



Pension Cuts Due to Council Decisions

Findings of the Court of Justice of the European Union

The CJEU (General Court) was asked to answer the following question: does the EU have the competence to adopt decisions imposing on Member States the obligation to enact strict fiscal consolidation measures, severely curtailing, among others, social security payments and benefits for pensioners.

Specifically, the applicants alleged, first, that the Council lacks the competence to adopt decisions on specific measures relating to the Member States' fiscal policy, which primarily involve political judgement on behalf the national authorities. By acting as such, it, thus, violated the principles of conferral and subsidiarity, as enshrined in articles 4 and 5 TEU. They also claimed that the Council acted unlawfully in adopting disproportionate measures, citing substantive provisions related to their fundamental rights, as enshrined in the Charter, namely, in Articles 1 on Human Dignity, 25 on the Rights of the Elderly, and 34 on Social Security and Social Assistance Rights.

In response to the applicants' claims, the Court, first, observed that establishing EU non-contractual liability for damages caused by its institutions to private individuals in breach of Union law (article 340 TFEU), requires said breach to be of sufficient severity, so that the actions undertaken by the EU institutions may be considered as blatantly unlawful. In the context of this case, the Court found that the Council acted on the basis of articles 126 (9) and 136 TFEU, which confer on it a broad margin of appreciation to adopt the measures necessary with regards to the reduction of deficits and budgetary surveillance in the Member States whose currency is the euro. Furthermore, the impugned decisions were adopted following the Memorandum of Understanding signed with Greece on 3/5/2010, and introduced measures already described therein, aimed at preventing the fiscal derailment of that State, which was threatening the financial stability of both Greece and the euro area as a whole. Hence, they were in line with the general goals pursued by the Union, and justified in terms of the severity of the situation.

As regards the applicants' second claim, the Court noted that the rights to access social security and social assistance services are not absolute, but may be restricted under the conditions laid down in Article 52 CFR, namely that these restrictions are necessary, genuinely meet objectives of general interest recognised by the Union, and respect the essence of the protected rights and freedoms and the principle of proportionality. In this particular case, the measures introduced following the decisions adopted by the Council were aimed at ensuring that Member States of the Euro area exhibit fiscally responsible behaviour, as well as at securing the financial stability of the Euro area as a whole. In light of the immediate danger to Greece's solvency, the Court concluded that the measures adopted did not constitute a disproportionate interference with the applicants' rights, nor a violation of EU law in general.

See: *Sotiropoulou and Others v. Council*, Case T-531/14, Judgement of 3.5.2017.



Co-funded by the Justice Programme
of the European Union



Ludwig Boltzmann Institute
Human Rights



CENTRE FOR
EUROPEAN
CONSTITUTIONAL
LAW



INPRIS



National Research Council of Italy



IJSGI
Institute for International Legal Studies



REPUBLIC OF AUSTRIA
FEDERAL MINISTRY OF JUSTICE



REPUBLIKA HRVATSKA
Pučki pravobranitelj