



The Government of Malaysia and Another v Ian Chin Hon Chong — Protecting Constitutional Pension Rights of Judges

Introduction

The Federal Court's decision in The Government of Malaysia and Another v Ian Chin Hon Chong¹ represents a significant affirmation of the constitutional protection afforded to Judges in Malaysia, particularly in respect of their pension entitlements. The dispute arose following amendments to the pension scheme under the Judges' Remuneration (Amendment) Act 2014 ('Act A1462'), which altered the method of pension calculation for retired Judges.

Background

Old Section 15B (pre-2014)

Prior to the coming into force of Act A1462 with effect from 1 January 2014, section 15B of the Judges' Remuneration Act 1971 ('Act 45') provided for the adjustment of the pensions of retired Judges and the dependants of deceased Judges in accordance with the Third and Fourth Schedules (now deleted) of Act 45. Those Schedules prescribed a formula whereby pension adjustments were automatically based on the '*corresponding last drawn salary*' of a retired Judge. The phrase '*corresponding last drawn salary*' was defined in section 1A of Act 45 effectively as equivalent to the current salary of a serving Judge of the same position as the last position of that retired Judge prior to retirement. As a result, pensions were automatically adjusted based on the current salaries of serving Judges which were revised incrementally from time to time.

New Section 15B (post-2014)

By Act A1462, section 15B was altered with effect from 1 January 2014. The Third and Fourth Schedules and the definition of '*corresponding last drawn salary*' in section 1A of Act 45 were deleted. The amended section 15B(1) of Act 45 stipulated an annual pension increment of two per cent (2%), while sections 15B(2) and 15B(3) provided for further adjustments to address any disadvantage that may arise owing to the said amendments.

Effect of the Change

Under the former regime, retired Judges' pensions would have adjusted automatically and correspondingly to reflect the increased salaries of serving Judges. Under the amended section 15B(1), pension adjustments did not take into account and reflect the increase effected in the salaries of serving Judges with effect from 1 July 2015 via P.U.(A) 59/2016. The disadvantage arising from this was clear unless further corrective adjustments were made under sections 15B(2) and 15B(3).

¹ Federal Court Leave Application No. 08(f)-152-06/2024 (S)



Findings of the Courts

In the High Court

The Plaintiff in Ian Chin Hon Chong v The Government of Malaysia and Another was a retired Judge who had retired on 1 December 2009 and it affected his pensions as a result of Act A1462.

The High Court in Kota Kinabalu accepted the Plaintiff's claim and held that Act A1462 was void for being inconsistent with Article 125(7) read with Article 125(9) of the Federal Constitution.² Article 125(7) provides that the '*remuneration and other terms of office (including pension rights) of a judge of the Federal Court shall not be altered to his disadvantage after his appointment*' while Article 125(9) applies Article 125 to all Judges of the High Court and the Court of Appeal. On the other hand, the Defendants argued that pension adjustment was an additional benefit rather than a pension right protected by Article 125(7) of the Federal Constitution, that the salary revision under P.U.(A) 59/2016 was not intended to apply to Judges who retired before 1 July 2015, and that if pension adjustment was recognised as a protected right and Act A1462 was declared void, the salary revision dependent on that Act must likewise be invalidated.³ The Court held that the Government replaced the Third and Fourth Schedules formula with a flat 2% annual pension increment under Act A1462, claiming it was an improvement, but failed to show how it was better or how it did not constitute a disadvantageous alteration.⁴ The Court ordered the payment of arrears with interest to reflect the difference between what had been paid under the section 15B as amended and what should have been paid under section 15B (which refers to the Third and Fourth Schedules) as it stood prior to the amendment.⁵

