



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF TARKOEV AND OTHERS v. ESTONIA

(Applications nos. 14480/08 and 47916/08)

JUDGMENT

STRASBOURG

4 November 2010

FINAL

11/04/2011

*This judgment has become final under Article 44 § 2 (c) of the Convention.
It may be subject to editorial revision.*

In the case of Tarkoev and Others v. Estonia,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Peer Lorenzen, *President*,

Renate Jaeger,

Rait Maruste,

Isabelle Berro-Lefèvre,

Mirjana Lazarova Trajkovska,

Zdravka Kalaydjieva,

Ganna Yudkivska, *judges*,

and Claudia Westerdiek, *Section Registrar*,

Having deliberated in private on 12 October 2010,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in two applications (nos. 14480/08 and 47916/08) against the Republic of Estonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by forty-five former servicemen of the Russian (Soviet) army (“the applicants”), on 24 March and 2 October 2008, respectively. The applicants reside in Estonia and are Russian or Estonian nationals whose names, along with other relevant information, are listed below (Annex).

2. The applicants were represented by Mr M. Rusakov, a lawyer at the Legal Information Centre for Human Rights in Tallinn. The Estonian Government (“the Government”) were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs. The Government of the Russian Federation did not make use of their right to intervene under Article 36 § 1 of the Convention.

3. Two of the original applicants, Mr P. Slepnev and Mr V. Rannasalu died (on 19 September and 6 November 2009, respectively) after the submission of the applications. Mr E. Slepnev, Mr P. Slepnev's son, and Ms S. Rannasalu, Mr V. Rannasalu's widow, wished to pursue the case before the Court.

4. The applicants alleged, in particular, that the refusal of the Estonian authorities to pay them a pension for their period of civil employment in Estonia unless they gave up their military pension paid by the Russian Federation was discriminatory, in breach of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

5. On 4 June 2009 the President of the Fifth Section decided to give notice of the applications to the Government. It was also decided to examine

the merits of the applications at the same time as their admissibility (Article 29 § 1).

6. The parties submitted written observations. The applicants requested the Chamber to hold a hearing. The Chamber decided, pursuant to Rule 54 § 3, that no hearing was required.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

7. The applicants, forty-five Russian military pensioners whose names along with other relevant information are listed below (Annex), live in Estonia.

A. Background of the case

8. On 26 July 1994, at the same time as the conclusion of a treaty on the withdrawal of Russian troops from Estonian territory, Estonia and the Russian Federation signed an agreement concerning the provision of social security guarantees to the retired military personnel of the armed forces of the Russian Federation on the territory of Estonia (“the Agreement”). The Agreement provided that retired military personnel, that is – persons discharged from army service and receiving pensions, could apply for residence permits in Estonia. The Russian Federation undertook the securing of the payment of pensions to the persons concerned according to Russian legislation. Furthermore, it was stipulated that the retired military personnel could also apply for an Estonian pension, in which case the payment of their Russian pension would be suspended while they were receiving an Estonian pension, and vice versa.

9. Until 1998 the Russian military pension was, in most cases, considerably higher than the Estonian old-age pension. Then, after the change in the economic situation and amendment of the pension law, the Russian military retirees faced the situation where they could choose to receive either a Russian military pension (smaller than the average old-age pension in Estonia) or an Estonian old-age pension for fewer years of service. In the latter case, only the years of pensionable employment in the civil sphere – and not the years of service in the Russian (Soviet) armed forces – were taken into account. According to the applicants, in both cases the sums were rather small and not enough for survival in Estonia.

10. From January 2006 many military retirees, including the applicants, who had worked in Estonia in the civil sphere and fulfilled the requirements

(in particular, at least fifteen years of pensionable employment in Estonia) for receiving an Estonian old-age pension, applied for and were granted, such a pension for life. However, a few months later, after a regular exchange of information between the Estonian social insurance authorities and the Russian Embassy, the Estonian authorities realised that the Russian Embassy was continuing to pay the persons concerned Russian military pensions. The Estonian authorities then suspended the payment of the Estonian pension to the persons concerned and requested that they provide confirmation of the suspension of payment of the Russian military pension if they wished that the payment of the Estonian pension be resumed.

11. According to the Government, who referred to information published in the Russian-speaking press, the average military pension paid by the Russian Federation in 2008 was, depending on the person's military rank, 7,400, 5,800 or 5,000 kroons (EEK) a month (corresponding to approximately 473, 371 or 320 euros (EUR), respectively). At the same time, the average old-age pension in Estonia was EEK 4,356 (EUR 278). Although the pensions paid by Estonia had increased since 1994, the Russian military pension was higher than the average Estonian old-age pension and definitely higher than the minimum pension established in Estonia (EEK 2,008.80 (EUR 128) in 2009) which they had been guaranteed under Article 3 of the Agreement.

According to the applicants, who relied on the information from the Russian Embassy in Tallinn, the average pension of a Russian military pensioner in Estonia in 2008 was EEK 3,817 (EUR 244) – which was much less than the average Estonian pension at the same time.

