

08.10.2003, E.2003/31, K.2003/87

Date : 08.10.2003
Number : E.2003/31, K.2003/87
Official Gazette : 24.02.2004, 25383
Subject : Rule of law, Certainty of the law, Vested and/or acquired rights, Social security, Right to social security, Right to a pension, Right to health, Pension, social security / Pension, deduction, increase.

Headnotes:

The State has the duty to ensure everyone under the social security system. In the operation of this system, an increase in the rate of a premium by a certain percentage is not contrary to the Constitution. But, once the premium has been collected and the individuals have retired, it is not constitutional to deduct an amount as "contribution on health payment" from the payment of the retirement pension.

Summary:

The main opposition party (at the material time, the Republican Party) applied to the Constitutional Court seeking the annulment of some provisions of Law 4838 amending the Law on Retirement (5434).

Article 1 of Law 4838 increased the rate of the retirement pension deduction by 1 percent, that is to say, from 15 percent to 16 percent. The opposition party claimed that that increase infringed legal stability and legal confidence. A State governed by the rule of law is a State that must respect human rights, preserve such rights, and establish a legal order appropriate to equality and justice in social life, and a State whose acts and actions are subject to legal review.

The Constitutional Court noted that when the Law on Retirement had been enacted, the retirement deduction rate had been 5 percent in 1949. That rate was amended several times afterwards. It was observed that the retirement deduction rate had been increased to respond to changes in the economic situation of the country and the problems faced by the retirement pension system. Even though the increase in question would place a heavy burden on the participants, a one-percent increase was not an unjust and unreasonable obligation as far as the principle of the rule of law was concerned.

Consequently, the increase in the retirement pension deduction was not contrary to the Constitution.

Another part of the application related to Article 6.1 of Law 4838, which provides for a deduction called "the contribution on health payment" on retirement pension payments. The amount of that deduction is not to exceed one percent of the total retirement payment.

Article 5 of the Constitution provides that the fundamental aims and duties of the state are: to safeguard the independence and integrity of the Turkish Nation, the indivisibility of the country, the Republic and democracy; to ensure the welfare, peace, and happiness of the individual and society; to strive for the removal of political, social and economic obstacles which restrict the fundamental rights and freedoms of the individual in a manner incompatible with the principles of justice and of the social state governed by the rule of law; and to provide the conditions required for the development of the individual's material and spiritual existence. According to Article 60 of the Constitution, everyone has the right to social security and the state has the obligation to take the necessary measures and establish the organisation for the provision of social security.

The Court noted that social security organisations were under an obligation to ensure the future security of the beneficiaries. The actuarial balance of the security organisations must be preserved in order to continue their activities. The State is under an obligation to ensure everyone social security. In Turkey, the State carries out this obligation by way of the three social security organisations: namely, the Social Security Insurance Fund for workers, the Pension Fund for State Officials and the Self-Employed Insurance Fund. The term and the amount of the premiums paid by the beneficiaries of the social security organisations are determined by the relevant laws during the beneficiaries' years in the workforce. The essence of a social security system relying on premiums consists of a system under which the prepaid premiums are distributed to the beneficiaries.

That being so, making the beneficiaries pay an extra amount called "the contribution on health payment" infringed their right to social security because they had already paid the premiums during their years in the workforce. Moreover, that kind of obligation was contrary to the principles of the legal security, clarity and foreseeability and could run counter to the State's duty to ensure comfort and happiness to its citizens. Therefore, that provision was contrary to Articles 2,5 and 60 of the Constitution.

Since Article 7 of Law 4838 had been abolished by Law 4919 of 8 July 2003, the Constitutional Court decided that there was no reason to deliver a decision on that article.