

Decision 857/B/2005 AB

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of petitions aimed at the subsequent examination and rejection of the unconstitutionality of the legal rule, the Constitutional Court has adopted the following

Decision:

1. The Constitutional Court rejects the petition seeking the unconstitutionality and to annul – based on Article 8 Paragraph 2, Article 17 and Article 70/E of the Constitution – Section 11 of Government Decree No. 168/1997 (X. 6.) implementing Act LXXXI of 1997 on Social Security Pension Benefits.
2. The Constitutional Court rejects the petition seeking the unconstitutionality and to annul – based on the infringement of Article 2 Paragraph 1, Article 8 Paragraph 1, Article 54, Article 70/D Paragraph 1 and Article 70/A of the Constitution – Section 11 of Government Decree No. 168/1997 (X. 6.) implementing Act LXXXI of 1997 on Social Security Pension Benefits.

Reasoning

I.

1. The petitioner sought the unconstitutionality and annulment of Section 11 of Government Decree No. 168/1997 (X. 6.) implementing Act LXXXI of 1997 on Social Security Pension Benefits (hereinafter: DSSPB). The unconstitutionality was based, on the one hand, on his standpoint that the determination of the minimum amount of pension as opposed to Section 5 point (i) and Section 15 Paragraph (2) of Act XI of 1987 on Legislation (hereinafter: AoL) did not take place at the level of statute, although the regulation pertaining to social security concerns a fundamental right. On the other hand the minimum pension does not meet the basic necessities based on statistical figures, so pensioners have to cover their living costs at the expenses of their health expenditure. This infringes their rights under Article 8 of the Constitution, the right to health (Article 70/D Paragraph (1)), the right to human dignity (Article 54), Paragraph 1 of Article 70/A of the Constitution. It does not fulfill the provisions of Article 17. The regulation – in his opinion – is against the principle of legal security because it pushes those affected, into the gutter “with legislative cooperation”.
2. After filing the petition, Section 7 of Government Decree No. 291/2005 (XII. 23.) on the Increase of Old-Age Pension and Accident Benefit (DIOAPAB), Section 7 of Government DIOAPAB No. 224/2006 (XI. 20.), Section 6 of Government Decree No. 329/2006 (XII. 23.) on the Increase of Pension and Pension-like Regular Social Benefits in Relation to the Introduction of Visit Fee, Section 7 of Government DIOAPAB No. 352/2007 (XII. 23.), Section 15 Paragraph 1 point ac) of Government Decree 332/2008 (XII. 30.) on amending Government Decree 168/1887 (X. 6.) implementing Act LXXXI of 1997 on Social Security Pension Benefits, Section 10 Paragraph 4 point a) of Government Decree 266/2009 (XII.

1.) on amending Government Decree 168/1997 (X. 6.) implementing Act LXXXI of 1997 on Social Security Pension Benefits modified the challenged provisions of DSSPB relative to the amount and the standard period and as a result the amount of minimum pension is currently HUF28,500.

According to the practice of the Constitutional Court, it conducts the subsequent examination of the unconstitutionality of the new regulation replacing the old regulation if its content is the same. Thus the constitutionality problem to be examined is the same. [Constitutional Court Decision 137/B/1991, Decisions of the Constitutional Court 456, 457/1992; CC Decision 138/B/1992, DCC 579, 581/1992; CC Decision 1425/B/1997, DCC 844, 845/1998; Constitutional Court Decision 4/1999 (VI. 3.), DCC 396, 399/1999] Considering that the problem of unconstitutionality raised by the petitioner exists regarding the operative text of the challenged regulation, the scale of minimum pension did not change, the Constitutional Court performed the substantive examination in respect of the operative regulation.

## II.

The Constitutional Court took into consideration the following legal provisions when deciding on the petition:

### 1. The provisions referred to by the petitioner:

“§2 (1) The Republic of Hungary shall be an independent, democratic state under the rule of law.”

“§8 (1) The Republic of Hungary shall recognize the inviolable and inalienable fundamental human rights; respecting and protecting them shall be the primary obligation of the State.

