



IN THE NAME OF THE REPUBLIC OF ARMENIA

DECISION

OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA

**ON THE CASE OF CONFORMITY OF POINT 12 OF PART 1
OF ARTICLE 41 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 MARIAM LALAYAN**

Yerevan

November 29, 2016

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

with the participation of (in the framework of the written procedure)

Applicant M. Lalayan,

representatives of the Respondent: official representatives of the RA National Assembly H. Sargsyan, Head of the Legal Department of the RA National Assembly Staff, and V. Danielyan, Chief Specialist at the Legal Consultation Division of the same Department,

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

examined in a public hearing by a written procedure the Case on conformity of Point 12 of Part 1 of Article 41 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 Mariam Lalayan.

The Case was initiated on the basis of the Application submitted to the RA Constitutional Court by Mariam Lalayan on 14 June 2016.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, as well as having studied the RA Law on State Pensions 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 National Assembly on 22.12.2010, signed by the RA President on 30.12.2010 and entered into force on 01.01.2011. The challenged provision was enshrined in the Law HO-100-N on Making Amendments and Supplements to the RA Law on State Pensions, which was adopted by the RA National Assembly on 19.03.2012, signed by the RA President on 12.04.2012 and entered into force on 05.05.2012.

The challenged provision of the Law stipulates that the right to receive a pension shall be terminated... “12) in case of failure to pay a pension for five consecutive years to a pensioner entitled to a labor or military pension or to a person entitled to receive a pension in lieu of the latter”.

2. The procedural background of the Case is the following:

In 2003, an old age labor pension was granted to the Applicant. The Applicant was paid pension till March 2004; afterwards she submitted an application for transferring the pension to her bank account in the RA Central Bank.

According to the Applicant, she had not checked her account for several years, being convinced that her pension was being accumulated. In 2013 the Applicant became aware that from June 1, 2012 her right to receive a pension was terminated on the grounds of Point 12 of Part 1 of Article 41 of the RA Law on State Pensions.

On December 19, 2013, the Applicant filed a statement of claim to the RA Administrative Court with a request to oblige the Vanadzor territorial department of the Staff of the Social Security Service of the Ministry of Labor and Social Affairs of the Republic of Armenia to restore her right to receive a pension and pay the pension that was not paid over the last few years.

On December 8, 2014, the RA Administrative Court decided to dismiss the claim (administrative case No. ՎԴ6/0666/05/13).

An appeal was filed against the Judgment of the RA Administrative Court, which was rejected by the Decision of the RA Administrative Court of Appeal dated September 8, 2015.

A cassation appeal was filed against the Decision of the RA Administrative Court of Appeal dated September 8, 2015, and according to the Decision of the RA Court of Cassation dated December 9, 2015, the RA Court of Cassation dismissed the cassation appeal in regard to one part, and rejected to accept the cassation appeal for examination in regard to the other part.

3. The Applicant finds that the challenged provision of the Law contradicts Part 1 of Article 10, Parts 1 and 4 of Article 60, as well as Article 83 of the RA Constitution, as it deprives her of her property.

Referring to the Decision No. 3-1260 (ՎԴ) of the RA Court of Cassation dated 30.06.2006, the Judgments *Burdov v. Russia*, *Beyeler v. Italy* of the European Court of Human Rights, the Applicant justifies her position by the fact that from the moment she was granted a pen-

sion, the amount to be paid to her was her property, she had the right to own, use and dispose of this amount at her own discretion, and that by the application for transferring her monetary means to her bank account she only determined the way the property would be used, and she did not commit any actions aimed at abandoning her monetary means.

The Applicant also notes that stipulating by the challenged provision of the Law of the time term for the termination of the right to receive a pension is not justified, and as a result, the right to social security and the right to property - which are vital for the existence of the most vulnerable part of society - are violated.

4. Objecting to the arguments of the Applicant, the Respondent finds that Point 12 of Part 1 of Article 41 of the RA Law on State Pensions is in conformity with the RA Constitution.

