



**IN THE NAME OF THE REPUBLIC OF ARMENIA**

**DECISION**

**OF THE CONSTITUTIONAL COURT OF THE REPUBLIC OF ARMENIA**

**ON THE CASE OF CONFORMITY OF ARTICLE 71 OF THE RA LAW  
ON STATE REGISTRATION OF RIGHTS TO THE PROPERTY WITH  
THE CONSTITUTION OF THE REPUBLIC OF ARMENIA ON THE BASIS  
OF THE APPLICATION OF THE NON-GOVERNMENTAL  
ORGANIZATION “FREEDOM OF INFORMATION CENTER”**

**Yerevan**

**February 23, 2016**

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

with the participation of (in the framework of the written procedure) representatives of the Applicant non-governmental organization “Freedom of Information Center”: A. Zeynalyan, G. Hayrapetyan,

representative of the Respondent: H. Sardaryan, official representative of the RA National Assembly, Chief Specialist of the Legal Consultation Division of the Legal Department of the RA National Assembly Staff,

pursuant to Point 1 of Article 100, 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 Law of the Republic of Armenia on the Constitutional Court,

examined in a public hearing by a written procedure the Case on conformity of Article 71 of the RA Law on State Registration of Rights to the Property with the Constitution of the Republic of Armenia on

the basis of the Application of the non-governmental organization “Freedom of Information Center.”

The Case was initiated on the basis of the Application submitted to the Constitutional Court of the Republic of Armenia by the non-governmental organization “Freedom of Information Center” on 19.10.2015.

Having examined the written report of the Rapporteur on the Case, the written explanations of the Applicant and the Respondent, having studied the RA Law on State Registration of Rights to the Property, the RA Law on Freedom of Information and other documents of the Case, the Constitutional Court of the Republic of Armenia **ESTABLISHES:**

1. The RA Law on State Registration of Rights to the Property (hereinafter referred to as the Law) was adopted by the RA National Assembly on 14 April 1999, signed by the RA President on 30 April 1999 and entered into force on 6 May 1999.

The challenged Article 71 of the Law, titled: “Fee for state registration and provision of information” states:

“1. In accordance with the procedure established by this Law, for state registration of property rights and restrictions, their origin, termination, assignation or modification, as well as for services provided for the provision of information from the unified cadastre of real estate, a fee shall be charged to the state budget (to the corresponding account opened at the treasury) in the amount provided for by this Law.

2. Applicants shall make payments prescribed by this Law.”

The above-mentioned Article was stipulated by the Law HO-247-N of 23 June 2011, after which it was not amended or supplemented.

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

On 7 May 2013, the Applicant submitted a written request to the Center for Information Technologies of the Staff of the State Committee (hereinafter referred to as the Committee) of the Real Estate Cadastre adjunct to the RA Government to obtain information about the Covered Market of the city of Yerevan.

By the letter No. ԿԽ-1/1813 of 18.05.2013, the Committee rejected the application and did not provide the Applicant with the requested information. The rejection was due to the fact that the fee for the pro-

vision of information prescribed by the Law was not paid, as well as due to the fact that the provision of certain information included in the range of the requested information was limited by law.

On 23.08.2013, the Applicant submitted a claim “On the requirement to provide information” to the RA Administrative Court against the Committee. On 06.06.2014, the Administrative Court rendered a Judgment on rejecting the claim on the administrative case No. ՎՂ/7503/05/13, and motivated that the Applicant did not pay the fee for the requested information prescribed by the RA Law on State Registration of Rights to the Property.

On 30.06.2014, the Applicant submitted an appeal to the RA Administrative Court of Appeal, and by the Decision of 18.12.2014 the Court rejected the appeal of the Applicant and left the appealed judicial act unchanged.

On 18 January 2015, the Applicant appealed the Decision of the RA Administrative Court of Appeal to the RA Court of Cassation, and on 01.04.2015 the Court of Cassation issued a Decision “On rejecting to accept the cassation appeal for examination.”

3. The Applicant considers that the challenged provisions of the Law contradict Articles 8, 18, 23, 27 and 27.1 of the RA Constitution (in the edition of 2005), insofar as they envisage restriction of the right of a person to access to information about herself/himself or information important for the protection of the rights of a person, or information of public importance (important for the protection of public interest).

According to the Applicant, the Constitutional legislator has directly linked the right to obtain information or documents from state authorities with the protection of public interests. The importance of the right prescribed in Articles 27 and 27.1 of the Constitution (in the edition of 2005) is reflected in Part 2 of Article 7 and in Part 2 of Article 10 of the RA Law on Freedom of Information, according to which the owner of information shall immediately disclose or in any other accessible way inform the public about the information she/he owns, the disclosure of which can prevent the danger threatening state and public security, public order, public health and morals, rights and freedoms of others, environment, property of persons, and besides, the fee is not

charged when providing such information, if up to 10 printed or copied pages are provided.