(2) In the Republic of Hungary rules pertaining to fundamental rights and duties shall be determined by statute, which, however, shall not limit the essential content of any fundamental right.”

“§17 The Republic of Hungary shall provide for those in need through a wide range of welfare measures.”

“§54 (1) In the Republic of Hungary everyone shall have the inherent right to life and to human dignity, of which no one can be arbitrarily deprived.”

“§70/A (1) The Republic of Hungary shall ensure the human rights and civil rights for all persons on her territory without any kind of discrimination, such as on the basis of race, color, gender, language, religion, political or other opinion, national or social origins, financial situation, birth or on any other grounds whatsoever.”

“§70/D (1) Everyone living in the territory of the Republic of Hungary shall have the right to the highest possible level of physical and mental health.”

“§70/E (1) Citizens of the Republic of Hungary shall have the right to social security; in the case of old-age, sickness, disability, being widowed or orphaned and in the case of unemployment through no fault of their own, they shall be entitled to the assistance necessary for their subsistence.

(2) The Republic of Hungary shall implement the right to social support through the social insurance system and the system of social institutions.”

### 2. The challenged provisions of DSSPB:

“Section 11: The minimum amount of full old-age pension set between December 31, 2004 and January 1, 2006 is HUF24700 per month (Section 12 Paragraph 3 of DSSPB).”

The operative provisions of the DSSPB:

“Section 11: The minimum amount of full old-age pension set between December 31, 2007 and January 1, 2011 is HUF28500 per month.”

### III.

The petition is partially unfounded and partially inadequate for substantive judgment.

1. The petitioner tailored his objection to regulating the minimum pension at the level of government decrees as only opposing AoL, in the summary of the petition; however, he also named the infringement of Article 8 of the Constitution. According to Section 5 point (j) of AoL, health care and social security benefits as fundamental rights and obligations of citizens, have to be regulated in a statute. According to Section 15 Paragraph 2, regulation of fundamental rights and obligations cannot be done via authorization. The infringement of these regulations is unconstitutional if the regulations of DSSPB also infringe Article 8, Section 2 of the Constitution, which states that regulations regarding fundamental rights and obligations are regulated in a statute. According to the relevant practice of the Constitutional Court not all kinds of connection to fundamental rights requires regulations in a statute. The definition of the content of certain fundamental right and determining its substantial guarantees can only be done in a statute, respectively a statute is necessary for the direct and significant restriction of a fundamental right. In case of indirect or remote context the level of a decree is sufficient. Issuing technical and non-restricting regulations in the form of a decree is not per se unconstitutional. [Constitutional Court Decision 64/1991 (XII. 17.), Decisions of the Constitutional Court 97, 300/1991; CC Decision 29/1994 (V. 20.), DCC 148, 155/1994]

According to the position of the Constitutional Court the challenged provisions of the DSSPB are not subject to legislation.

Act LXXXI of 1997 on Social Security Pension Benefits records among its principles that operating and developing the compulsory social security pension system is the task of the state. According to Section 2 Paragraph 3, pension benefits orientates to the amount of income and qualifying years of service, forming the basis of pension benefits. Section 12 Paragraph 1 contains a general rule for minimum old-age pension: it cannot be less than the minimum amount of old-age pension set in another law. Section 101 Paragraph 1 point f) mandates the Government to determine annually the minimum amount of full old-age pension, disability pension and accident disability pension set from December 31, 1998 in a decree; the challenged provision is based on this mandate.

The law regulates the principles of setting pensions, its method of calculation, and the obligation of defining a minimum pension accordingly. The specific amount of the latter one – changing periodically and influenced by the type of

pension benefits and other factors – is not in close context with the right to social security benefits (Article 70/E Section 2 of the Constitution), thus it does not require regulation in a statute.

Considering the above, the Constitutional Court rejected the petition in this respect.

2. The petitioner considered the provision regarding the minimum amount of old-age pension to be against Article 17 and Article 70/E of the Constitution, as according to his standpoint the state did not fulfill its obligation to secure pensioners the necessary benefits for their living.