Referring to a number of legal positions of the European Court of Human Rights and the RA Constitutional Court, the Respondent substantiates his position by the fact that, within the meaning of the European Convention for the Protection of Human Rights and Fundamental Freedoms, at the time the Applicant submitted the alleged application for transferring the pension to her bank account, the Applicant did not have property rights in respect of the monetary means to be paid to her, since for acquiring the right to receive a pension and ensuring the continuity of receipt of a pension, the legislator has established a group of certain legitimate duties, such as the presentation of the required documents, and in case of non-cash receipt of a pension, appearing in the bank at least once a year.

According to the Respondent, the termination of the right to receive a pension does not lead to the loss of the right to a pension.

5. Taking into account the Applicant's arguments, the Constitutional Court, within the framework of this Case, first of all considers it necessary to turn to the constitutional legal content of the terms "the right to a pension" and "the right to receive a pension" used in the Law.

Pursuant to Part 2 of Article 7 of the Law - titled "The right to a pension and the right to receive a pension" – "A person entitled to a pension under this Law shall be entitled to receive a pension in case, according to the procedure provided for by the law, she/he applied to the appropriate division of the entity empowered to appoint a pension (hereinafter referred to as the division that appoints a pension), and she/he is entitled to a pension (hereinafter referred to as the pensioner)".

Pursuant to Part 1 of Article 9 of the Law, "An old age labor pension shall be granted to the person upon reaching the age of 63 years, provided she/he has at least 25 years of service".

It follows from the above-mentioned legal norms that:

- a) As a form of manifestation of the constitutional right to social security, the right to a pension is initial, and it serves as a precondition for acquiring the right to receive a pension;
- b) The right to a pension has its own prerequisites and legal grounds for the emergence;
- c) The right to receive a pension is the guarantee of the realization of the right to a pension in the presence of legal conditions provided for by the law.

The prerequisites for the right to a pension and the right to receive a pension are different: if in a specific case, reaching a certain age and the existence of a certain length of service are the preconditions for the emergence of the right to an old age labor pension, the submission of an application and the necessary documents to the appropriate di-

vision of the entity empowered to appoint a pension are the prerequisites for the emergence of the right to receive a pension.

The legislator enshrined in the Law the conditions that are prerequisites for the person for the realization of the constitutional right to social security. Firstly, Article 35 of the Law prescribes a certain duty, in particular, Part 6 of the Law stipulates: “In case of non-cash receipt of a pension, a pensioner (in the case of a minor or a pensioner in charge, her/his legal representative i.e. parent, adoptive parent or guardian) **shall be obliged** to appear in the bank **at least once a year** to continue the receipt of a pension and sign an announcement about being in the Republic of Armenia, and not later than the last working day of the twelfth month following the month of appearing in the bank (to apply for non-cash receipt of a pension) during the previous year”. According to Point 3 of Part 2 of Article 41 of the Law, the payment of a pension shall be terminated “in case of non-submission of an announcement (failure to appear in the bank) in the procedure prescribed by Part 6 of Article 35 of this Law”.

Moreover, it follows from Articles 36 and 41 of the Law that **the legislator provided only for the possibility of terminating the right to receive a pension, and not terminating the right to a pension**. Envisaging in the Law at issue of the provisions on the restoration of the right to receive a pension and the renewal of the payment of a pension also follows from the above-mentioned (respectively, Parts 3 and 4 of Article 41 of the Law). Moreover, it follows from the provisions of Part 4 of Article 41 of the Law that, firstly, the right to receive a pension must be restored, and only then the payment of a pension must be renewed.

6. The Constitutional Court considers it necessary to state that there is a need for more specific clarification of the internal logical

connection between Parts 1, 2, 3, 4 and 5 of Article 41 of the RA Law on State Pensions. Obviously, the “right to receive a pension” derives from the “right to a pension”. Part 1 of Article 41 of the Law establishes the grounds for the termination of the right to receive a pension. Part 2 of the same Article, in particular, provides that **the payment of a pension shall be terminated in the event the right to receive a pension is discontinued**. According to Point 12 of Part 1 of Article 41 of the Law, non-payment of a pension becomes the basis for the **termination** of the right to receive a pension. In Article 41 of the Law, no consistent and differentiated approach is present in regard to the terms “discontinuation” and “termination”. “Discontinuation” assumes a legal consequence by force of law, and “termination” is a consequence of a certain legal action, i.e. a consequence of the will of the authority endowed with state powers. In this case, the issue of judicial protection of the rights of a person may even arise. In addition, it follows from the legal conditions of Part 1 of the same Article that in all cases, except for Point 12, the grounds for **termination** of the right to receive a pension result from the circumstances of **discontinuation** of the right to a pension.

