

Case No 2009-88-01*

Name of the Court:

The Constitutional Court of the Republic of Latvia

Parties:

Vēsma Vilka 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:

The Applicant was granted long service pension of a military person, and she was also employed and thus was a socially-insured person. When submitting the application, the Applicant had already terminated her legal employment relationship. It follows from the application that the long term pension of the Applicant was reduced by 70%, namely, under Para 17 of the Transitional Provisions of the Long Service Pension Law the amount of 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. According to the information provided by the Ministry of Defence, some persons who terminated their legal labour relations from 1 July 2009 were disbursed long service pensions erroneously deducted 70% of the estimated amount because, after coming into force of the Contested Norms, not all data on persons who have ceased their legal labour relations before coming into force of the Contested Norms were received. It follows from the case materials that this mistake was corrected and sums erroneously deducted were disbursed. Consequently, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law do not directly infringe the rights of the Applicant.

Article 29 Paragraph 3 of the Constitutional Court Law provides that judicial proceedings of a matter may be terminated until pronouncement of the judgment at the decision of the Constitutional Court if the Constitutional Court establishes that a decision regarding initiation of a matter does not comply with the requirements of Section 20, Paragraph five of this Law. However, Article 20 Paragraph 5(3) of the Constitutional Court Law provides that, in examining applications, the Division shall be entitled to refuse to initiate a matter if the application does not comply with the requirements specified in Section 19² of the Constitutional Court Law. If a Constitutional Court panel, when deciding on initiation of the case, has any doubts regarding existence of any particular infringement, the above mentioned issue is being solved during preparation and examination of the case. In the frameworks of the case under review, the Constitutional Court shall have the right to assess reduction of long service pensions for military persons insofar as it applies to the Applicant, namely, to assess Para 14 of the Transitional Provisions of the Long Service Pension law (hereinafter – the Contested Norm).

Legally relevant factual situation:

On 16 June 2009, the Parliament adopted the Law “Amendments to the Law on Long Service Pensions of Military Persons”. It came into effect on 1 July 2009. The Law supplemented the Long Service Pension Law by paras 14, 16 and 17 of the Transitional Provisions (hereinafter – the Contested Norms).

Para 14 of the Transitional Provisions of the Long Service Pensions Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who have been granted the long service pension before 30 June 2009, shall be recalculated and reduced by 10 percent based on the estimated amount of the long-service pension. The Ministry of Defence shall recalculate long service pensions of military persons before 3 July 2009.”

Para 16 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pension of beneficiaries who, as on 1 July 2009, is a socially insured person (an employee or a self-employed person), 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. If the beneficiary of the long service pension is not, as on 1 July 2009, a socially insured person (an employee or a self-employed person), he or she shall have the duty to inform the Ministry of Defence on it, as well as on the loss of the status of a socially insured person within three working days from the date of the loss of the status.”

Para 17 of the Transitional Provisions of the Long Service Pension Law provides:

“In the period from 1 July 2009 to 31 December 2012, long service pensions for beneficiaries, who become socially insured persons (an employee or a self-employed person) on the first date of the month proceeding the month when the beneficiary of the long service pension has become a socially insured person, 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. The duty of the beneficiary of the long service pension is to inform the Ministry of Defence on the loss or acquisition of the status of a socially insured person within three working days from the date of the loss or acquisition of the status.”

Legal questions

The compliance of Para 14, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law with Article 1, Article 91 and Article 109 of the Constitution. Para 14 of the Transitional Provisions of the Long Service Pension Law established reduction of long service pensions for military persons by 10% based on the estimated amount of the pension. However, Para 16 and Para 17 of the Transitional Provisions of the Long Service Pension Law provides for reduction of long service pension by 70% based on the estimated amount of it for employed recipients of the pension.

Arguments of the parties:

Applicant: The Applicant holds that the Contested Norms do not comply with Article 1, Article 91 and Article 109 of the Constitution of the Republic of Latvia and asks the Court to recognize these norms as null and void as from the moment of adoption. The Legislator, when adopting the contested norms that establish reduction of long service pensions by 10%

for non-employed recipients of long service pension and by 70% for employed recipients of long service pensions has breached these principles. The Contested Norms have been adopted with a view to solve financial problems of the State, to save budget resources, and to balance interests of all beneficiaries of social security.

These norms are also aimed at creating such circumstances that make recipients of long service pension to abandon their jobs. When adopting amendments in the field of social rights, it is necessary to guarantee a certain period for persons to be able to get prepared for the changes. In the case under review, such preparatory period constituted only two weeks. Disregarding the fact that application of the Contested Norms is temporary, consequences caused by them are, in fact, irreversible because it is rather unlikely that the Applicant who has terminated her labour relations will be able to restore them after the expiry of the term of the restriction established in the Law, namely, after 31 December 2012.

According to the Applicant, the Parliament, when establishing restrictions to the fundamental rights of persons, has failed to assess whether the society would gain any benefit when recipients of long service pension would be replaced by other persons. However, the aim of the norms, i.e. saving of budget resources, cannot be reached by means of the Contested Norms if the majority of recipients of long service pension prefer terminating their legal labour relations. The Parliament has neither assessed the fact that a part of recipients of long service pensions would continue working and receive “an envelope salary”, which means that they would not pay taxes and thus reduce incomes into the State budget.

