



REPUBLIKA SLOVENIJA
USTAVNO SODIŠČE

U-I-150/94 - 16
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D E C I S I O N

At the meeting of 15 June 1995 concerning the proceedings for evaluation of constitutionality commenced on the initiative of Ms. Jožefa Sever, represented by her proxy, Mr. Andrej Sever, both from Ljubljana, and of Mr. Anton Meglič from Hoče, the Constitutional Court

made the following decision:

The provisions of paragraph 4 of article 39 and paragraph 4 of article 52 of the Old-Age Pension and Disability Insurance Act (Official Gazette of RS, Nos. 12/92 and 5/94) are not in conflict with the Constitution.

R e a s o n s:

A.

1. The initiator states that she was first employed at the age of 15. When completing the 35 years of service, however, she will not be able to retire for not being old enough to do so.

She claims that, in the case of paragraph 4 of article 39 of the Old-Age Pension and Disability Insurance Act (hereinafter: "the OAPDIA"), mandatory extension of the years of service applies exclusively to those who have started to work prior to reaching the age of 18. Thus she will have to work another year and ten month longer than others who got employed a little later; naturally, she will also have to contribute to the pension fund that much longer than others. A further discrimination with respect to such workers is claimed to be the percentage relating to the measuring of the pension which, while increased by one percent for each six month of employment, is in the case of those who are forced to continue to be employed beyond the prescribed number of years of service only increased by half a percent for the same period.

2. The second initiator states that he retired under old-age pension scheme at the age of 65, after more than 46 years of service. He continued to be employed for more than five years after having completed the years of service prescribed for full old-age pension because his services were still required.

He maintains that he has not been granted such benefits as arise from his services rendered and his contributions paid for the purpose of old-age pension insurance for the period of service following the years of service prescribed for full old-age pension. In his opinion, the insured person who has remained insured after having completed the years of service prescribed for old-age pension should have his old-age pension increased by 1% for each full year of service additional to the prescribed years of service for old-age pension, because during any such period all contributions prescribed by statute have been paid.

3. In its reply to the initiative, the National Assembly states that the right to old-age pension refers to the right of the insured person in his or her old age, which mainly consist of such elements as will provide the said person with social security in his or her old age. According to the provisions of the OAPDIA, this right is exercised on the basis of the principle of reciprocity and solidarity. The OAPDIA makes the acquisition of the right to old-age pension subject not only to the completion of the prescribed years of service but also to the reaching of a certain age which applies to all insured persons under identical circumstances. This is why the principle of equality of each person before the law is claimed not to have been violated. The statutory arrangement having been in force prior to the

coming into force of the OAPDIA did not prescribe as an additional requirement the reaching of a certain age. This is why paragraph 4 of article 52 of the OAPDIA has regulated the transition to a new system for the insured persons with respect to whom the age-related conditions for retirement have been made stricter; at the same time, such persons have also been offered a special advantage concerning the determination of their maximum pension base in the event of their deciding to remain employed. In this case, also, the principle of equality before the law could not have been infringed, because this is only a special way of regulating a specific type of insured persons. Neither are the disputed provisions in conflict with the right to social security, because the latter has not been in any way jeopardised.

B.

4. With its resolution of 19 January 1995, the Constitutional Court accepted the initiative of Jožefa Sever and commenced proceedings for evaluation of constitutionality of the statutory provisions referred to in the adjudication hereof.

With the resolution of 4 May 1995, the initiative of Anton Meglič for evaluation of constitutionality of article 52 of the OAPDIA was also joined to the instant case.

5. According to paragraph 2 of article 14 of the Constitution, all persons shall be equal before the law. One of the constitutionally protected rights is also the right to social security, which, according to article 50 of the Constitution, shall belong to all citizens who fulfil such conditions as may be laid down by statute. Within the context of the right to social security, it is especially prescribed by the Constitution that the State shall regulate compulsory pension insurance and shall ensure the proper administration thereof.

