

Case No 2009-111-01*

Name of the Court:

Constitutional Court

Parties:

Dace Ābele et al. v the Parliament

Type of action/procedure:

Constitutional complaint (Article 85 Constitution and Articles 16(1), 17(1)(3) and 17(1)(11), 19.² and 28.¹ Constitutional Court Law

Admissibility issues:

No

Legally relevant factual situation:

The Salary of judges was reduced by 15%. On 16 June 2009 the Parliament adopted the Law “Amendments to the Law “On Judicial Power””, with which the period of time for functioning of the mechanism for calculating the salary with transitional character was extended till the end of 2010. It was established: “*Starting with the day of the Amendments to the Law “On the State Budget for the Year 2009”, adopted in June 2009, till 31 December 2010 the remuneration of judges and judges of Land Register Offices shall be set as 85 % of the remuneration set in accordance with Paragraph 7 and 17 of these Transitional Provisions*” (the contested second sentence of Paragraph 20).

On 1 December 2009 the Parliament adopted the Law “Amendments to the Law “On Judicial Power””, which came into force on 1 January 2010. With these amendments the period of time for functioning of the mechanism for calculating salary envisaged in the second sentence of Paragraph 7 of the Transitional Provisions was extended till the end of 2011 (the contested second sentence of Paragraph 7). It was as well set: “*From 1 January 2010 till 31 December 2011 the amount of the remuneration of judges and judges of Land Register Offices is set in the amount of 73 % of the remuneration, which is set in accordance with Paragraph 7 and 17 of these Transitional Provisions, but without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions in 2009*” (the contested third sentence of Paragraph 20).

Legal questions:

The compatibility of the contested second sentence and the contested third sentence with Article 1, 83 and 107 of the Constitution.

Arguments of the parties:

Applicants: A situation, when officials of public administration, who prepare administrative acts or control their legality, have higher remuneration than judges, who control the work of these officials, indicates that the amount of judges' remuneration is not commensurate. Disproportionate decreasing of judges' salaries also makes this office unattractive for highly qualified lawyers (2.1). Judges are especially affected by changes in remuneration, because they have very few possibilities to find another way of earning money. If a judge's career is temporarily suspended, the office is not preserved and the career of a judge must be built anew. The Applicants indicate that judges were not given sufficient time for adjusting to the decrease of remuneration, i.e., to re-plan their everyday life, which is linked with the satisfaction of their own and their family members' basic needs, and to review the commitments that they had undertaken.

The Applicants emphasize that the contested provisions also violate the principle of legal stability. The amendments to the procedure for calculating the salary set in the Law "On Judicial Power" deprive the Applicants of the opportunity to found their future activities on valid acts of legislation and effectively plan their income and expenditure (para. 2.2).

Under the conditions of a crisis the remuneration must be commensurate with the responsibility, required qualification, dignity of the profession, prestige and the restrictions connected to the office. A situation when the state decreases judges' remuneration to the extent that a judge, who has assumed financial commitments commensurate with remuneration, becomes insolvent or that his independence comes under threat is inadmissible.

The principle of the division of powers demands observing a balance between all three branches of state power, therefore, when deciding upon the financing of the judiciary, several criteria must be abided by. The legislator should have listened to the representatives of the judiciary, assess their arguments, as well as to provide arguments in case the opinion of the representatives of the judiciary is not taken into consideration. In adopting the contested provisions, the legislator did not comply with these criteria; therefore the principle of the division of power has been violated (para. 2.4).

Respondent: The Parliament in its written response indicated that the adoption of the contested provisions was connected with the economic recession, which is not over yet. To compensate for the lack of finances, Latvia took on international loans. In order to obtain and to use them a number of conditions were set for Latvia, including ones applicable to the decrease of remuneration in the institutions financed from the state budget, as well as ensuring proportionality of remuneration in all fields of employment (para. 3).