Respondent: It has been indicated in the reply of the Parliament that, when assessing compliance of the Contested Norms with the Constitution, it is necessary to take into account factors related with the economic situation of the State and possibilities of the State budget of Latvia under circumstances when the conditions have considerably reduced. The fall of the GDP in comparable prices was 18% in the first quarter of the year, and 19.6% in the second quarter of the year. The economic recession resulted in a considerable cut of State budget expenses. During the first six months of 2009, the financial deficit of the State consolidated budget reached 449.9 million lats. Therefore the Parliament had to take effective measures to cease economic recession in the State, to preserve a functioning financial system, and balance wishes of the society with the possibilities to implement them. Moreover, under Declaration of 11 March 2009 regarding planned activities of the Cabinet of Ministers, the government had undertaken to achieve reduction of budget deficit. This followed from both liabilities in front of the European Commission and the International Monetary Fund, and from the determination to cease economic recession of the State.

The Parliament indicated that the Law “Amendments to the Law on the State Budget 2009” that came into effect on 1 July 2009 provided for a considerable cut of expenses from the budget of ministries and other central authorities in order to achieve budget consolidation for the amount of 500 million lats. The Contested Norms ensure saving of the basic budget resources and those of the special budget.

It has been maintained in the reply that the Contested Norms do not contradict Article 109 of the Constitution because social rights are of a special and different character. Exercise of these rights depends on the economic situation of each state and resources available thereto. Economic development and employment serve as preconditions for social protection system of the highest level. From 2002 to 2008, when the State was experiencing economic growth and also incomes into the special budget, the amount of old age pensions and long service

pensions has considerably increased. The Parliament argued that the cut of long service pensions should be assessed in the context of economic recession. The restriction included in the Contested Norms was established as a temporary solution. The restriction included in the Contested Norms had a legitimate objective, namely, to protect not only the interests of the special budget but also the constitutional value mentioned in Article 116 of the Constitution, i.e. welfare of other persons, taking into account the duty of the State to ensure State pensions and other social services in the future. This aim could not be reached by other measures at the disposal of the Parliament and the Cabinet of Ministers that would restrict the rights of a person at a lesser extent. The measures selected for reaching the above mentioned objectives were appropriate because the Contested Norms ensured saving of budget resources and balanced interests of all beneficiaries of social security. They should be regarded as proportional and appropriate for reaching the 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 amount of state guaranteed social rights depends on the resources at the disposal of the State. In certain cases, economic crisis can develop to the point when the freedom of action must be granted to the legislator to enable the implementation of remedial measures – even if the latter would infringe the fundamental rights established by the Constitution. In the situation of extremely limited financial resources of the State, the latter has freedom of action to change the conditions for pension disbursement – with the aim of sustaining a just social insurance system. Under the conditions of economic crisis social solidarity means that every citizen assumes a proportional responsibility for eliminating the harsh consequences of the crisis. The measures for combating crisis and restrictions of rights of persons related thereto should comply with certain criteria - they should be carried out on the basis of thorough assessment and principles of a law-governed state should be observed.

Under circumstances of economic recession and crisis, it is necessary to ensure disbursement of State granted long service pensions but, when reducing them, it is necessary to observe the principle of proportionality, which means that the State cannot cease fulfilling liabilities undertaken by it and cause considerably less beneficial situation for a person by thus infringing the trust of a person in receipt of the stipulated long service pension. The Contested Norm is not aimed at changing the social security system. It provides that, during a certain period, i.e. from 1 July 2009 to 31 December 2012, granted long service pensions shall be disbursed at the amount of 90%. The measure established in the Contested Norm, the aim of which is to solve financial problems, is an exception of the long service pension system for military persons established in the State. By failing to disburse long service pension granted according to a certain procedure, the fundamental rights of the Applicant established in the Constitution are infringed.

The Applicant was conferred legitimate trust in receipt of long service pension at a certain amount. The Constitutional Court has already indicated that under circumstances of economic recession or in other extraordinary situation, the principle of legal certainty requires balancing legitimate trust of persons with interests of the society. In this case, observance of the principle of proportionality plays a decisive role. Deduction of 10% is applied to long service pensions of all military persons disregarding the amount of pension and age of these persons. The Constitutional Court has already concluded that reduction of the long service pension does not apply to the right to social security at least at the minimum level. The Contested Norm was adopted with a view to balance incomes and expenses of the State

budget. Economic recession denied the State the possibility to guarantee such amount of long service pension established during the period of economic growth. If no measures were carried out to solve the situation, this would influence the possibility of the State to ensure the right of other persons to receive services of the social security system and thus it would fail to protect welfare of the society. This would contradict the principle of a socially responsible state.

The Contested Norm restricted the rights of the Applicant once conferred to her; moreover, she could count on these rights for an extended period of time. When adopting the Contested Norm, the legislator failed to provide a lenient transition to the new legal regulation, namely, it did not establish a transitional period or elaborated regulation providing compensation to persons. Since no compensation for deductions from pension or any other measures that would be aimed at ensuring of a fair balance between legal interests of the Applicant and those of the society has been established, the Contested Norm is not proportional. Consequently, the Contested Norm does not comply with the principle of proportionality.

The Court held:

1. Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”, insofar as it applies to persons who have received the age of granting old age pension established in the Law “On State Pensions” does not comply with Article 1 and Article 109 of the Constitution of the Republic of Latvia and shall be regarded as null and void as from the moment of adoption thereof.

2. Accordingly deductions of long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” shall be terminated no later than by 1 June 2010.

3. The Parliament shall be committed to establishing, no later than by 1 June 2010, a procedure for disbursing deductions from long service pensions of military persons who have reached the age of granting of old age pension established in the Law “On State Pensions” made under Para 14 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons”.

4. Proceedings regarding compliance of Para 16 and Para 17 of the Transitional Provisions of the Law “On Long Service Pensions for Military Persons” with Article 1, Article 91 and Article 109 of the Constitution shall be terminated.

Legal effects of the judgment/decision:

The operative part of the judgment becomes a law once announced. The judgment required further changes in law by the legislator.

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)*