To substantiate his position the Applicant refers to the fact that his request for information on the grounds for property rights or lease of the Covered Market of the city of Yerevan located on Mashtots Avenue is of social significance, and he finds that any information of public importance shall be undoubtedly available to a person free of charge or without any condition or precondition, regardless of the fact whether this information has a degree of secrecy or not, and if so, the secrecy of which information should not serve as grounds for rejecting to provide the information of public importance to the person.

In addition, the Applicant finds that the RA Constitution guarantees an unrestricted right of a person to obtain information about herself/himself, without any interference. The information on a person available in state and local self-government bodies or any other state institution shall be available to her/him without any encumbrance, including the duty to make payments. This right derives from the requirements of well-known international documents on the protection of human rights, in particular the Universal Declaration of Human Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, etc.

In conclusion, the Applicant emphasizes that he does not challenge the constitutionality of payment for obtaining any information and he does not challenge the constitutionality of payment for the provision of services, but he challenges the legal regulation where the state sets out a condition for making payment for providing information of public importance.

The Applicant also stated that Article 8 of the RA Constitution (in the edition of 2005) is comparable to Article 10 of the RA Constitution (in the edition of 2015), Article 18 is comparable to Articles 50 and 61, Article 23 is comparable to Article 34, Article 27 is comparable to Articles 42 and 51, Article 27.1 is comparable to Article 53. At the same time, the Applicant stated that the numbering of articles of the RA Constitution was changed, however the content of the rights indicated therein remained the same, therefore, according to the Applicant, there was no need to amend the interpretations, positions and arguments indicated in the Application.

4. The Respondent considers that in the modern conditions of information society, the right to information is one of the fundamental human rights. This right is closely connected with the spheres of public life, and the exercise of this right creates prerequisites for the realization of other basic human rights.

The right to freedom of information creates positive obligations for the state to ensure the necessary legislative conditions for the exercise of this right.

The Respondent notes that the right to obtain information is implemented in two ways - active and passive. The active right to obtain information requires the person to apply to the authorities possessing the relevant information in order to obtain the necessary information, and the passive right to obtain information corresponds to the duty of the authorities possessing the information to disclose on their own initiative the information considered to be generally available. The RA Law on Freedom of Information has already predetermined the information of public importance, the duty of disclosure or gratuitous provision of which is assigned to the authorities possessing the relevant information. Such provisions are the guarantee for the civil society to exercise public control over the activities of state and local self-government bodies, socio-political organizations, and various spheres of public life.

According to the Respondent, unlike the RA Law on Freedom of Information (which establishes general rules for the provision of information), certain laws, including the RA Law on State Registration of Rights to the Property, regulate relations concerning the provision of information in certain areas. Given the importance of the right to obtain information, the fee charged for providing information should not be so high as to hinder the exercise of this right. Fee for obtaining information is compensatory and deterrent.

The Respondent notes that the provision of information based on the free-of-charge principle is acceptable only in the case of information with certain content that is of public importance, is of interest to a wide section of society, or the immediate notification of the public about this information is due to extreme necessity. The provision of information based on the free-of-charge principle is not conditioned by the status of the entities requesting information, but the nature of the information.

The Respondent also refers to the international experience, and recalls the legislations of a number of countries, which also provide a fee for obtaining information. The Respondent notes that even in the countries the legislations of which basically stipulate the right to obtain information on a free basis, laws on registration of rights to the property stipulate the amount of fees charged for the provision of related services.

Summarizing, the Respondent concludes that the provisions of Article 71 of the RA Law on State Registration of Rights to the Property are in conformity with the RA Constitution, they were established in accordance with the requirements of the RA Law on Freedom of Information, and the fees charged for providing the requested information are not aimed at restricting the right to access to information, but they are the conditions that are elements of the procedure for exercising this right.

5. The RA Constitutional Court states that within the framework of the present constitutional legal dispute, the Applicant points out two issues, namely:

1. Fee for obtaining information by the person about herself/himself,
2. Fee for obtaining information important for the protection of the rights of a person, or information of public importance (important for the protection of public interest).

Therefore, the Constitutional Court considers it necessary to refer to the following questions:

- Does not the fee for obtaining information related to public interest violate the right of a person to obtain information prescribed by Article 51 of the RA Constitution, as well as Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms?
- Is the fee for the exercise of the right of a person to obtain information about herself/himself in conformity with the requirements of Article 34 of the RA Constitution?
- Do not the procedure and the amount of the fee for providing information (as prescribed by the RA Law on State Registration of Rights to the Property) lead to possible blocking of guarantees of freedom of information prescribed by law?