B. Court proceedings initiated by the applicants

12. The applicants challenged the decisions of the Estonian social security authorities to suspend the payment of the Estonian old-age pension (in the case of Mr V. Gladõšev – invalidity pension). Arguing that they had been discriminated against and that their property rights had been violated, they lodged complaints with the competent administrative courts against the individual decisions of the Estonian social security authorities. They requested that the courts order the social security authorities to resume payment of the pension. Their complaints were dismissed in separate administrative court proceedings by the administrative courts and courts of appeal. In the case of all of the applicants, with the exception of Mr V. Gladõšev, the Supreme Court dismissed the appeals as manifestly ill-founded. Mr V. Gladõšev's appeal was refused by the Supreme Court because of his failure to pay the court fee of EEK 400 (EUR 26). The Supreme Court examined his request for exemption and rejected it by a reasoned decision.

13. The reasoning underlying the individual decisions of the social security authorities as well as the complaints and judgments in respect of each of the applicants were similar and can be summarised as follows.

14. The courts found that the clear and unequivocal wording of Article 5 of the Agreement provided that only one of the States (not both States simultaneously), should pay a pension to the military retirees. Simultaneous payment of the Russian military pension and the Estonian old-age pension was excluded because the State Pension Insurance Act (*Riikliku pensionikindlustuse seadus*) provided that if an international agreement entered into by the Republic of Estonia contained provisions which differed from the provisions of this Act for the grant or payment of pensions, the international agreement applied (section 4(3)). By way of comparison, the courts noted that the State Pension Insurance Act generally provided that persons who had the right to receive several state pensions were granted one state pension of their choice. The same applied to members of the Estonian Defence Forces even if they qualified for an old-age pension and defence forces pension simultaneously (section 196(5) of the Defence Forces Service Act (*Kaitseväeteenistuse seadus*)).

15. The courts did not exclude the possibility that there were people living in Estonia who were receiving military pensions from a foreign country and, at the same time, a state pension from Estonia. Nevertheless, they found that the Russian military retirees had not been discriminated against, as their situation was not comparable to that of persons who had served in the armies of States which were members of the same international organisations as Estonia, such as NATO or the European Union. The courts pointed out that the relationship of Estonia with those countries had been established on a different basis.

16. The courts dismissed the argument concerning an alleged violation of the applicants' legitimate expectation, noting that they could have no legitimate expectation of receiving two pensions simultaneously, as the Agreement provided that a person could not receive two pensions at the same time.

17. The courts also rejected the applicants' allegation that their property rights had been violated, finding that, as they were continuing to receive their Russian military pension, the applicants did not meet the conditions required for receiving the Estonian pension and that therefore they had no property rights within the meaning of Article 32 of the Estonian Constitution or Article 1 of Protocol No. 1 to the Convention. The courts emphasised in this context that the applicants had the right to opt for an Estonian pension instead of the Russian one at any moment they wished.

18. The courts found that the essence of the applicants' pension rights had not been undermined, as they had been guaranteed an income sufficient for subsistence. They noted that, according to Article 3 of the Agreement,

the applicants received a pension at least equal in value to the amount of the minimum pension in Estonia.

19. Finally, the courts noted that the States which were parties to the Agreement could amend the Agreement so that each of them undertook to pay pensions according to the pensionable years of work in the respective country. However, this was a matter of political will; the actual Agreement did not foresee such a possibility and there were no grounds for not applying the Agreement.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW AND PRACTICE

20. The State Pension Insurance Act (*Riikliku pensionikindlustuse seadus*), as in force at the material time, provided:

Section 4 – Right to receive a state pension

“(1) Under the conditions provided for in this Act, state pensions shall be granted and paid to:

- 1) permanent residents of Estonia;
- 2) aliens residing in Estonia on the basis of temporary residence permits or a temporary right of residence.

...

(2) A state pension shall be granted pursuant to this Act unless a person receives a state pension pursuant to other Estonian Acts.

(3) If an international agreement entered into by the Republic of Estonia contains provisions which differ from the provisions of this Act for the grant or payment of pensions, the international agreement applies.”

Section 6 – Right to choose type of pension

“Persons who have the right to receive several state pensions shall be granted one state pension of their choice ...”

Section 7 – Right to receive an old-age pension

“(1) The following persons have the right to receive an old-age pension:

- 1) persons who have reached sixty-three years of age and
- 2) whose pension-qualifying period as provided for in section 27 of this Act and spent in Estonia is fifteen years.

...”

Section 11 – Amount of old-age pension

“(1) An old-age pension consists of three components:

1) the basic amount (*baasosa*);

2) a component calculated on the basis of years of pensionable service (*staažiosak*), the amount of which equals the number of years of pensionable service (*pensionidõiguslik staaž*) (section 28) multiplied by the financial value of a year of pensionable service;

3) an insurance component (*kindlustusosak*), the amount of which equals the sum of the annual factors of an insured person (section 12) multiplied by the financial value of a year of pensionable service.

...”

Section 27 – Pension qualifying period

“(1) A pension-qualifying period (*pensionistaaž*) is a period during which an insured person is engaged in an activity which merits the right to receive a state pension.