The Parliament simultaneously indicated that the principle of the independence of courts cannot be linked only with the amount of judges' remuneration set in the legislation. A complex and systemic assessment of compliance with this principle is needed. The independence of the system of courts (the institutional dimension) and the independence of judges (the individual dimension) is said to follow from numerous criteria: absence of direct interference of other powers (executive and legislative) in the administration of justice, sufficient funding to the system of courts for fulfilling its organisational and administrative functions, guaranteed social security and activities to the judges (selection of candidates for the office of judge, irrevocability and immunity of a judge), impartial allocation of cases, the reviewing of the court judgements according to the procedure set out in the legislation, etc.

The Parliament emphasized that at present the remuneration for judges' work is

commensurate with the nature of the job, the skills needed for performing the job and the responsibility, conforms with the requirements and restrictions set in the law, and, moreover, is balanced with the status and the remuneration of other officials of the judicial system, as well as with the general level of salaries in the state. Therefore a breach of Article 107 of the Constitution cannot be identified (para. 3.1). The Parliament further argued that the setting of the remuneration falls within the sphere of social rights, which is inseparably linked with the state's financial possibilities. Therefore the legislator, in regulating the aforementioned legal relationship, has been granted a wide discretion and as strict requirements as with regard to the ensuring of other human rights cannot be set for the legislator (para. 3.2). The Parliament did not agree to the Applicants' opinion that the contested provisions are inconsistent with the principle of legal certainty. The principle of legal certainty is one of the corner-stones of a democratic state; however, it does not prohibit introducing amendments, conforming to certain requirements, to the existing legal regulation (para. 3.3).

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

Several constitutional courts, dealing with the issues linked with judges' remuneration, have noted that the levelling of remuneration in various branches of power should not be set as an aim. The Constitutional Court has already established that there were no grounds to question the legislator's decision to set the Prime Minister's monthly salary as the highest within the public administration. Several laws contain such a restriction. However, at the same time such a restriction has not been applied to the remuneration of the members of the Parliament, as well as to the remuneration of the officials of several independent institutions and state companies. The Constitutional Court already established that this restriction did not ensure a different treatment of judges of different level courts and with different qualifications, i.e., of persons, who are in different circumstances. Such a levelling of remuneration, as well as the mechanical levelling of remuneration in various branches of power, does not have impartial and reasonable grounds. ***Thus, the restriction included in the contested third sentence of Paragraph 20 – i.e., that judges' remuneration may not exceed the Prime Minister's remuneration, which is set in accordance with the Law on the Remuneration of the Officials and Employees of State and Municipal Institutions, - is incompatible with the principles of equality and division of power.***

For judges the right included in Article 107 of the Constitution to receive commensurate remuneration for the work done, assessing it in interconnection with the requirement of independence included in Article 83 of the Constitution, are restricted. To assess the proportionality of the restriction, both the fact that the right included in Article 107 of the Constitution is a social right, and the fact that the requirement to set appropriate (commensurate) remuneration for a judge follows from Article 83 of the Constitution, must be taken into consideration. Thus, the Constitutional Court has to verify, whether the decrease of judges' remuneration can be considered reasonable and fair, i.e., whether the Parliament, in adopting the contested provisions, complied with the restrictions set for the legislator's discretion – whether it has abided by the principles following from the Constitution. The decrease in percentage of judges' remuneration is admissible, if a similar decrease in percentage to the decrease of remuneration for employees in the other branches of power is applied and is calculated, taking as the basis such remuneration for judges, upon which they could lawfully rely. As a result of the decrease in percentage of judges' remuneration the coefficient applied in calculating a judge's salary is lowered from 4.5 to 1.7. Thus, the remuneration for work, upon which judges could lawfully and justifiably rely upon, actually is decreased by 62 percent. ***Thus, the decrease in percentage of judges' remuneration set by***

the contested provisions, even though is temporary, cannot be regarded as proportional and does not comply with the principle of legal certainty.

