

Annex I.1

Case No 2009-08-01*

Name of the Court:

Constitutional Court (*Satversmes tiesa*)

Parties:

20 MPs (*Andrejs Klementjevs et al.*) v the Parliament (*institution that adopted the contested norm*)

Type of action/procedure:

Abstract control (Article 85 Constitution and Articles 16(1), 17(1)(3) and 28.¹ Constitutional Court Law)

Legally relevant factual situation:

The Law on Pensions 1995 provided that the state pension amount has to be examined every year by taking into account the changes in the consumer prices and the changes in the insurance contribution wage index (this process is called ‘*indexation*’). The amendments from 12 March 2009 provided that in 2009 the state pension amount will not be examined (the Contested Norm). This means that the indexation of pensions was stopped. 20 MPs claimed before the Constitutional court (Court) that the amendments from 12 March 2009 are incompatible with Articles 1 and 109 Constitution.

Article 1 Constitution:

“*Latvia is an independent democratic republic.*”

Article 109 Constitution:

“*Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.*”

Legal questions:

The compliance of the Contested Norm with the principle of legal certainty and the principle of proportionality that follow from Article 1 of the Constitution and the compliance of the Contested Norm with the principle of a socially responsible State that follows from the aggregation of social rights guaranteed in the Constitution as well as the right to social security enshrined in Article 109 of the Constitution.

Arguments of the parties:

Applicants: The applicants argued that the challenged norm breaches the principle of legal certainty. They argued that granting a State pension is an issue of social policy with long-term character. Therefore, legal regulation in this field should be sufficiently stable and unchanging. Even though the principle of legal certainty is not absolute, a transition period

should have been provided. In essence, the Contested Norm has retroactive force, because it concerned the re-consideration for a period of time which has passed (1 October 2008 to 31 March 2009) (para. 2.1).

The applicants argued that the Contested Norm is disproportional. One of the objectives behind the norm was to ‘freeze’ the pensions – a promise given to the international lenders, and from 2010 on to only examine pensions’ compliance with the increase in the consumer prices. The second objective mentioned is the balancing of the state social insurance special budget with revenue. However, the real objective, in spite of the ones mentioned, was to save the state budgetary means. In general this could be legitimate, but not when it happened on behalf of socially unprotected groups, such as pensioners. Alternatives had not been sufficiently considered and the chosen means are not proportional (para. 2.2).

The applicants argued that the challenged norm breaches the principle of socially responsible state. The pensions have not only an economic but as well a social function – to ensure an opportunity for pensioners to preserve a status as full-fledged members of the society. The Applicants indicate that, according to the data of the Central Statistical Bureau of the Republic of Latvia, the subsistence wage in February 2009 was 172.47 LVL. It is indicated in the annotation to the Draft Law that the average pension is 166.72 LVL. The Contested norm cancels indexation of pensions for persons who receive pensions not exceeding 135 LVL planned for February 2009. Consequently, the right of all social groups to an appropriate living standard is not ensured and pensions are not approximated to the real costs (para. 2.3).

Respondent (the Parliament): The Parliament argued that the social rights, including the right to social security, are special and different rights, implementation of which depends on the economic situation and available resources of each state. Latvia undergoes an economic recession. Moreover, Latvia has borrowed international loans. Latvia’s Economic Stabilization and Growth Revival Programme, adopted in December 2009 by the Parliament, served as the ground for granting international funding. When adopting the Contested Norm, the State had not resigned from effective implementation of social rights. Quite the contrary – social area and especially provision of the State pensions shall be regarded as a priority. If compared to other spheres, State pensions have been influenced the least, namely, only their indexation has been cancelled, whilst their amount has not been reduced (para. 3.1). The legitimate objective of the restriction is, first of all, to ensure the interests of the State budget (sustainability). The second objective of the restriction is implementation of the right of other persons to social security, as well as ensuring that the right to social security will be fulfilled as well in the future.

The selected measures are appropriate for reaching the legitimate objective because budget resources by cancelling indexation will be saved up. When assessing the necessity of the established restriction, the Parliament indicated that alternative measures could only be cancellation of other norms favourable to pensioners. Such measures, however, would restrict the rights to a greater extent. The Contested Norm has to be regarded as the most lenient measure also because the amount of pensions would reduce after indexation due to the deflation. The cancelling of indexations avoids such a situation. The Contested Norm complies with the principle of proportionality because it takes into account the current situation in the State and the fact that economic recession has influenced all groups of society. Moreover, other groups of society, for instance, employees of the public sector, have to cope with even greater restrictions.

When assessing compliance of the Contested Norm with the principle of legal certainty, the Parliament indicated that Para 15 of the Transitional Provision of the Law “*On State Pensions*” has been amended several times since its adoption. The procedure for indexation of pensions has been changed several times; therefore it cannot be characterized as constant. Hence, a person was not given grounds to trust that the procedure of examination would stay unchanged. Quite the contrary, individuals during the economic recession could reasonably foresee that indexation of pensions could be cancelled.

Answer by the Court to the legal questions and legal reasoning of the Court:

The Constitutional Court held that arguments of the Applicants regarding non-compliance of the Contested Norm with the principle of a socially responsible State have to be assessed in conjunction with the right to social security enshrined in Article 109 of the Constitution (para. 14).

