

Decision 62/1993

IN THE NAME OF THE REPUBLIC OF HUNGARY

In a procedure of the subsequent constitutional examination of statutory provisions, the Constitutional Court has adopted the following

Decision:

The Constitutional Court holds that an unconstitutional situation has emerged as the Annex of Act XII of 1991 on Revision of Certain Pensions and Terminating Certain Pension Supplements does not contain Council of Ministers Decision 3091/1988 (IV. 5.). The Constitutional Court suspends the procedure in point of annulment of Section 3 Paragraph 1 of the Act and the Annex until November 30, 1994.

The Constitutional Court rejects the petitions seeking the establishment of unconstitutionality and the annulment of Section 1, Section 2, Section 3 Paragraphs 2 and 3 of Act XII of 1991 on Revision of Certain Pensions and Terminating Certain Pension Supplements.

The Constitutional Court publishes this Decision in the Hungarian Official Gazette.

Reasoning

I.

The Constitutional Court received several petitions seeking the establishment of unconstitutionality of Act XII of 1991 (hereinafter: Act.); the Constitutional Court consolidated these petitions. The petitioners considered Section 1, Section 2, Section 3 of the Act and point 7 of its Annex unconstitutional and sought their annulment.

According to their standpoint, the provisions of the Act infringe fundamental constitutional rights as they oppose the constitutional principle of the rule of law when they annul acquired rights retrospectively. The petitioners consider the Act as conflicting with the prohibition of humiliating treatment and infringing the constitutional principle of the presumption of innocence, as it does not dispose the annulment of pensions from persons but from groups, categories; thus not creating an opportunity to examine whether the behaviour or acts of the person substantiates the annulment or limiting the amount of the pension. According to their judgement the Act infringes the right to physical and mental health, the right to social security when it proceeds to suspend the disbursement of old people's pension. According to the standpoint of the petitioners the regulation that excludes Council of Ministers Decision 3091/1988 (IV. 5.) from the Annex of the Act is a discrimination, qualifies as differentiation between citizens, conflicting the Constitution; albeit, it equals the aim and nature of the regulation with Council of Ministers Decision 3089/1988 (III. 25.) on Tasks Connected to Realignment and Overruling Certain Decisions listed under point 7 of the Annex. The petitioners qualify the provisions of the Act as conflicting with the constitutional principle of enforceability of claims due to infringement of fundamental rights in courts. According to these provisions those whose pension supplement disbursed by right of certain honours is annulled are

only entitle to supervision of the derogatory measure. Certain petitioners consider the act unconstitutional as it conflicts the constitutional principles of freedom of thought, conscience and religion.

II.

The petitions are only partly founded.

1. / Act XII of 1991 on Revision of Certain Pensions and Terminating Certain Pension Supplements rules to terminate the disbursement of those pensions that were set according to the allowance guaranteed by Council of Ministers Decision 54/1998 (VI. 12.) on Issues Related to Employment of State Leaders, additionally pension that were set in individual, exceptional proceedings contrary to the effective and publicized regulations of social security and pensions that were set by bodies of the Hungarian Socialist Workers' Party (MSZMP). The Act simultaneously rules about pension supplements related to honours and honorary titles defined in Council of Ministers Decision 30/1985 (VI. 22.), amended several times, and in Council of Ministers Decision 1045/1980 (XI. 18.), additionally the Act rules on the termination of the disbursement of national care fees that are based on Government Decree 28/1966 (XII. 18.).

With the termination of extra rights reflected in the amount of social security pensions and disbursed to the burden of Social Security Funds, the legislator - according to the testimony of the preamble and the reasoning of the Act – wanted to reinstate the principle of equal rights and obligations and wanted to terminate priority pensions and pension supplements not fitting in and conflicting with the principles of the standardized pension system.

The termination of priority pensions and pension supplements only covers the extra rights – not assessable within the system of social security as they conflict its principles. Simultaneously to the termination of the disbursement of pensions and pension supplements for the entitled a pension have to be set and disbursed, calculated according to the effective regulations at retirement. The Act also considers social aspects during the termination of extra rights while excluding those pensioners aged 70 or over on January 1, 1991 from its provisions whose individual pension does not reach HUF 8,500 or whose widow pension does not reach HUF 7,500, and those individuals, whose pension increased with allowances does not exceed HUF 6,500. Likewise, while distributing the principles of social security – emphasizing its social solidarity element – the Act makes exceptions regarding pensions which were set for individuals, exceptional procedures differing at all times from effective and publicized regulations of social security and which were based on government decrees listed in the annex of the Act.

