

Case No 2010-21-01*

Name of the Court:

Constitutional Court of the Republic of Latvia

Parties:

Eduards Ikvilds 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 29 April 2009, the Parliament adopted the Law “Amendments to the Law on State Funded Pensions” that came into force on 1 May 2009. The above mentioned Law provided the following wording of Section 4 (2) of the Funded Pension Law:

“The contribution rate in the funded pension scheme shall be six per cent of the contribution object specified in the Law on State Social Insurance”.

Para 2 of Transitional Provisions of the Law acquired the following wording:

“The rate determined in Section 4, Paragraph two of this Law shall come into force on 1 January 2012.”

Para 3 (4) of Transitional Provisions now has the following wording:

“as of 1 May 2009 2 per cent of the contribution object determined in law. The rate shall be applied to contributions which are registered from 1 May 2009 in the account of a participant of a funded pension scheme, except adjusted contributions for the time period until 31 December 2008”

Moreover, Para 3 of Transitional Provisions was supplemented by indent 5 with the following wording:

“as of 1 January 2011 not less than 4 per cent of the contribution object determined in law.”

The summoned person, the Cabinet of Ministers, informed that in the Memorandum of Understanding signed on 18 December 2008 and addressed to the International Monetary Fund (hereinafter – the IMF), readiness to implement short-term and long-term measures in order to receive international loan and thus to stabilize the national economy has been expressed. The Memorandum of Understanding also included determination to restrict budget expenses up to the amount of 40 percent of the Gross Domestic Product (GDP). However, in July 2009, the GDP continued to drop; therefore it was evident that the established fiscal deficit would not be achieved. Consequently, receipt of the loan was threatened. The Cabinet of Ministers emphasizes that the IMF will grant another loan only if determinations expressed in the Memorandum of Understanding are implemented. In order to prevent failure by the State to fulfil liabilities, the Memorandum of Understanding dated with 27 July 2009 was prepared and the Latvia’s Economic Stabilization and Growth Revival Programme was also supplemented. The above mentioned Memorandum of Understanding included a determination to elaborate, before 1 July 2010, pension reform in order to ensure sustainability of the three levels of the pension system. International creditors have not

stipulated reducing the contribution rate of the State funded pension scheme. The Cabinet of Ministers emphasizes that, when discussing the terms of the international loan and considering the plan for reducing budget deficit, no substantial cut of funding for the social field has been planned.

Legal questions:

The compliance of the Contested Norms with the principle of legitimate expectations that follows from Article 1 of the Constitution. Likewise, the Applicant asks to assess compliance of the Contested Norms with the principle of a socially responsible State that follows from the body of social rights guaranteed in the Constitution, as well as compliance with the property right enshrined in Article 105 of the Constitution and the right to social security established in Article 109 of the Constitution.

Arguments of the parties

Applicant: The Applicant indicates that, pursuant to case-law of the Constitutional Court, the right to disbursement of pension irrespective of the source of funding pertains to the content of Article 105 of the Constitution. The right to social security, however, has been infringed by the fact that the State has amended, without any legitimate aim, the legal regulatory framework that concretizes the fundamental rights established in Article 109 of the Constitution; the legislator has also breached principles of a law-governed State – the principle of legitimate expectations, the principle of proportionality, and that of a socially responsible State.

When adopting amendments to the Funded Pension Law, the legislator has failed to establish any transitional period for persons to be able to adapt to the new regulatory framework; neither has it established any compensation mechanism. Consequently, according to the Applicant, the Parliament, when adopting the Contested Norms, has breached the principle of legitimate expectations.

The Applicant holds that the ill-considered procedure of adoption of the Contested Norms shows that the aim of these norms is covering of the State budget deficit rather than balancing of incomes and expenses of the State social insurance special budget (hereinafter – social budget). Consequently, the Contested Norms do not have any legitimate objective. The aim put forth by the legislator, which is balancing of social budget, cannot be reached by means of the Contested Norms. The Parliament has failed to make an exhaustive assessment of financial benefit for social budget and consequences caused by the Contested Norms to persons who would use their right to retire. When adopting the Contested Norms, the legislator has not analysed and considered measures to be applied in order to ensure sustainability of social budget. Absence of such measures and unwillingness to elaborate and implement them proves that existence of social budget is endangered. Measures selected by the legislator cannot be regarded as proportional because social impact of the Contested Norms has not been assessed when adopting them.

