

Case No 2009-76-01*

Name of the Court:

The Constitutional Court of the Republic of Latvia

Parties:

Uldis Mugurevičs 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

Legally relevant factual situation:

On 16 June 2009, the Parliament adopted and on 30 June 2009 the State President proclaimed the Law „Amendments to the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”. The Law came into effect on 1 July 2009. This law supplemented the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” by Para 20 (hereinafter – the Contested Norm) in the following wording:

“From 1 July 2009 to 31 December 2012, the long-service pension for a socially insured person (an employee or a self-employed person) as from 1 July 2009 shall be recalculated and reduced by 70% based on the estimated amount of the long-service pension. The amount of the long-service pension shall be restored as from the first date of the month proceeding the month when the status of a socially insured person is lost.”

Legal questions:

The compatibility of the Contested Provision with Article 1 Constitution (principles of legitimate expectations and proportionality) and Article 109 Constitution (the right to social guarantees)

Arguments of the parties:

Applicant: It was indicated in the application that disbursement of pension at the amount of 30% in fact deprives the respective person of social security. The Applicant denies that exercise of social rights in the State would depend on the economic situation and available resources. Legal norms on long-service pensions regulating the procedure of granting the respective pension have remained unchanged. The Contested Norm restricts only application of these norms during a certain period of time.

The social security measures fulfil not only an economic function, which is to compensate loss of income, but also a social function, namely, to ensure persons a possibility to preserve the status of a full-fledged member of the society. The Contested Norm does not fulfil the latter function. Although the Norm has been adopted with the purpose to solve financial problems of the state, save budget resources, and balance the interests of all beneficiaries of

State social security, this norm, however, is aimed at creating circumstances that make a pensioner quit paid labour. Although the Contested Norm is a temporary measure, consequences thereof are, in fact, irreversible because it is rather unlikely that a pensioner having once quit paid labour would be able to resume working after the expiry of the term of the Contested Norm, namely, after 31 December 2012.

According to the Applicant, the Contested Norm does not comply with the principle of proportionality. When establishing restriction of the fundamental rights of a person in the Contested Norm, the Parliament has failed to assess whether the society would gain any benefit in the result of substitution of employed pensioners by other persons. However, the aim set, i.e. saving of budget resources, cannot even be reached by the Contested Norm because the majority of working pensions who receive long-service pensions prefer terminating their labour relations. The Parliament has neither assessed impact of the Contested Norm, nor the possibility that a part of pensioners receiving long-service pensions could continue working and be paid an envelope wage, which means that no taxes would be paid and budget income would only decrease. Moreover, the Contested Norm could cause a partial destruction of the pensions system because it could raise distrust of the society into the system.

The Respondent: It has been indicated in the reply of the Parliament that, when assessing compliance of a contested norm with the Constitution, it is necessary to take into account independent factors related with the economic situation of the State and possibilities of the Latvian State budget under circumstances of decline of economic activities. The rapid fall of economic activities has caused substantial reduction of State budget incomes. The revenues of the State consolidated budget were 2052 million lats, which is 363.4 million lats or 15 percent less than those of the corresponding time period in 2008. During the six months of 2009 the financial deficit of the State consolidated budget has reached 449.9 million lats.

Under the above mentioned circumstances, the Parliament had to take effective measures with a view to prevent economic recession in the state, preserve a functioning financial system, and balance wishes of the society with the possibilities of implementing them. Moreover, in accordance with the Declaration of the Intended Activities of the Cabinet of Ministers issued on 11 March 2009, the government has undertaken to achieve reduction of the budget deficit. The need for such a reduction followed both from the commitments to the European Commission and IMF as well as from determination to stop the economic recession in the country. The budget consolidation measures were based on the agreement signed by the political parties constituting the government, the Free Trade Union Confederation of Latvia, the Employer's Confederation of Latvia, the Latvian Association of Local and Regional Governments, the Latvian Chamber of Commerce and Industry and Latvian Pensioners' Federation on 11 June 2009.

The Parliament emphasized that the principle of functioning of the special social insurance budget is self-financing, which means that normative acts on social insurance establish a close link between social insurance payments and social insurance services. As a result of the crisis in Latvia, labour incomes of employed persons have reduced, whilst unemployment rates has increased. As a result of this, revenues into the special budget have reduced, these revenues being formed mainly by social insurance payments. According to the prognosis of incomes and expenses of the social insurance special budget as well as planned expenses of the following years, it is possible to conclude that accumulation in the State special budget

would be used within a couple of years unless the Parliament would have taken the respective measures.

The Contested Norm does comply with Article 109 of the Constitution because social rights are special and different rights. Exercise of these rights depends on the economic situation and available resources of each state. Economic growth and employment are preconditions for a higher level social protection system.

