clarification of the fate of the inheritance may serve as a justification for such a restriction, the legal regulation of which is, however, envisaged by the RA Civil Code.

6. In the framework of examination of the present case, the Constitutional Court finds it necessary to consider the issue of correlation of the challenged regulation and the regulations of the RA Civil Code relating to inheritance.

According to Part 2 of Article 1184 of the Civil Code of the Republic of Armenia "inheritance is regulated by this Code, and by other laws in cases prescribed by it." The analysis shows that despite the fact that the RA Civil Code does not contain any provision concerning stipulation of any regulation by the RA Law "On State Pensions", nevertheless, the challenged legal provision of the RA Law "On State Pensions" prescribes legal regulations which are not consonant with the legal regulations of the Civil Code. According to Part 3 of Article 1249 of the Civil Code, dedicated to the inheritance of amounts of unpaid salaries, pensions, allowances and the compensation payments for the caused damages, "In case of absence of the persons authorized to receive the unpaid amount of sum of the deceased in accordance with Point 1 of this Article or in case if they do not make a claim for the payment of such amounts within the prescribed period, the corresponding amounts shall be included in the inheritance and inherited on the general grounds prescribed by this Code. "That is, in the case of non-compliance with the special procedure prescribed by the Civil Code of the Republic of Armenia, general rules of inheritance are applied. According to Part 1 of Article 1226 and Part 1 of Article 1227 of the RA Civil Code, acceptance of an inheritance is made within six months after the date of opening the inheritance by submission to a notary at

the place of opening of the inheritance of a statement of the heir on the acceptance of the inheritance or his request for the issuance of a certificate of the right to inheritance..However, this period is not absolute, and the heir may accept the inheritance without any time limitation in case of satisfying certain conditions. Thus, in accordance with Part 1 of Article 1228 of the Civil Code of the Republic of Armenia I.An inheritance may be accepted by an heir after the expiration of the time period limit established for accepting without applying to court, on the condition of the consent thereto of all the remaining heirs who have accepted the inheritance.” The legislator does not envisage any time limits for exercising it. According to Part 2 of the same article, “On request by an heir who has let pass the time period for acceptance of an inheritance, a court may declare that he has accepted the inheritance, if the court finds the reasons for letting pass the time period to be compelling, in particular if it establishes that this time period was passed because the heir did not know and should not have known of the opening of the inheritance and on the condition that the heir who had let pass the time period for the acceptance of the inheritance applies to the court in the course of six months after the reasons for letting this time period pass have ceased to exist. ”The legislator also does not set any time limit for the period of time between the expiration of the acceptance of inheritance and the time period for abolishing the reasons for missing this deadline. That is, no matter how much time has passed since the expiry of acceptance of the inheritance, still in the case of applying to court within six months after the reasons for passing this deadline are abolished, the reasons for missing the deadline may be considered as valid, and the succession may be accepted by the heir.

The other way of the succession is provided by Part 3 of Article 1226 of the Civil Code, according to which “It shall be recognized, unless proved otherwise, that an heir has accepted an inheritance when he has in fact entered into possession or management of the inherited property, in particular when the heir:

- 1) has taken measures for the preservation of the property and for the protection of it from incursions or claims of third persons;
- 2) has made expenses at his own expense for the maintenance of the property;
- 3) has paid at his own expense the debts of the donor by inheri-

tance or has received sums due to the donor by inheritance from third persons.

The above-mentioned legal provision does not condition acceptance of the inheritance by filing any statement to the notary. A person does not have to apply to any body, and just shall actually take possession or control of the inherited possession. The analysis of this legal provision and Part 3 of Article 1225 of the Civil Code of the Republic of Armenia shows that by the force of actual ownership, it is considered that the heir has also accepted the unpaid amount of pension due to the death of the pensioner.

Summing up the analysis, the Constitutional Court finds that the challenged legal provision ignores not only the ways of acceptance of the inheritance envisaged by the Civil Code of the Republic of Armenia, without providing an opportunity to the heir by virtue of the actual ownership to receive also the outstanding amount of pension due to the death of a pensioner, but provides a time restriction on the right to inheritance, which contradicts the terms stipulated by the Civil Code of the Republic of Armenia.

The study of law enforcement practice regarding the challenged issue shows that in the legal relationships associated with inheritance of unpaid amount of pension due to the death of the pensioner, the administrative law enforcement agencies, in fact, adhere to the challenged legal provision.

The Constitutional Court, based on Part 6 of Article 9 of the RA Law "On Legal Acts", according to which "In the field of legal relations regulated by a code, all other laws of the Republic of Armenia must comply with codes, " as well as on the requirement of Part 1 of Article 1 of the RA Civil Code, according to which "Norms of Civil Law contained in other laws must correspond to the present Code" states that the disputed legal provision can be applied insofar as it does not contradict the legal regulations of the Civil Code. In order to ensure a legitimate law enforcement practice, the Constitutional Court highlights the need to ensure a harmonious legal regulation of the relations concerning the inheritance regulated by the RA Law "On State Pensions" with the Civil Code of the Republic of Armenia, which is the responsibility of the legislator.

Based on the results of consideration of the Case and being governed by Point 1, Article 100 and Point 8 of Part 1 of Article 101 of the Con-

stitution of the Republic of Armenia and Articles 63, 64 and 68 of the RA Law on Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare the provision of Second Paragraph of Part 3 of Article 36 of the Law of the Republic of Armenia on State Pensions “The amount shall be paid upon submitting the application and necessary supporting documentation to the unit granting pensions within six months after the death of a pensioner” contradicting the requirements of Articles 18, 19 and 31 of the RA Constitution and void.

2. Pursuant to Article 102, Part 2 of the RA Constitution this Decision is final and enters into force from the moment of its announcement.

Chairman

G. Harutyunyan

14 October 2014

DCC-1167