Article 17 of the Constitution records it to be the state's task to care for those in need. The Constitutional Court has stated its standpoint several times that the examination of the general provisions of the Constitution has to be performed regarding the constitutional provisions found among fundamental rights and obligations – due to their close relation. Thus social measures set in Article 17 should be examined against the provisions of Article 70/E. (Constitutional Court Decision 3/D/1998, Decisions of the Constitutional Court 642, 644/1999; CCD 65/B/2002, DCC 1589, 1593/2004)

In the interpretation by the Constitutional Court, the content of the right to social security is a right demonstrated in a state covenant. (Constitutional Court Decision 32/1991 (V. 6.), Decisions of the Constitutional Court 162, 163/1991; CCD 26/1993 (IV. 29.), DCC 196, 199/1993) The state fulfills this obligation by organizing and maintaining the system of social security and social services. The state obligation only exists on account of the minimum level necessary for living (CCD 43/1995 (VI. 30.), CDD 188, 192/1995) as the degree and methods of social benefits, support and other allowances depend on the capacity of the national economy, one cannot determine a constitutional obligation regarding the scope and method of social benefits, support and allowances and method from the Constitution. (CCD 731/B/1995, DCC 801, 804/1995) The obligations of the state towards its citizens are described in the Constitution in general and they do not mean a personal right to acquire a certain determined income, or to receive care. (CCD 600/B/1993, DCC 671, 672/1993)

As the Constitutional Court has pointed out in its several decisions, the pension system currently is a mixed system, it has both insurance and social elements, but the insurance element is increasing. (Constitutional Court Decision 39/1999 (XII. 21.), Decisions of the Constitutional Court 325, 333/1999; CCD 37/2007 (VI. 12.), DCC 457, 461/2007) The insured gains entitlement to different types of pension benefits – depending on statutory terms – the amount of which depends on the qualifying years of service and the acquired income. In this respect the solidarity element has a limited presence, and the principle of need prevails within the scope of social benefits. The legislator increased the social element in Section 12 Paragraph 2 of DSSPB by guaranteeing pension benefits of a fixed amount for those who are not entitled to pension based on their years of service and income. In addition several provisions of Act III of 1993 on Social Governance and Social Benefits allow supply in cash and in kind for those who do not reach a certain income and are in social need of it.

In view of this, provisions regarding the minimum amount of old-age pension do not infringe Article 17 and 70/E of the Constitution, thus the Constitutional Court rejected this part of the petition as well.

3. The petition only emphasized in connection with Article 2 Paragraph 1, Article 8 Paragraph 1, Article 54, Article 70/D Paragraph 1 and Article 70/A of the Constitution, that the amount was low, but it did not contain constitutional reasoning establishing a connection between the challenged legislation and the listed provisions of the Constitution. Hence it does not meet the content requirement of Section 22 Paragraph 2 of Act XXXIII of 1989 on the Constitutional Court, according to which the petition has to contain a definite request besides naming the reason that is the basis of the petition. Additionally, according to the practice of the Constitutional Court it is not sufficient to refer to certain provisions of the Constitution, one must reason in the petition why and wherein the legal rule sought to be annulled infringes the quoted provisions of the Constitution. (Constitutional Court Mandatory Writ 472/B/200, Decisions of the Constitutional Court 1655/2001; CCMW 494/B/2002, DCC 1783, 1784/2002; CCMW 477/B/2001, DCC 1596, 1598/2005)

The Constitutional Court stated that due to the lack of this content requirement the petition was not eligible for substantive consideration in this respect, hence the Constitutional Court rejected it based on Section 29 point d of the amended and consolidated Decision 2/2009 (I. 12.) (DCC January 3, 2009) on the Temporary Standing Orders and Its Publishing of the Constitutional Court.

**Budapest, November 9, 2010**

**Dr. Elemér Balogh**  
**Judge of the Constitutional Court,**  
**Rapporteur**

**Dr. András Bragyova**  
**Judge of the Constitutional Court**

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