The Applicant argued that the Contested Norm provides for a temporal reduction of the amount of long-service pensions. This should be assessed in the light of amelioration or deterioration of the economic situation. Restrictions included in the Contested Norm have a legitimate objective, namely, it is aimed not only at protection of the interests of special budget, but also the constitutional value enshrined in Article 116 of the Constitution, which is welfare of other persons, and to ensure the duty of the State to disburse State pensions and provide other social services in the future. This objective cannot be reached by other measures that were at the disposal of the Parliament or the Cabinet of Ministers and that would restrict the rights of a person at a lesser extent. Increase of incomes by increasing payment rates for employers and employees could serve as a hypothetical alternative to reduce expenses of the Special budget. Such alternative, however, would cause a number of negative consequences that would, in the long term, have a negative impact on State social insurance payments.

The Parliament argued that the selected measures for reaching the above mentioned aims are appropriate because the Contested Norm ensures saving of budget resources and allows balancing of interests of all beneficiaries of social security. The Contested Norm shall be regarded as proportional and appropriate for reaching the above mentioned objective because the benefit gained by the society is greater than the detriment caused to the rights of a person.

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

The Constitutional Court has already concluded in several of its judgments that in 2009, under the conditions of economic recession, the Latvian State was under the necessity to substantially cut budget expenses, these measures also including the general cut of wages in budget funded institutions. It is not necessary to reassess whether it was urgently necessary to reduce the State basic budget and State social budget expenses when adopting the Contested Norm. The Constitutional Court has also emphasized that “*the State has not only the right but also the duty to coordinate its liabilities in the field of social rights with its economic possibilities. Otherwise execution of other duties of the State could be hampered, including implementation of other social rights*”. The amount of social security granted by the State may vary depending on the amount of funds at the disposal of the State. The State has the right to restrict disbursement of benefits if it is counterbalanced by interests of the society and the right of other persons to receive financial support from the State.

The Constitutional Court referred to the fact that it has already indicated that during economic recession the action of the legislator should be as fast, coordinated and decisive as possible with a view to prevent possible negative consequences. To fulfil the respective duties, the legislator should be conferred a reasonable freedom of action. However, the economic situation of the State or the necessity to reduce the budget deficit provided that there are no other legitimate objective cannot serve as a general justification for the fact that the State refrains from the rights once conferred to persons. The fundamental rights of

persons established by the Constitution are binding on the legislator irrespective of the economic situation in the State. Consequently, adoption of the Contested Norms under the particular economic circumstances does not per se testify their constitutionality.

In the case under review, the right to social security at least at the minimum level is not infringed. Article 109 of the Constitution does not guarantee the right to certain kinds of pensions, including the long-service pension that is calculated based on certain criteria or provided at a certain amount. However, if the State has established a certain kind of pension by law, then Article 109 of the Constitution requires that all further activities of the State would comply with the principles of a law-governed State. The compliance of the Contested Norm with the principle of legal security and that of proportionality should be assessed in conjunction with Article 109 of the Constitution.

A person who has been in service in the interior system for a particular term was not granted legal certainty regarding a certain amount of pension; however, he or she had the right to rely that the amount of the long-service pension would be reasonably bound to the contribution of the person into the service and the correspondent economic situation. Under the circumstances of general inflation and increase of wages, such persons would have the right to expect a respective recalculation of pensions. Likewise, under the circumstances when wages of the interior system employees are substantially cut, reduction of the amount of long-service pensions based on certain criteria would be permissible. However, the Contested Norm provided for reduction of pension at a considerable rate, i.e. by two thirds. A person had the right to confide in the fact that disbursement of a pension would not be related with such unforeseeable factor. Consequently, the Contested Norm has materially infringed legal certainty of persons. However, the Constitutional Court has reiterated that prevention of infringement of substantial interests of the society should have priority over the principle of legal certainty.

During harsh economic conditions in the State, a situation when the State would provide, within the limits of its possibilities, minimum existence possibilities for as much persons as possible, might arise. However, consequences of these circumstances should equally touch all inhabitants of the State. The Constitutional Court has already concluded that no equal approach towards all persons regarding reduction of funds to be disbursed from the State budget was ensured. Under such circumstances, an undifferentiated reduction of long-service pension by 70% cannot be regarded as compliant with the principle of proportionality. Consequently, the Contested Norm does not comply with Article 109 of the Constitution in conjunction with Article 1 of the Constitution.

Having assessed the economic situation of the State and possibilities of the State budget, the deducted part of the pension withheld based on the Contested Norm shall be fully disbursed according to procedure established by the State and no later than before 1 July 2015.

The Court held:

1. Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” does not comply with Article 1 and 109 of the Constitution of the Republic of Latvia and shall be null and void as from the date of adopting it.

2. Deductions from long-service pensions established in Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks” shall be terminated no later than by 1 June 2010.

3. No later than by 1 June 2010, the Parliament shall be committed to establishing procedure for disbursing the deductions from the long-service pensions made in accordance with Para 20 of the Transitional Provisions of the Law “On Long-Service Pensions for Ministry of the Interior System Employees with Special Service Ranks”.

Legal effects of the judgment/decision

The operative part of the judgment becomes a law once announced. This judgment required amendments of law.

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

This was one of the maybe less important and less famous cases where the Court declared changes in law introduced to carry out austerity measures unlawful. As one of the pension cases this case served for protection of the pensions system from cuts.

** 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)*