Thus, the legislator has been empowered to determine the conditions and scope in reference with the rights belonging to insured persons under compulsory pension insurance; and in this connection the regulation by statute shall ensure with respect to each individual person his or her social security and equality before the law, taking into consideration the fundamental principle that Slovenia is a state governed by the rule of law and a social state (article 2 of the Constitution). The principle of equality before the law implies in particular the need for non-arbitrary application of law to legal entities, but it also binds the legislator to ensure equality of such entities in the process of developing legal norms. It does not prevent the legislator from regulating legal relations differently but binds him to regulate the same kind of relations in the same manner and different relations in a different manner. In this context the legislator must, within the framework of the purpose of a law or any of its provision, select appropriate means which should be proportionate with such difference between individual entities as has been established by objective means.

6. The provision of article 50 of the Constitution protects the individual person's right to social security - in the case of pension insurance his or her right to social security in advanced years. Pension insurance is compulsory; it is regulated by statute, and the latter also prescribes the conditions to be fulfilled to be able to acquire the rights arising from such insurance, as well as their scope. The rights arising from pension insurance depend not only on the contributions paid on the basis of the person's work but also on other contributions and funds, as well as on the implementation of the principle of reciprocity and solidarity.

The rights acquired on the basis of statute are protected by the Constitution in such a way that they cannot be encroached upon retrospectively (article 155 of the Constitution). But the Constitution does not prohibit the changing of a prior statutory right or conditions for the assertion of such right by prospective law, if such changes are not in conflict with constitutional principles and other constitutional provisions, in particular with the principle of confidence in the law as one of the principles of the law-governed state. Conditions with respect to the acquisition of the rights arising from pension insurance may also be modified by prescribing an additional condition, but with posterior effect only, and only to the extent that this does not interfere with the right to social security or equality before the law of the insured parties concerned. For systems such as pension scheme do not allow quick and radical changes. Changes in the system of pension insurance can only be introduced so as to have posterior effect and to allow for a longer transitional period. This also applies to changes concerning

individual rights arising from pension insurance, or concerning specific categories of insured persons. What is involved is not only the protection of accrued rights but, to a certain extent, also of anticipated rights arising from pension insurance. In this connection it should be observed that the individual cannot rely on the assurance that the currently effective law, which entitles him to the assertion of certain rights subject to his fulfilment of prescribed conditions, will not change.

Prohibition of retrospective effect and the principle of protection of confidence in the law are a means of protection against interference of the legislator with the rights and legal relations having been granted or established already under previously enacted and still effective legislation.

Anticipated rights are protected indirectly, by taking into consideration the principle of equality before the law, by the fact that they bind the legislator to choose such appropriate and proportionate changes as would be in conformity with the designed aims and the principle of justice.

7. According to the provision of paragraph 4 of article 39 of the OAPDIA, the right to old-age pension shall be acquired by the insured person who has completed 40 years of service and has reached the age of 58 (men) or, in the case of women, 35 years of service and the age of 53. The regulations in force prior to the coming into effect of the OAPDIA (prior to 1 April 1992), however, also made possible full old-age pension retirement after 35 and 40 years of service respectively for insured women and men, irrespective of their age. As this is a new condition, additionally introduced, a transitional period of five years is provided for in paragraph 5 of article 39 of the OAPDIA, during which the age required to be able to retire after having completed the prescribed years of service will be gradually increased from respectively 50 and 55 years and a half in 1993 to respectively 53 and 58 years subsequent to 1 January 1998.

8. Article 52 of the OAPDIA specifies the criteria used in measuring out old-age pension. The latter must be measured as percentage amounts of the pension base determined on the basis of the years of service. This is a compulsory insurance scheme, with pensions depending on wages of the insured person in the past. Such system is characteristic of the majority of European countries (Austria, Italy, Germany, France, Spain), as well as, for example, of the U.S.A. The pension is measured out so as to ensure, to a certain extent, the continuity of the standard of living of the insured during the period of his active employment; for the pension replaces a certain portion of his wage from which pension insurance contributions used to be deducted. The major difference between Slovenian and other systems lies in the fact that in our system the years of service not only determine the pension amount but are also an essential requirement which must be satisfied to acquire the right to the pension.