The Constitutional Court in its Judgement of 18 January 2010 established that also under the conditions of economic recession the financing can be decreased only and solely by abiding by the constitutional principles, including the principle of solidarity. When adopting the contested provisions, which envisage a decrease in percentage of judges' remuneration, neither the legislator, nor the executive power evaluated or substantiated the amount of decrease for each group of employees working in the public sector, nor the treatment of different social groups was compared and evaluated. At the court hearing the representatives of the ministries provided information on the evaluation, which has been performed. Namely, the provided comparison is only information about the results of the decrease in remuneration and only about the average salary. It does not take into consideration the fact indicated in the Judgement of January 18, 2010, that during the recent years prior to adoption of the contested provisions, the remuneration for public sector employees was considerably increased, but the salary of judges, in turn, was frozen for several years. ***Thus the comparison of changes in remuneration noted by the Ministries is not justified. The use of average salary as a criterion is not appropriate either.***

The Constitutional Court already in its Judgement of 18 January 2010 established: "*When deciding upon a decrease of salary, which would meet equality and solidarity criteria, not only the amount of remuneration of concrete persons, but also the scope of work, different functions, requirements and restrictions set for the office in all branches of power – judges, the representatives of the legislative and executive power, as well as independent institutions should be taken into consideration, moreover, the option of giving up certain functions or the possibility of decreasing the number of positions should be considered.*" Solidarity has not been observed in the decrease of salaries, if it applies to all employees of the public sector, but the amount of decrease has not been assessed and substantiated separately for each group working in the public sector. ***The decrease of salaries was not performed solidary.***

The case materials and the information provided at the court hearing show that the legislator was aware of the risks existing in connection with the contested provisions and was informed about the objections of the judiciary, however, did not assess the respective situation – neither the actual conditions, nor the legal arguments. A situation, when the legislator does not treat the risk forecasts, expressed by experts, with sufficient seriousness and does not take timely measures to prevent the risks, is inadmissible in a judicial state. If the risks are not prevented timely, the judicial system can be weakened even to the extent that reviving of its normal functioning would take longer time and require much larger resources. Moreover, doubts can arise, whether the state in general is judicial. ***Thus, by adopting the contested provisions, the legislator did not respect the principle of the division of power.***

In 2009 judges' remuneration was decreased in percentage, moreover, it was applied to judges' monthly salary, which had been frozen already since 2007 and which the Constitutional Court in its Judgement of 18 January 2010 declared incompatible with Article 83 of the Constitution. The Constitutional Court concluded that the total decrease was disproportionately large and that in setting it the principle of legal certainty was violated. With regard to the principles of solidarity and legal certainty the Constitutional Court concluded that in the adoption of the contested provisions the procedure had been violated. ***The legislator has failed to respect the limits of its discretion; the contested total decrease in***

percentage of judges' remuneration is not proportional and is incompatible with Article 107 of the Constitution in interconnection with Article 83 of the Constitution.

The Constitutional Court held:

- 1) To declare the second sentence and the words of the third sentence “from 1 January 2010 till 31 December 2011 judges’ remuneration shall be set in amount of 73% percent of the remuneration of work, which has been set in accordance with Paragraph 7 of these Transitional Provisions” of Article 20 of the Transitional Provisions of the Law “On Judicial Power” compatible with Article 1, 83 and 107 of the Constitution of the Republic of Latvia, if starting with 1 January 2011 the remuneration is set and paid in accordance with Article 119¹ of the Law “On Judicial Power”, i.e., in compliance with Judgement of 18 January 2010 by the Constitutional Court in Case No. 2009-11-01.
- 2) To declare the words of the third sentence of Paragraph 20 of the Transitional Provisions of the Law “On Judicial Power” “without exceeding the remuneration of the Prime Minister, which is defined in accordance with the Law on the Remuneration of Officials and Employees of State and Municipal Institutions” incompatible with Article 1 of the Constitution of the Republic of Latvia and invalid from 1 January 2011.
- 3) To close proceedings in the part regarding the compatibility of the second sentence of Paragraph 7 of the Transitional Provisions of the Law “On Judicial Power” with Article 1, 83 and 107 of the Constitution of the Republic of Latvia.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. The Court declared the Contested Norms void starting with 1 January 2011, therefore, the legislator had time to adapt.

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

The Court declared the cuts to the wages of the judges unlawful. This had broader implications because one of the demands of the international lenders was to create a united wage system in the public sector and the way it was done was to put all positions in a wage system with the Prime Minister at the top. This judgment had implications on the possibility to incorporate the judges within this system.

* *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)*