

The Ombudsman's Petition to the Constitutional Court concerning the ban on double benefits of pensioners working in the public sector

As of 1 July 2013, pensioners working in the public sector will stop receiving their pension as long as they remain employed. According to the Ombudsman, this alteration of pension regulations infringes on the right to property, on the protection of rights representing pecuniary values, therefore he requested the Constitutional Court to annul this amendment.

In the wake of the amendment of pension regulations the Ombudsman received numerous complaints from private citizens and various interest groups, including the Teachers' Union, the Union of White-collar Workers, the Hungarian Medical Chamber and the Civil Servants' Council of SOTE University. Most of those complainants deemed the introduction of the ban on double benefits discriminatory as it does not cover but the public sector and those employed by the state, leaving out the private sector. The right to pension is an acquired right that shall not be taken away. They also found it prejudicial that the ban affects not only future pensioners but also those already on pension. One of the complainants stressed that people are entitled to receive pension not on the basis of need but due to their long-term contributions to the pension fund. Another complainant pointed out that employees had been paying their pension contributions for decades and now that it was the state's turn to deliver it introduced a new condition into the system making the earlier contributors' situation worse.

In his petition Ombudsman Máté Szabó did not inquire into the constitutionality of the pension system's transformation – he asked whether or not pensions were protected. Having reviewed the regulation and the complaints, the Commissioner concluded that being entitled to pension as a result of having met all the requirements constitutes a right representing pecuniary values which is under the constitutional protection of the right to property. He found that his conclusion was supported also by the Constitutional Courts earlier decisions of great significance concerning the pension system.

Although the right to property is not a fundamental right that may not be restricted, it may be restricted only in the interest of the public and only to the extent of that interest. According to the Ombudsman, it infringes the requirement of proportionality if such a significant change is introduced into the pension system on a short notice, delaying the payment of pensions due to the introduction of a new element. And although there may be a connection, from a social point of view, between old-age pension and being employed, there definitely is not any connection under constitutional law between the two from the point of view of proprietorship and the protection of rights representing pecuniary values.

In his petition the Ombudsman pointed out that it would be disproportionate to lift the protection of acquired property fully and on a short notice referring to a condition that cannot be construed from the point of view of the protection of property. In view of all of the above, Máté Szabó requested the Constitutional Court to annul the ban on double benefits.

The Ombudsman also added that the pension system had gone through radical changes in recent years – the contested provisions were the result of those changes. Changes of such significance, affecting so many people, present and future pensioners, should be put through the scrutiny of the Constitutional Court, as it has been done every time the pension system was changed since the country's democratic transformation.