

IN THE NAME OF THE REPUBLIC OF HUNGARY

On the basis of the petition seeking a posterior review of the unconstitutionality of a statute, the Constitutional Court has adopted the following

decision:

The Constitutional Court establishes that the right to social security contained in Article 70/E of the Constitution entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits necessary for the realisation of the right to human dignity.

The Constitutional Court suspends its proceedings until 1 November 1998 concerning Section 37/A para. (2) item b) of Act III/1993 on social administration and welfare benefits (hereinafter: the "Welfare Act").

The Constitutional Court rejects the petition seeking determination of the unconstitutionality and declaration of the nullification of Section 37/C para. (1) of the Welfare Act.

The Constitutional Court publishes this Decision in the Hungarian Official Gazette.

Reasoning

I

The petitioner raises objections to Section 37/A para. (2) item b) of the Welfare Act on the ground of its violating the provisions of the Constitution concerning social security. In respect of Section 37/C para. (1), the petitioner refers to the unconstitutionality of the Welfare Act on the basis of its contradicting the provisions contained in Section 93 para. (1) of the Welfare Act and violating, at the same time, the provision laid down in the Constitution concerning the right to work.

The related provisions of the Welfare Act are the following.

Section 37/A para. (1) The local government shall establish the right to receive regular social aid of a person who

a) has reached the age of eighteen but is still of active age and who has lost his or her ability to work to the extent of at least 67% or who receives a personal allowance for the blind,

b) [Repealed by Section 13 para. (2) item aa) of Act LXXXIV/1997. Repealed as of 1 January 1998.]

c) is of active age and not employed,

provided that his or her livelihood is not otherwise secured.

(2) For the purpose of paragraph 1, livelihood is not secured

a) for a person referred to in paragraph 1(a) if his or her monthly income and the monthly income per capita in his or her family is below the level of 80% of the prevailing minimum amount of old age pension,

b) for a person referred to in paragraph 1(c) if his or her monthly income is below the level of 70% of the prevailing minimum amount of old age pension, and the monthly income per capita in his or her family is below the level of 80% of the prevailing minimum amount of old age pension,

and neither he/she nor his/her family has any property.

(3) For the purpose of paragraph 1(c), a person of active age and not being employed is one who has exhausted the period of eligibility for receiving a compensation benefit or who can document that during the period of three years before applying for a regular social aid he or she had acted in cooperation with the competent labour centre for at least two years and who is not engaged in any occupational activity, with the exception of an occupational activity specified in Section 34 para. (3) item d) of the Welfare Act.

Section 37/C para. (1) In the case of a person of active age who is not employed, the decree of the local government may prescribe an obligation to act in cooperation with the family support service or the designated social institution. Acting in cooperation means participation in a programme which corresponds to the social situation and mental conditions of the person receiving a benefit.

Section 37/A para. (1) item c) and para. (2) item b) of the Welfare Act define the eligibility criteria for regular social aid to be received by a person of active age who is not employed.

Section 37/D of the Welfare Act defines the amounts of benefits.

Section 37/D The monthly amount of regular social aid must be established by applying the provisions of Section 36 as appropriate, with the derogation of applying 70% of the prevailing minimum amount of old age pension to a person of active age who is not employed.

Section 36 para. (1) The monthly amount of compensation benefit must be assessed to reach the level of

a) 80% of the prevailing minimum amount of old age pension in respect of an unemployed beneficiary who has no income;

b) 80% of the prevailing minimum amount of old age pension together with all the other incomes in respect of an unemployed beneficiary who has got any income.

Section 93 para. (1) The social benefits providing personal care may be used on a voluntary basis, and they are granted on request by the person in need of care. If the person in need of care is legally incapacitated, the request will be submitted by his or her legal representative. A person of limited capacity may submit a request with the approval of his or her legal representative. If these persons cannot agree on submitting the request, the court of guardianship may settle the debate.

Pursuant to Article 70/E para. (1) of the Constitution, "the citizens of the Republic of Hungary are entitled to social security; they are entitled to receive benefits necessary to sustain themselves in old age, sickness, disability, widowhood, orphanhood and if they become unemployed as a result of causes beyond their control".

According to Article 70/B para. (1) of the Constitution, "in the Republic of Hungary everyone has the right to work and freely choose his job and profession".

III

The Constitutional Court gives the following reasoning to its decision.

1. The petitioner raises objections to Section 37/A para. (2) item b) of the Welfare Act on the ground of its violating the provisions of the Constitution concerning social security, as it defines the eligibility criteria for, and the amount of, regular social aid in an amount below the minimum subsistence figure.