The Act, parallel to terminating pension supplements connected to certain honours and honorary titles, rules that those honours and honorary titles that were given for scientific, sport, art or other activities that are prominently beneficial for the nation. Furthermore allowances that were given as acknowledgement of merits gained in national resistance movements or in the anti-German war of independence should be further granted within the frameworks of another legal norm – supplement. The Act detaches the allowances given as an acknowledgement of the above activities within the pension system from the social security system. Following this, the financing burden of these does not lay on the Social Security Fund but the Central Budget, in accordance with the fact that the basis

of the allowances was not the payment of social taxes, and that further financing of these allowances from the social security does not have social legacy from the aspect of the social security system.

Based on the provisions of the Act not every previous beneficiary will be entitled to the supplement. The holders of the honours and honorary titles defined in Section 2 paragraph 2 of the Act, a person who has won an Olympic gold or a gold medal or a World Champion title at World Championships are entitled to supplement. The holders of honours and honorary titles not listed in Section 2 paragraph 2 of the Act will only be entitled to supplement if their honours were given for scientific, sport, art or other activities that are prominently beneficial for the nation or as acknowledgement of merits gained in national resistance movements or in the anti-German war of independence.

Consequently the legislator generalizes the further maintenance of the allowances connected to honours with the condition that the basis of these allowances are activities that are prominently beneficial for the nation. The establishment of certain state honours and defining the allowances connected to them is the result of the free decision of the legislator. The decision of the legislator to establish honours to protect values or to promote aims respected by the society cannot be a matter of constitutionality. Similarly the introduction of allowances connected to state honours is not a matter of constitutionality per se.

2. / The respect of acquired rights is part of the rule of law. The rule of law can only interfere with acquired rights if these rights were created illicitly, for example violating the equality of citizens. The petitioner was wrong for considering the provisions of the Act unconstitutional on the basis that the Act annuls the legally acquired right to exceptional pensions and pension supplements retrospectively. The Act states the time of the annulment of exceptional pensions and pension supplements of state leaders as of the last day of the month following the Act coming into effect, while it rules the annulment of pension set in individual, special procedures not following the regulations of social security in effect or by the bodies of MSZMP (Hungarian Socialist Workers Party) as of June 30, 1991. In both cases the legal rule sets a future date.

3. / The provisions of the Act cannot be correlated to the prohibition of degrading treatment, the presumption of innocence, the freedom of thought, conscience and religion or the right to physical and mental health, defined in Article 54 Section 2, 57 Section 2, 60 Section 1 and 70/D Section 1 of the Constitution. The annulment of the further granting of an exceptional sustenance allowance, which affects all the entitled cannot be considered as degrading treatment. The Act, on one hand on the point of the annulment disposes the use of the same regulations using equal standards for everybody and realizing the Constitutional principle of equal treatment. On the other hand it does not adjudge those entitled to exceptional pensions and pension supplements guilty. The provisions of the Act do not impede anyone from practicing their rights derived from the freedom of thought, conscience and religion. The Constitution talks about the civil right to physical and mental health in connection with the duties of the State regarding organizing labour safety, health care services etc.

4. / The provisions of the Act do not conflict the right to social security defined in Article 70/E of the Constitution either. The right to social security, among others is a right of the citizens to sustenance, necessary for living in case of old age. The Republic of Hungary

realizes the right to sustenance with the system of social security and social institutions. This provision of the Constitution does not conclude that the sustenance of those citizens who did not acquire entitlement to social security under the regulations of social security, should be provided within the system of social security.

5. / During its procedure, the Constitutional Court examined whether or not listing Council of Ministers Decision 3091/1988 (IV. 5.) on Settling Certain Personal Matters in Connection with the Reorganization of Central State Institutions in the Annex results in unconstitutional discrimination. With that end in view, that the Annex lists Council of Ministers Decision 3089/1988 (IV. 5.) on Tasks in Connection with the Reorganization and the Annulment of Certain Decisions issued on the same matter. During the examination it was ascertained that discriminating on the point of step-by-step retirement pension between people of the same sphere does not have constitutional foundations. As a result of this, not listing Council of Ministers Decision 3091/1988 in the Annex, results in unconstitutional discrimination. The Constitutional Court, parallel to stating the unconstitutional situation, waived the procedure of setting a deadline in order to allow an opportunity for the legislator to redress the unconstitutional situation.

Taking all these into consideration, the Constitutional Court decided according to what is inhered in the provisional part.

Budapest, November 23, 1993

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