



The Constitutional Court terminates legal proceedings in the case with regard to recalculation of a pension, if a pension has been granted to the person also by another state.

On 21 October 2016 the Constitutional Court adopted a decision to terminate legal proceedings in Case No. 2016-03-01 “On Compliance of Para 42¹ of Transitional Provisions of the Law “On State Pensions” with Article 1, Article 91, Article 105 and Article 109 of the Satversme of the Republic of Latvia”.

Contested Norm

The contested norm of the law “On State Pensions” provides: “If a person has been granted pension of another state for periods of length of insurance, which have been taken into account in granting or recalculation of Latvian pension, the Latvian pension shall be recalculated or disbursement thereof shall be discontinued, excluding such periods, if it has not been laid down otherwise in Regulation No 883/2004 or the international agreements ratified by the Saeima.”

Norms of Higher Legal Force

The Satversme of the Republic of Latvia (hereinafter – the Satversme):

Article 1: “Latvia is an independent democratic republic.”

Article 91: “All human beings in Latvia shall be equal before the law and the courts.

Human rights shall be realised without discrimination of any kind.”

Article 105: “Everyone has the right to own property. Property shall not be used contrary to the interests of the public. Property rights may be restricted only in accordance with law. Expropriation of property for public purposes shall be allowed only in exceptional cases on the basis of a specific law and in return for fair compensation.”

Article 109: “Everyone has the right to social security in old age, for work disability, for unemployment and in other cases as provided by law.”

Facts of the Case

The case was initiated on the basis of two applications by, in total, 30 private persons. The applicants are military of the former Union of Soviet Socialist Republics (hereinafter – the USSR), who prior to the coming into force of the contested norm were receiving both old-age pension granted by the Republic of Latvia and, as former military of the USSR, service pension

granted by the Russian Federation. On the basis of the contested norm, the State Social Insurance Agency has re-calculated pensions to be disbursed to the applicants, decreasing the amount of old-age pension or discontinuing disbursement thereof completely.

The applicants have expressed the opinion that although the imposed restriction has a legitimate aim – ensuring public welfare – it could be reached also by other measures, less restrictive upon the applicants.

The Court's Findings and Decision

The term “another state” is used in the contested norm, and, thus, it applies to pensions granted by any state. However, the materials of the case show that the drafting and adoption of the contested norm was closely linked to the pensions granted by the Republic of Latvia and the Russian Federation for the same insurance period or a period equalled to it. Moreover, all applicants are recipients of military pension granted by the Russian Federation and their old-age pension had been recalculated or the disbursement thereof discontinued on the basis of the contested norm.

Compliance of the contested norms with the Satversme has been examined in interconnection with the commitments of the State defined by the international treaty approved on 24 November 1994 “Agreement between the Government of the Republic of Latvia and the Government of the Russian Federation on the Social Security of Military Pensioners of the Russian Federation and their Family Members Residing in the Territory of Latvia” (hereinafter – the Agreement).

The Constitutional Court found that, by concluding the Agreement, the Republic of Latvia and the Russian Federation were solving the social security issue of the former military of the USSR residing in the territory of Latvia¹. The Russian Federation has assumed responsibility for the social security of former military of the USSR, in accordance with valid legal acts of the Russian Federation. To ensure that all persons may exercise their right to social security in the territory of Latvia, the Republic of Latvia, in turn, has concluded an agreement with the Russian Federation. Thus, it can be concluded that the contested norm does not violate the right to minimum social security enshrined in the Satversme.

¹ The first sentence of Article 7 of the Agreement provides: “The pensions of military pensioners shall not subject to taxes and shall be disbursed at the banking institutions of the Republic of Latvia in the national currency from the resources of the Russian Federation in accordance with terms and provisions established in the Russian Federation.”

The Constitutional Court found that the applicants had never had the right to receive pensions granted by several states for the same social insurance period or a period equalled to it. Such right does not follow from the terms of the Agreement, neither is it protected by Article 109 of the Satversme. Therefore excluding the double social insurance periods from the length of social insurance periods and subsequent recalculation of pension does not create restrictions upon a person's fundamental rights.

The Constitutional Court has recognised² that with respect to pensions Article 105 of the Satversme ensures to a person a smaller scope of rights protection compared to Article 109 of the Satversme, therefore, if a restriction upon the rights enshrined in Article 109 of the Satversme is not established, then there are no grounds to assume that the contested norm restricts also the right to property enshrined in Article 105 of the Satversme.

Since legal provisions have never envisaged the subjective right of a person to receive pension from several states for the same period of social insurance or a period equalled to it, the applicants could not have developed legal certainty in need of protection that a situation like this would not be prevented sooner or later. The fact that the applicants, contrary to the terms of the Agreement, for a couple of years were receiving pension from two states for the same period of social insurance does not create legal certainty in need of protection. The Constitutional Court recognised that the adoption of the contested norm was not incompatible with the principle of legal certainty.

In examining the possible infringement upon the principle of equality, the Constitutional Court recognised that the principle of equality did not require ensuring to a group of persons the right to receive two pensions for the same social insurance period. Quite to the contrary, granting of such right to a group of persons would place it in a more favourable situation than other pensioners and, thus, would cause an infringement of the equality principle.

The decision by the Court is final and not subject to appeal. The decision [in Latvian] is available on the home page of the Constitutional Court:

http://www.satv.tiesa.gov.lv/wp-content/uploads/2016/01/2016-03-01_Lemums_izbeigsana.pdf

The press release was prepared with the aim to facilitate understanding of the decision by the Constitutional Court. It shall not be regarded as part of the decision and is not binding to the Constitutional Court. The judgements, decisions and other information regarding the Constitutional Court are available at the home page of the Constitutional Court www.satv.tiesa.gov.lv.

² For example, Judgement of 21 December 2009 by the Constitutional Court in Case No. 2009-43-01, Para 20.