

24.06.2004, E.2004/18, K.2004/89

Date : 24.06.2004
Number : E.2004/18, K.2004/89
Official Gazette : 23.11.2004, 25649
Subject : Social State, Rule of law, Certainty of the law,
Social law, Right to social
security, Pension, fund /Pension, pensionable
service,period, determination.

Headnotes:

A regulation on the time-limit for the retirement period which has retroactive effect is contrary to the principle of the rule of law and to the Constitution. The legislature in a state governed by the rule of law is under an obligation to ensure the laws conform not only to the Constitution, but also to the universal principles of law. The Law on the retirement period may not be applied to persons who have paid a pension premium before the new law has been promulgated.

Summary:

Balıkesir Labour Court brought an action in the Constitutional Court alleging that a provision of Article 57.b of Law no. 4956 was contrary to the Constitution.

The action before the trial court concerned the pension of the inheritor of a retired person. The time limit for retirement under some special circumstances had been fixed in Article 23 of Law no. 2926 as 3 years. But, the new provision of Article 57.b of Law no. 4956 fixed the retirement limit under the same circumstances as 5 years. The insurance premium has been paid for 3 years, 5 months and 25 days in the case before the trial court. The issue before the Constitutional Court related to the constitutionality of the new regulation.

Article 2 of the Constitution provides for the rule of law and it requires that the State must create a just legal order in all areas and that its acts and actions must be open to judicial review. Under Article 5 of the Constitution, the fundamental aims and duties of the state are: 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 a 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. On the other hand, Article 60 of the Constitution stipulates that "everyone has the right to social security. The state shall take the necessary measures and establish the organisation for the provision of social security."

As a requirement of legal security, rules are generally applied to events and situations after their promulgation, but in exceptional cases if the public interest and public order require, they may have retroactive effect. It is a prerequisite of the social rule of law that solutions be provided while taking into account that social security law develops to promote the rights and guarantees of employees and it is the State's duty to ensure those rights and guarantees.

The retroactive regulation harmed the legal certainty of individuals and was thus contrary to Articles 2, 5 and 60 of the Constitution.

It was unanimously annulled.