Section 37/A para. (2) item b) of the Welfare Act defines the income threshold under which, or in case having no income, a person of active age who is not employed may receive regular social aid. According to the Welfare Act, the amount of regular social aid must be

determined by the local governments, providing that the minimum amount thereof reaches 70% of the prevailing minimum amount of old age pension in respect of a person of active age who is not employed and has no income or an amount supplementing his or her total income to the above level in respect of a person with any other income. The local governments may, to the debit of their own resources, establish a higher level of regular social aid.

The Constitutional Court has been engaged in interpreting Article 70/E of the Constitution several times. In the framework of such interpretation, it gradually extended the definition of the criteria and requirements related to social security, the welfare benefit system and the fundamental right to social security as defined in the article in question. In its Decision 32/1991 (VI. 6.) AB, the Constitutional Court pointed out that the State is deemed to have met its obligation specified in Article 70/E by organising and operating a system of social institutions including welfare benefits. Within this, the legislature can itself determine the means whereby it wishes to achieve its social policy objectives. The obligations of the State in respect of the social security of its citizens are defined in a general manner by the provisions of Article 70/E para. (1) of the Constitution. [ABH 1991, 163]

The legislature has relatively great liberty in determining the methods and degrees by which it enforces constitutionally-mandated state goals and social rights. The State has a wide margin of appreciation with respect to changes, regroupings and transformations within welfare benefits depending on economic conditions. The right of the State to change is, however, not unlimited as stated by the Constitutional Court in its Decision 26/1993 (IV. 29.) AB [ABH 1993, 196 at 199-200]

In its Decision 43/1995 (VI. 30.) AB, the Constitutional Court established very clearly the following: in determining which of the benefits actually enjoyed and how these benefits can be constitutionally withdrawn, social rights have a role insofar that, as a result of such withdrawal, the extent of welfare benefits as a whole may not be reduced to below a minimum level which may be required according to Article 70/E [ABH 1995, 192]

In the said decision, the Constitutional Court established as a general constitutional requirement that the right to social security contained in Article 70/E of the Constitution entails the obligation of the State to secure a minimum livelihood through all of the welfare benefits necessary for the realisation of the right to human dignity. The legislature has

relatively great liberty in implementing such constitutionally-mandated state goals and it may define the minimum amounts of certain benefits by reference to the percentage of other types of income (prevailing minimum amount of old age pension, minimum wage etc.).

The Constitutional Court suspended its proceedings concerning Section 37/A para. (2) item b) of the Welfare Act in order to allow – by taking into account the study results expected from the organisations that had participated in the preparations of the legislation – a decision to be made on whether in the present system of welfare benefits, the minimum amount of regular social aid becoming due under the Welfare Act to a person of active age who is not employed can – together with other benefits – secure the minimum livelihood necessary for the realisation of the right to human dignity in line with the constitutional requirement specified in the holdings.

2. The petitioner further claims that the provisions of Section 37/C para. (1) and Section 93 para. (1) are not compatible. According to the practice of the Constitutional Court, unconstitutionality may only be established on the basis of a conflict of statutory regulations if any of the constitutional principles or rights is violated as a result of the incompatibility of regulations being impossible to resolve by interpretation, and this fact leads to substantive unconstitutionality. [Dec. 35/1991 (VI. 20.) AB, ABH 1991, 176-177.] The petitioner challenges the rule providing for obligatory participation in a mental hygiene programme as one violating the principle of voluntary participation specified in Section 93 para. (1) of the Welfare Act, with the petitioner further claiming that the provision which prescribes an obligatory cooperation violates the constitutional right to work as well.

As pointed out in Dec. 21/1994 (IV. 16.) AB by the Constitutional Court, the subjective right to work means the right to choose and freely practice one's work (on an employment or enterprise basis). The right to work as a subjective (justiciable) right must be distinguished from the right to work as a social right, and especially the latter's institutional aspect, namely, the duty of the State to pursue an appropriate employment and job-creation policy. [ABH 1994, 120-121]

The aim of the challenged cooperation obligation is to manage the living difficulties and mental problems that result from constant unemployment. The programmes are aimed to decrease the negative effects of constant unemployment on the persons who receive regular

social aid, and to prevent a related aggravation in their labour market positions. It serves the purpose of implementing the social essence of the right to work, too, when the State – taking into account the labour demand as well – empowers the local governments to make the use of a service supporting the re-employment of permanently unemployed persons a precondition for granting the benefit. Therefore, the authorisation of the local governments to regulate the cooperation obligation within the limits prescribed by the Welfare Act is not in conflict with the provisions of Article 70/B para. (1) of the Constitution. On the basis of the above, the Constitutional Court rejected the petition in this respect.

Budapest, 22 June 1998.

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President of the Constitutional Court

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