6. The right of a person to obtain information from the state and local self-government bodies is prescribed by Article 51 of the RA Constitution /with Amendments through 2015/, and Part 1 of the latter states: “1. Everyone shall have the right to access to information on the activities of state and local self-government bodies and officials, including the right to become acquainted with documents.” This constitutional right may be restricted by law in two cases:

1. for the purpose of protecting public interests,
2. for the purpose of protecting the fundamental rights and freedoms of others.

In addition, a number of other articles of the RA Constitution, in particular, Article 34 (Protection of Personal Data), Article 42 (Freedom of Assembly) and Article 53 (Right to Submit Petitions) relate to the right to obtain information.

The main legislative guarantees for the realization of the right to obtain information are stipulated by the RA Law on Freedom of Information. The Law has general nature and establishes the main principles in the field of information, the restrictions on the right to obtain information, the procedure for sending requests for information, etc. According to this Law, the provision of information in cases provided for by the law shall be carried out based on the free-of-charge principle. In particular, according to Article 10 of the RA Law on Freedom of Information, for the provision of information by state and local self-government bodies, the fee is not charged in the following cases:

- “1) when answering oral requests;
- 2) when providing up to 10 printed or copied pages of information;
- 3) when providing information by E-mail (Internet);
- 4) when responding to written requests for information provided for by Part 2 of Article 7 of this Law;
- 5) when providing information on the change in the period of the provision of information in the cases provided for by Point 3 of Part 7 of Article 9, and Part 10 of Article 9 of this Law;
- 6) in case of rejecting to provide information.”

Based on the provisions of the above-mentioned Law, by the Decision No. 1204-N of 15 October 2015 the RA Government established the procedure for providing information or its duplicate (copy) by state and local self-government bodies, state institutions and organizations

(hereinafter referred to as the procedure for providing information). According to this procedure, the process of providing information became definite, including the provisions related to the determination of fees charged for providing information for the cases when, according to the Law, the provision of information is carried out in accordance with the principle of payment.

At the same time, the RA Law on State Registration of Rights to the Property regulates the process of providing information on the rights to the property, according to which the provision of information provided for by this Law shall be chargeable. In particular, according to Part 2 of Article 32 of the Law “the receipt for payment of information shall be attached to the request” for information. In addition, Article 71 of the Law imperatively stipulates the obligation to make payment for the provision of information from the unified cadastre of real estate, without exception. The same logic is adhered to in Article 73 of the Law, which envisages the amounts of fees for the provision of information.

Article 75 of the Law provides privileges in respect of the fee for the provision of information. Considering the system of privileges for obtaining information, it becomes evident that in one case the provision of information on real estate located in border and high-mountainous settlements on preferential terms is not conditioned by the status of the requesting entity, i.e. each person who requests to obtain such information shall have the right to a 50 percent discount on payment for information. In another case, a number of state authorities are exempted from the duty to pay for obtaining information, i.e. application of the privilege is directly related to the status of the requesting entity. The Law does not prescribe other cases of exemption from payment for information.

Comparing Article 10 of the RA Law on Freedom of Information with Articles 32 and 71 of the RA Law on State Registration of Rights to the Property, the RA Constitutional Court states that the implementation of the guarantees of freedom of information provided for by the law is ignored by the legal act relating to a specific sphere. Such a situation does not follow from the principle of certainty stipulated by Article 79 of the RA Constitution, according to which: in case of restriction of fundamental rights and freedoms, the preconditions and



the scope of restrictions shall be stipulated by law; the latter shall be sufficiently certain for the holders of fundamental rights and the addressees to be able to engage in appropriate conduct.

7. Within the framework of constitutional legal dispute in this Case, it is also necessary to apply to the requirements of the Recommendation NR(81)19 of the Committee of Ministers of the Council of Europe on the Access to Information held by Public Authorities, according to which:

“I. Everyone within the jurisdiction of a member state shall have the right to obtain, on request, information held by the public authorities other than legislative bodies and judicial authorities.

II. Effective and appropriate means shall be provided to ensure access to information.

III. Access to information shall not be refused on the ground that the requesting person has not a specific interest in the matter.

IV. Access to information shall be provided on the basis of equality.

V. The foregoing principles shall be applicable only to such limitations and restrictions which are necessary in a democratic society for the protection of legitimate public interests (such as national security, public safety, public order, the economic well-being of the country, the prevention of crime, or for preventing the disclosure of information received in confidence), and for the protection of privacy and other legitimate private interests, having, however, due regard to the specific interest of an individual in information held by the public authorities which concerns him personally.

VI. Any request for information shall be decided upon within a reasonable time.

VII. A public authority refusing access to information shall give the reasons on which the refusal is based, according to law or practice.