In the Court of Appeal

The Court of Appeal subsequently upheld the decision of the High Court by a majority. The Appellants argued on the same points as in the High Court. The Appellate Court held that pension entitlements formed an integral part of a Judge's remuneration and terms of office and cannot be treated as discretionary benefits.⁶ The majority rejected the Government's argument that the amendment merely provided additional benefits rather than a right and found that the reduction constituted a disadvantageous alteration of vested rights.⁷ It was also held that Article 125(7) protects a Judge's remuneration and other terms of office, including pension rights in the plural, meaning all pension-related entitlements. As the Judges' Remuneration Act 1971 (Act A609) had already linked Judges' pensions to serving Judges' salaries at the Respondent's appointment, this adjustment mechanism constituted a protected pension right that could not be altered to the Judge's disadvantage by later legislation.⁸

² Paragraph 73 of [2023] 4 CLJ 198, High Court

³ Paragraph 28 of [2023] 4 CLJ 198, High Court

⁴ Paragraphs 55 to 59 of [2023] 4 CLJ 198, High Court

⁵ Paragraph 78 of [2023] 4 CLJ 198, High Court

⁶ Paragraph 38 of [2024] 9 CLJ 665, Court of Appeal

⁷ Paragraph 43 of [2024] 9 CLJ 665, Court of Appeal

⁸ Paragraph 39 of [2024] 9 CLJ 665, Court of Appeal



In the Federal Court

The Government applied for leave to appeal to the Federal Court, which unanimously refused leave.⁹ In its broad grounds, the Federal Court emphasized that the amendment had resulted in a reduction of monthly pensions for the Plaintiff, thereby contravening Articles 125(7) and 125(9) and engaging Article 4(1) of the Constitution. The Court observed that the issue was neither novel nor of broader public interest because it concerned a finite and diminishing group of affected retirees. The Court underscored the importance of constitutional protection for the Judiciary, affirming that it is the Constitution that must safeguard Judges when legislative amendments threaten their vested rights. By refusing leave, the Federal Court gave finality to the lower Courts' judgments and confirmed that the amended Act was void insofar as it disadvantaged pre-2015 retirees.

Constitutional and Institutional Implications

The significance of the case is substantial. It confirms that pension entitlements for Judges are constitutional rights that cannot be diminished. By ordering the payment of arrears, the Courts demonstrated that constitutional protections are enforceable and carry tangible consequences when breached. The decision clarifies that legislative reforms affecting pension rights must ensure that no sitting or retired Judge is made worse off. The case also serves as a reminder that the Judiciary, while independent in the discharge of its functions, is the Governmental organ vested with the power to enforce the safeguards provided by the Constitution to protect both active and retired Judges from potential Legislative encroachments.

From a policy perspective, the decision sends a clear message to the Legislature and the Executive that any reform affecting Judicial remuneration or pension must ensure that existing beneficiaries are not disadvantaged. Otherwise, such reforms risk constitutional invalidation and retrospective liability.

The implications of this decision extend beyond the immediate question of pension payments. It reinforces the Judiciary's role as a guardian of the Constitution and as a stabilising institution within the governance framework of Malaysia. By protecting post-retirement benefits, the Courts are ensuring that Judges remain independent in the exercise of their functions and that they are not vulnerable to Legislative or Executive pressure during their tenure.

This protection reflects the wider constitutional commitment to securing Judicial independence through stable and predictable financial arrangements, both during service and after retirement.

⁹ Federal Court's Broad Grounds of Judgment dated 17 October 2024

<https://www.kehakiman.gov.my/sites/default/files/2024-10/Govt%20v%20lan%20Chin.pdf>



Conclusion

In conclusion, the Federal Court's judgment in [The Government of Malaysia and Another v Ian Chin Hon Chong](#) reaffirms the constitutional sanctity of Judicial pension rights and strengthens the institutional independence of the Judiciary. It confirms that once a Judge's pension rights have vested, the Legislature cannot enact reforms that disadvantage such rights. The refusal of leave to appeal by the Federal Court provides finality to the lower Courts' judgments and ensures that constitutional guarantees have concrete enforceable effects. The case serves as a guide for lawmakers, administrators and scholars, demonstrating that Judicial independence relies not only on security of tenure but also on the predictable and enforceable protection of financial entitlements. The decision reinforces the principle that constitutional rights, even post-retirement, are sacrosanct and must be respected in practice as well as in principle.



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