9. The measuring of the pension is based on the wages earned by the insured person over the ten most favourable years of insurance (article 43 of the OAPDIA); the percentages of the pension base are determined in article 52 of the OAPDIA and increase progressively with the years of service, but are not in excess of 85%. The system of the selected 10-year period, which is taken into consideration in determining the pension base for being the most favourable period out of the total number of years of service from the viewpoint of wages, however, is a departure from the principle of balance between the contributions paid for pension insurance and the pension as payment out of this insurance.

10. The making the conditions concerning the acquisition of the right to old-age pension after having completed the prescribed years of service harsher by requiring that in such a case the reaching of a specified age is also required is based on objective and justified grounds.

Longer life expectancy of the population has also increased the number of pensioners, while deteriorated economic conditions have produced an imbalance between the number of pensioners and the number of actively employed insured persons to the disadvantage of the latter. Further deterioration of this proportion would affect financial capacity for ensuring the totality of the rights arising from pension insurance and provided for by statute, both with respect to new and existing pensioners. This is why the age limit as a condition to be fulfilled to be able to acquire the right to pension has been raised. And in the case of the insured who have completed the prescribed years of service what is also involved is the application of the same conditions as apply to other insured persons for whom the age limit was prescribed already by former legislation as an essential requirement for acquiring the right to old-age pension.

11. The provision of paragraph 4 of article 39 of the OAPDIA does not violate the right to equality before the law. For the said provision introduces with respect to all insured persons within the framework of compulsory insurance the same essential requirement for acquiring the right to old-age pension: the reaching of a specified age. The requirement of completion of the prescribed years of service has an impact on pension amount and does not by itself entitle one to the right to old-age pension. In the case of the insured persons who have first been employed at the age of 15, the entire length of employment is taken into consideration as in the case of all others, but in line with the adopted pension scheme the pension base may only be established on the basis of wages earned during the most favourable 10-year period of service selected. Such period is in their case not increased for reasons of their being employed for more than the prescribed 35 or 40 years of service, which is also true of the insured persons who remain insured after having fulfilled the conditions entitling one to full old-age pension for other reasons (e.g., on the basis of article 101 of the Labour Relations Act). The requirements of completing the prescribed years of service and of reaching the specified age are in all cases of age-based retirement under article 39 of the OAPDIA prescribed cumulatively, with less years of service specified for higher age and more years of service for lower age. With regard to the length of employment as a condition for acquiring the right to old-age pension, insured persons may find themselves in various actual conditions which differ one from another, and these may be regulated differently by statute.

12. The provision of paragraph 4 of article 52 of the OAPDIA does not violate the right to equality before the law and the right to social security. For the provision only applies to those insured persons who have been affected by the change of conditions applying to old-age retirement. For if they do not reach the newly prescribed age required to be able to retire at the time when they have completed the prescribed years of service, their measured pension will be increased. For at the time of completed the prescribed years of service their pension will be measured out to them in the maximum prescribed percentage of their pension base (85%). However, as they would still fail to satisfy all the requirements for acquiring the right to such pension, they are in fact forced to continue to be employed and to extend pension insurance. This is why the so measured-out pension, which is reflected in subsequent increase of pension resulting from the so extended insurance, is justified by their objectively different position when compared with other insured persons who remain insured after having already satisfied the requirements for acquiring the right to full old-age pension. This is why the latter are rightly excluded from this special right.

13. The Constitutional Court cannot enter into the appropriateness of the rate of pension increase under paragraph 4 of article 52 of the OAPDIA, because this question can be regulated independently by the legislator on the basis of the objectives pursued in this area. The Constitutional Court only notes that the percentages used in measuring out the pension are determined in a different manner already in paragraphs 1, 2 and 3 of article 52 both with regard to the years of service and the sex of the insured person.

C.

14. This Decision was made on the basis of article 21 and paragraph 2 of article 41 of the Constitutional Court Act (Official Gazette of RS, No. 15/94) by the Constitutional Court in the following composition: Dr. Tone Jerovšek, President, and Dr. Peter Jambreč, Matevž Krivic, M.L., Janez Snoj, M.L., Dr. Lovro Šturm, Franc Testen, Dr. Lojze Ude and Dr. Boštjan M. Zupančič, the judges. The decision was reached with seven votes in its favour and one vote against it. The vote against was cast by the judge Krivic, who gave a dissenting opinion.

P r e s i d e n t:
Dr. Tone Jerovšek