“The Constitutional Court admits that the amount of social security guaranteed to a person is impacted by the economic situation of the state and available resources. The Constitutional Court, however, has already established the following: “If the legislator, making use of its authority in creation and realization of the social policy as well as in determination of the amount of social rights, has incorporated social rights into the Constitution and has specified the contents of these rights in laws, then they have turned into the rights of an individual. A person may request realization of these rights from the state as well as protect his/her rights at the court” [...]. Consequently, if the legislator has decided to guarantee a certain amount of social security by law, a person is conferred subjective rights to it.” (para. 15)

The Court argued that the duty to regularly examine State pensions follows from international law. For instance, the UN Committee on Economic, Social and Cultural Rights has indicated that States parties must monitor on regular basis whether the amount of social security is sufficient to ensure that beneficiaries are able to afford the goods and services they require to realize their Covenant rights. Likewise, old age pensions and disability pensions are regularly examined in all the EU Member States (para. 15).

The restriction of the fundamental rights can only be established by law or based on a law, it must have a reasonable and legitimate objective, as well as it must comply with the principle of proportionality (para. 16).

In this case, the timeframe for submitting suggestions before the second reading in the Parliament, i.e. 15 minutes shall not be regarded as breach of the Rules of Procedure (17.1). It was not testified in the case materials that consultations on the Contested Norm have ever been organized. In a democratic state the process of adopting a normative act restricting the fundamental rights established in the Constitution should make the society trust its lawfulness. In the context of preparing and adopting the Contested Norm, any urgency and the fact that the society has not been informed in advance cannot be considered positive signs. These circumstances infringed the trust of society (para. 17.2). These considerations, however, do not change the fact that the restriction of the right to social security has been established by law.

Balancing of the special budget of social insurance has to be regarded as grounds for guaranteeing sustainability of the budget and confidence that the fulfilment of rights of following generations to social security will be ensured. Consequently, the aim to guarantee

the right of other persons to social security as guaranteed by the Constitution is legitimate (para. 18.1).

“The Applicants maintain that the objective to fulfil liabilities undertaken by the Cabinet of Ministers in front of international creditors cannot be regarded as legitimate because adoption of such a decision falls into the competence of the legislator rather than that of the government. Although the Parliament has not indicated the objective of the Contested Norm, its statements during the discussions show that this was one of the factors that influenced adoption of the Norm. [...] The Parliament agrees with the Applicants that the aim to fulfil international liabilities undertaken by the Cabinet of Ministers, providing that there are no other legitimate objectives, could not be recognized as the grounds for restricting the fundamental rights established in the Constitution” (para. 18).

The Contested Norm should be assessed in the context of the general situation in the State economics and other measures adopted with the purpose to balance incomes and expenses of the State special budget of social insurance. Since the Contested Norm is only one of the elements out of a range of measures, the Constitutional Court regards it as one of the instruments, aim of which is the reduction of expenses (respectively, balancing of incomes and expenses) of the State special budget (para. 20).

The Contested Norm is appropriate for reaching the legitimate objective.

In this case, it is not possible to provide for a more lenient restriction because indexation of pensions on 1 April 2009 would apply only to those persons who receive pension not exceeding 135 lats. The Constitutional Court considered that there are no more lenient measures for reaching the legitimate objective. It concluded that, when it selected the most appropriate measure for reaching the legitimate objective, the legislator has not exceeded the limits of the freedom of action conferred thereto (para. 21).

Finally, the Constitutional Court assessed whether the benefit gained by the society is greater than the detriment to a person. The gravity of the infringement caused by the Contested Norm to recipients of State pensions is reduced by the fact that the restriction of the right to social security has been established only for a definite period of time, which is the year 2009. It is planned to resume indexation of State pensions in summer 2010 (para. 22.1).

Consequently, the Constitutional Court concluded that, as the economic situation in the State deteriorates, the State no more could guarantee the same amount of social security as it was provided during the period of economic growth. Otherwise the ability of the State to implement the right to social security and to guarantee sustainability of social security system would be threatened. Under such circumstances, cancelling the indexation of pensions can be regarded as the most appropriate measure for solving the above mentioned problems. When comparing the necessity by the society of the Contested Norm and the right of a person to social security, it can be concluded that the benefit gained by the society is greater than the infringement of rights of a person (para. 22.3).

The fact that the responsible institution has not yet issued the normative act on indexation of pensions impacts the level of safeguarding of legal certainty, whilst it does not influence the fact that legal certainty would not have been conferred. Taking into account the aforesaid, it can be concluded that persons were given lawful, grounded and reasonable basis to trust that

indexation of pensions on 1 April 2009 will take place in accordance with the procedure established in the normative acts (para. 24).

The Court further stated that a reasonable balance between the necessity to protect legal security and the interests of the society has to be ensured. The Contested Norm was adopted with the purpose to balance incomes and expenses of the State special budget of social insurance. The deviation from the rights to indexation of pensions was committed with the purpose to ensure substantial interests of the society. Consequently, after having compared the importance of the interests of a person with those of the society, it can be concluded that in the case under review the necessity of the Contested Norm compensates the fact that rights, implementation of which persons relied upon, were not ensured. Consequently, the Contested Norm does not infringe the principle of legal security (para. 25).

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. No law amendments were necessary according to this judgment.

Shortly describe the main outcome of the judgment/decision and its broader political implications:

The Court held that the words “*State pensions shall not be examined in 2009*” of Section 2 of 12 March 2009 Law “*Amendments to the Law “On State Pensions”*” comply with Article 1 and Article 109 of the Constitution of the Republic of Latvia.

In general, this judgment was one of the first giving the ‘*green light*’ to the legislator to carry out austerity measures. Even though the contested norm was adopted in a rush (e.g. 15 minutes for submitting suggestions for the second reading), this case indicated that the Constitutional Court will not try to purposefully stand in the way of austerity measures, even in cases where the process of adopting them has been slightly flawed.

* *The information concerning the case and the reasoning of the Court from <http://www.satv.tiesa.gov.lv/?lang=2> (last visited 18 Nov 2013)*