VIII. Any refusal of information shall be subject to review on request.”

In addition, it should be noted that in a number of judgments the European Court of Human Rights has referred to the issues of freedom of information, in particular in the case of *Tarsasag a Szabadsagjogokert v. Hungary* of 14 April 2009 (application no. 37374/05) the Court concluded that obstacles to the provision of information of public interest

may adversely affect persons engaged in media activities and related fields. By the 28 November 2013 Judgment of *Osterreichische Vereinigung zur Erhaltung, Stärkung und Schaffung eines wirtschaftlich gesunden land und forstwirtschaftlichen Grundbesitzes v. Austria* (application no. 39534/07) the Court reiterated the previous positions, i.e. the Court advocated a broader interpretation of the notion “freedom to obtain information,” which includes the principle of access to information.

Summarizing the aforementioned requirements and comparing them with the legal regulations of the law in dispute, the RA Constitutional Court states that the right to obtain information from state and local self-governments bodies and officials imposes positive obligations on the state to ensure the proper and effective implementation of the relevant law. Regulating the legal relations related to payment of the fee for the provision of information from the unified cadastre of real estate, the legislator is bound by the obligation to guarantee the principle of access to information.

The RA Constitutional Court states that the right to obtain information, provided for by the RA Constitution, can be exercised in various ways.

In particular, depending on the content and importance of the information, it may be available either as information subject to mandatory disclosure, or information provided in accordance with the procedure provided for by the law.

Part 3 of Article 7 of the RA Law on Freedom of Information establishes the information related to the activities of the owner of information, as well as the information and changes therein published at least once a year, regarding which the RA Constitution and (or) the Law do not provide otherwise. According to the legislator, the latter is the minimum information that should be available to everyone, as information of public interest. However, the range of information of public interest is not limited to this. Each person, including organizations, should have opportunities, in conditions of equality, to reclaim or get acquainted with information possessed by state and local self-government bodies, if the provision of such information does not violate the protection of public interests or the rights and freedoms of others.

Moreover, Part 3 of Article 8 of the RA Law on Freedom of Information has already predetermined the range of information that cannot, under any conditions, serve as grounds for restricting the provision of information on the basis of a violation of public interest.

As for the availability of becoming acquainted with the information about herself/himself, this right is envisaged in a number of articles of the RA Constitution, in particular Article 34 titled: “Protection of Personal Data,” and Part 3 of this Article stipulates the following: “Everyone shall have the right to become acquainted with the data about her/him collected in state and local self-government bodies ...” This right may be restricted by law with the aim of protecting state security, the economic wellbeing of the country, preventing or solving crimes, the public order, health and morals, or the fundamental rights and freedoms of others.

Fee for information regarding the access to information may become an obstacle to the effective exercise of the right to obtain information, if it is not a matter of the actual and reasonable costs incurred or information provided by state and local self-government bodies for the services rendered by state and local self-government bodies.

The Constitutional Court considers it necessary to emphasize that although defining the amount of the fee for the provision of information is within the powers of the legislator, it must nevertheless be consonant with the principle of proportionality provided for by Article 78 of the RA Constitution, i.e. the means chosen for restricting fundamental rights and freedoms have to be suitable and necessary for the achievement of the aim prescribed by the Constitution.

In addition, the task of the legislator is to ensure privileges for insolvent persons from the principle of fee for obtaining information about themselves, ensuring the inviolability of the essence of fundamental rights and freedoms provided for by Article 80 of the RA Constitution, in this case, the right to obtain information.

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, Articles 63, 64, 68 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 Article 71 of the Law of the Republic of Armenia on State Registration of Rights to the Property, as well as Part 2 of Article 32, systemically related to the latter, contradicting Articles 34, 51, 78, 79 and 80 of the Constitution of the Republic of Armenia, insofar as they do not prescribe differentiated approach when the requested information concerns the information about the person, as well as the implementation of guarantees on freedom of information provided for by the law.

2. Taking into consideration the necessity not to damage the legal security of the system, pursuant to Part 3 of Article 102 of the Constitution of the Republic of Armenia and Part 15 of Article 68 of the Law of the Republic of Armenia on the Constitutional Court, to determine 1 November 2016 as deadline for invalidating the legal norms declared contradicting the Constitution of the Republic of Armenia by this Decision, thus allowing the National Assembly of the Republic of Armenia and Government of the Republic of Armenia, in the scopes of their powers, to align the legal regulations of the Law of the Republic of Armenia on State Registration of Rights to the Property, and other laws and normative legal acts systemically related to the latter, with the requirements of this Decision, taking into consideration the new clarifications, prescribed by the Constitutional Amendments through 2015, regarding the restriction of rights.

3. Pursuant to Part 2 of Article 102 of the Constitution of the Republic of Armenia this Decision is final and enters into force from the moment of the announcement.

**Chairman**

**G. Harutyunyan**

**February 23, 2016**  
**DCC-1256**