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## **The Supreme Court did not declare the pension reform unconstitutional**

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The Supreme Court en banc rejected the petition of the President of the Republic to declare the law being the basis of the mandatory funded pension reform unconstitutional.

The reform enables the working-age people to withdraw money from the mandatory pension fund and gives the pensioners the right to terminate the pension contract concluded before 2021 and require a lump sum payment.

The Supreme Court found that the law infringes the fundamental right to property and equality and freedom to conduct a business. However, on the basis of the current estimates it was not possible to conclude with adequate certainty that the constitution was being violated. The objectives of the reform - in particular to increase people's freedom of choice - outweigh the violations of fundamental rights and a number of solutions have been introduced to balance these.

The Supreme Court agreed with the President that the separate right to receive state aid at the old age proceeds from the constitution. At the same time the constitution does not stipulate the way of provision of old-age aid or its specific amount, but leaves these for the legislator to settle. The court is entitled to intervene only if the level of old-age aid required by the constitution is clearly not guaranteed or the scope and terms of the aid are arbitrarily worsened by law.

The mere abolition of the mandatory funded pension or a significant change in the system does not mean that the state aid will automatically fall below the level required by the constitution. The court considered it unlikely that the most negative projections would be materialised and thus the fundamental right to old-age aid would be violated.

### **Fundamental right to property**

According to the Supreme Court the reform may have a negative impact on the financial status of the people who wish to continue accumulating pensions to the second pillar. Based on the estimates a considerable number of unit-holders will demand the payment of money which will force the funds to invest money in more easily realizable and less profitable assets. The latter would decrease returns and infringe the fundamental right of unit-holders to property at least in the short term.

However, the reform also provides for a number of solutions to mitigate the possible negative consequences and according to the estimates there is no reason to believe that the funds will not be able to make disbursements. There are no reliable data on the long-term impact of the law and whether and how quickly the volumes and returns of the funds could recover. In view of the above and according to the court the

infringement of the fundamental right to property is not intensive and it is justified by the objective of increasing people's freedom of decision.

The Supreme Court also analyzed the impact of the reform on the fundamental right to property of people currently receiving a second-pillar pension and reached a similar conclusion.

### **Fundamental right to equality**

The Supreme Court stated that the reform also infringes the fundamental right to equality. As a result of the reform the people who have joined the second pension pillar will be able to withdraw money from the fund and thus will be free to use the 4% part of the social tax that the state contributed to the fund for them. This can have an effect similar to the tax refund. The non-members of the second pillar will not receive a refund in this way.

According to the court the making of payments from the state budget to the non-members of the second pillar would be very complicated and costly, which is why unequal treatment is justified and the infringement is in accordance with the constitution. Finding a fair amount would be difficult as the state pensions are influenced by indexation, while the value of units is affected by fund performance and costs.

### **Freedom to conduct a business**

The reform was also analyzed from the point of view of freedom to conduct a business. The law provides the recipients of pensions from the second pillar with a new basis for cancelling the pension contract and paying out the accumulated money. The new regulation creates the risk that the contract will be cancelled primarily by the pensioners who, based on their health data, believe that their life expectancy is shorter and consider it more profitable to withdraw money at once. This in turn would lead to rising average life expectancy of the fund's clients and an increase in costs. The fund also loses the opportunity to earn income from investing insurance premiums and managing contracts due to the cancellation of contracts.

According to the Supreme Court this infringes the freedom to conduct a business and legitimate expectations of insurers, but not too intensively. The possibility to cancel the pension contract is a one-time and temporary solution. In order to hedge the risks the law stipulates a cancellation fee, an opportunity for these funds to stop distributing profits to pensioners and finally the transfer of the performance of contracts to the state.

### **The issue of trust should not be handled lightly**

In the opinion of the Supreme Court the issues mentioned in the President's petition were actually serious and it was justified to bring them before the court. If a law has a wide-scale impact by affecting a large number of people and causing fundamental disagreements in society, it is reasonable to assess its constitutionality before it enters into force.

In addition to resolving the issues raised by the President, the Supreme Court noted that the constitutionality is also subject to linking the law to the issue of trust which simplified and accelerated its adoption in the Riigikogu. The light use of this measure could lead to a stalemate in the parliamentary debate. In the present case, however, no violation was found because the government used an issue of trust due to the obstruction tactics of the opposition.

The President should now promulgate the impugned law and it will enter into force on the tenth day after its publication in the Riigi Teataja, except for the provisions for which the law prescribes a different date of entry into force.

Read the judgment, competing opinions and dissent in Estonian:

<https://www.riigikohus.ee/et/lahendid/?asjaNr=5-20-3/43> [1]

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