Respondent:

The Parliament indicates that, in 2009, the State economic situation has deteriorated, unemployment rate has increased, and incomes of the inhabitants and those of the social budget have reduced. Under such circumstances, it was necessary to take immediate

measures to solve the situation because the financial reserve accumulated in the social budget as on 1 January 2009 was 951.1 million lats, whilst it was prognosticated that the reserve would reduce to 383.1 million lats by the end of 2010. By reducing contribution rate into the funded pension scheme, it was prognosticated that incomes into the social budget would increase.

The Parliament holds that the shift of the contribution rate from ten to six percent constitutes an optimal distribution between the first and the second pension system level and ensures that the pension system could operate in a long term. The aim of the Contested Norms is to optimize provision of social insurance services by ensuring the ability of the social budget to operate in the long term provided that it is necessary to balance incomes and expenses of the social budget. Consequently, the Contested Norms have a legitimate aim, namely, to ensure sustainable operation of the State social insurance system by reaching the aim enshrined in Article 116 of the Constitution, i.e. welfare of the society.

According to the Parliament, the Contested Norms are the most lenient solution available because, by reducing the contribution rate in the second level of pension system and thus increasing the contribution rate in the first level of the system, the amount of first level pension is, in fact, increased. Thus the hypothetical restriction established by the Contested Norms is lower than the benefit gained by the society from balancing of incomes and expenses of the social budget.

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

The special character of social rights also determines the limits of control executed by the judicial power in this field. Criteria that should be applied when assessing compliance of a legal norm with the right to social security may differ depending on the fact whether the particular norm restricts the rights conferred to the person or obliges the State to implement its positive duty. When adopting the Contested Norms, the legislator had not only changed the contribution rate to be paid into the funded pension scheme, but also extended the term of introduction of the funded pension scheme. The Contested Norms taken as a common regulatory framework have an impact on the scope and content of each norm because, if taken together, they regulate the development of the funded pension scheme. Consequently, the Constitutional Court, when assessing compliance of the Contested Norms with a legal norm of a higher legal status, shall assess them as a single regulatory framework.

When adopting the Contested Norms, the legislator has not restricted the right of a person to social security in old age because the right of participants of the funded pension scheme to disbursement of a pension are preserved irrespective of the pension level, to which a person has made contributions. By means of the Contested Norms, allocation of social insurance contributions is changed between the first and the second pension level.

The Constitutional Court has already indicated that the principle of legitimate expectations does not exclude the right of the State to amend the existing regulatory framework. An opposite approach would lead to inability of the State to react to changing living circumstances. The principle of legitimate expectations requires that the State, when amending the normative regulatory framework, would observe a reasonable balance between trust of a person and those interests, in favour of which the regulatory framework is being amended.

Balancing of the special budget of social insurance shall be regarded as the grounds for guaranteeing sustainability of the budget and confidence into the fact that the right of the following generations to social security would be realized. The duty of the State to form a sustainable and balanced policy to ensure welfare of the society follows from the principle of a socially responsible state. The State has to coordinate not only the rights of a person in the social field but also the necessity to ensure welfare of the entire society with its economic possibility, as well as to elaborate such a regulatory framework that would be aimed at sustainable development of the State. The legislator, when introducing amendments into the funded pension scheme, has to elaborate such legal regulatory framework that would be aimed at sustainable development of the funded pension scheme. When Adopting Para 3 (5) of the Transitional Provisions, the legislator established that, as from 1 January 2011, the contribution rate into the funded pension scheme shall be no less than four percent. Consequently, the legislator has established a procedure, according to which operation of the funded pension scheme would be facilitated. Namely, in the Transitional Provisions, the legislator has established a mechanism for balancing contributions between the first and the second pension level for persons to be able to accumulate pension capital. Consequently, reduction of the contribution rate into the funded pension scheme is possible if the meaning and aim of creating this scheme is not threatened, and the gradual increase of contribution rate in accordance with economic possibilities of the State, as established in the Transitional Provisions, is observed. When comparing significance of interests of the Applicant and those of the entire society, it can be concluded that, in the case under review, the Contested Norms compensate the fact that the rights of persons, implementation of which could be counted upon, were restricted. Consequently, the Contested Norms do not infringe the principle of legitimate expectations, and therefore they comply with Article 1 and Article 109 of the Constitution.

The Court held: Article 4(2) of the Law on State Funded Pensions and Para 2 (3), (4) and (5) of Transitional Provisions thereof taken as a single regulatory framework comply with Article 1, Article 105 and Article 109 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.

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

Since the Court did not declare the changes in law unlawful, the contribution system was temporarily changed. This was one of the cases where the Court considered temporary austerity measures affecting the social security system to be lawful.

** 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)*