At the same time, it follows from Part 5 of Article 41 of the Law that **the payment of a pension shall be renewed in case of restoration of the right to receive a pension**. However, there is no system link between the legal regulations for the **termination of the right** to receive a pension on the basis of Part 4 /renewal of payment of a pension/ and Point 12 of Part 1 of the same Article. In case the legislator had in mind - in connection with this provision - that the right to a pension shall discontinue, and as a result, the right to receive a pension shall be terminated when a person had not received a pension for five consecutive years, hence this provision should be stated exactly this way. Otherwise, questions arise, in particular, why the pension was not

paid, what opportunities the person had to protect her/his rights, who should **terminate** paying the pension and in what procedure, etc.

7. The Constitutional Court considers it necessary to state that Article 75 of the Constitution of the Republic of Armenia, titled: “Organizational Mechanisms and Procedures for the Exercise of Fundamental Rights and Freedoms” states that: “When regulating fundamental rights and freedoms, laws shall define the organizational mechanisms and procedures necessary for their effective exercise”. Although this constitutional requirement of legislative regulation directly concerns fundamental rights and freedoms, the guarantees set forth in Chapter 3 of the Constitution of the Republic of Armenia must also meet the constitutional requirement of effectiveness.

The Constitutional Court finds that this requirement was not consistently implemented by the legal regulation at issue. Failure to pay a pension for five consecutive years to a pensioner entitled to a labor or military pension or to a person entitled to receive a pension in lieu of the latter may have various reasons and may not assume that the circumstance of **discontinuation** of the right to a pension exists. In addition, the cause-and-effect relationship is also violated. According to Point 12 of Part 1 of Article 41 of the Law, “The right to receive a pension shall be terminated ... in case of failure to pay a pension”, and according to Point 1 of Part 2 of Article 41 of the Law, “Payment of a pension **shall be terminated** ... in the case the right to receive a pension **is discontinued**”. Such legal regulation leads to the fact that a person receives only one opportunity to restore the **right to a pension** (which she/he did not actually lose) and to re-acquire the right to receive a pension.

The Constitutional Court finds that the legal regulation, when the failure to pay a pension to a person without taking into account the

concrete circumstances of the **termination of her/his right to receive a pension**, is not legitimate and does not meet the requirements of the constitutional principle of legal certainty. Due to this legal regulation, a person is also deprived of the opportunity of challenging the **issue of termination** of her/his right to receive a pension, as well as effective judicial protection of the right to property.

Based on the review of the Case and being governed by Point 1 of Article 100 and Article 102 of the Constitution of the Republic of Armenia (with Amendments through 2005), Articles 63, 64 and 69 of the Law of the Republic of Armenia on the Constitutional Court, the Constitutional Court of the Republic of Armenia **HOLDS:**

1. To declare Point 12 of Part 1 of Article 41 of the RA Law on State Pensions, within the framework of the legal content provided by the law enforcement practice, contradicting the requirements of Articles 3, 60, 61, 78, 79 and 83 of the Constitution of the Republic of Armenia and void.

2. Considering that the provision declared as contradicting the RA Constitution is systemically interrelated with the provisions of Articles 35, 36, 41 and a number of other articles of the RA Law on State Pensions, as well as taking into account the possible consequences conditioned by the legal security to be achieved via the elimination of this provision at the moment of the announcement of this Decision, pursuant to Article 102 of the RA Constitution /with Amendments through 2005/ and Part 15 of Article 68 of the RA Law on the Constitutional Court, to determine 1 October 2017 as deadline for entry into force of this Decision in regard to the provision declared as contradicting the Constitution, thus allowing the RA National Assembly and the RA Government, in the scopes of their powers, to take steps to

guarantee in system integrity the constitutionality of the legal regulation at issue.

3. Based on Part 12 of Article 69 of the RA Law on the Constitutional Court, the final judicial act adopted against the Applicant is subject to review due to new circumstances and in accordance with the procedure provided for by the law.

4. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia (with Amendments through 2005) this Decision is final and enters into force from the moment of the announcement.

Chairman

G. Harutyunyan

November 29, 2016

DCC-1325