(2) A pension qualifying period shall be divided as follows:

1) the years of pensionable service (*pensionidõiguslik staaž*), which is calculated up to 31 December 1998;

2) the accumulation period (*pensionikindlustusstaaž*), which is calculated from 1 January 1999.

...”

Section 28 – Time included in years of pensionable service

“(1) Time during which the employer of a person is required to pay social tax for the person shall be included in the years of pensionable service (*pensionidõiguslik staaž*) of the person.

...”

21. The relevant provisions of the Agreement concerning social guarantees to retired military personnel of the armed forces of the Russian Federation on the territory of Estonia, agreed between Estonia and the Russian Federation on 26 July 1994, provide as follows:

Article 3

“The Russian Federation shall secure pensions for military retirees on the territory of the Republic of Estonia regardless of their nationality, on the conditions and according to the norms established by the legislation of the Russian Federation. The pension shall be paid at least in the amount of the minimum pension in the Republic of Estonia, including compensation.

...”

Article 5

“The authorities of the Republic of Estonia may establish and pay at the cost of the Republic of Estonia pensions to military retirees who have a right to a pension under the laws of the Republic of Estonia, subject to the wishes of those military retirees.

In this case the payment of the pension that had earlier been established by the Russian Federation shall be suspended for the period of payment of pensions by the authorities of the Republic of Estonia, and vice versa.”

22. A cooperation agreement on exchange of information on the enforcement of Article 5 of the Agreement was signed by the Estonian Social Insurance Board (*Sotsiaalkindlustusamet*) and the Social Department of the Embassy of the Russian Federation in Estonia on 7 July 2004. A new agreement concerning the same matter was signed on 20 February 2007.

23. In the meantime, on 25 June 1993, Estonia and the Russian Federation signed a general pension agreement which was amended by a protocol signed on 5 November 2002. That agreement and its protocol entered into force on 16 October 2007. These instruments provide that, as a rule, a person receives pension from his or her country of residence on the basis of that country's legislation. Military pensioners, subject to the Agreement, do not fall under the general pension agreement.

24. The Government informed the Court that Estonia and the Russian Federation were holding negotiations to sign a new general pension agreement instead of the current one which was due to expire in 2011. According to its draft, each country would pay pension for the years of pensionable employment accumulated on its territory. That principle would also apply to the military pensioners instead of Article 5 of the Agreement.

25. In a judgment of 28 April 2008 (case no. 3-3-1-1-08) the Administrative Law Chamber of the Supreme Court dealt with a case similar to that of the applicants. The Supreme Court quashed the lower court's judgment on procedural grounds and therefore did not rule on the merits of the case. Nevertheless, it pronounced its opinion on some aspects of the matter.

The Supreme Court considered that the so-called military pension paid under the Agreement was not a state pension and that therefore section 6 of the State Pension Insurance Act was not applicable. It pointed out that

pursuant to section 4(3) of the Act, if an international agreement signed by Estonia contained provisions which differed from the provisions of that Act, the international agreement took precedence.

The Supreme Court found that pursuant to Article 5 of the Agreement it was not possible to simultaneously pay a pension for service in the Soviet armed forces and for a subsequent period of employment in Estonia. According to the Estonian Ministry of Foreign Affairs which was invited to participate in the proceedings, this had been the understanding of the parties to the Agreement since its signing. However, the parties were aware of the problem and since 2002 the Russian party had taken the initiative to resolve it. The Estonian Ministry of Foreign Affairs admitted that both the general approach and the factual circumstances had changed since the signing of the Agreement. In drawing up recent pension agreements the principle of adding up different (not overlapping) periods was also applied; this approach was used in the European Union as well. It was also noted that the Estonian and Russian parties were preparing a new pension agreement presumably also to address the issue of the military pensioners.

The Supreme Court referred the case to the Tallinn Court of Appeal which, in a judgment of 4 September 2008 (case no. 3-06-2305), dismissed the appeal. It held:

“18. ... In the Court of Appeal's opinion, Article 5 § 2 of the Agreement is justified, on the one hand, by the State's obligation and need to economically use of the state budget. On the other hand, in assessing Article 5 § 2 of the Agreement, the context of the conclusion of the Agreement has to be taken into account, in particular [its] relation to the [treaty on the withdrawal of Russian troops from the Estonian territory] that was concluded at the same time. The purpose of these “July agreements” was the withdrawal from Estonia of the armed forces of the country that had occupied Estonia. As a compromise between the countries, military pensioners who did not pose a threat to Estonian national security were granted the right to stay in Estonia. In return, the Russian Federation assumed an obligation to secure for the military pensioners staying in Estonia under the Agreement, a pension from the Russian Federation that would ensure their subsistence. When entering into the Agreement, Estonia had the right to avoid taking excessive risks with its state budget in connection with the remaining of the military pensioners in Estonia.

As the complainant is and was an Estonian national, his right to stay in Estonia was guaranteed regardless of the Agreement; however, [his] nationality alone does not provide him with any wider social guarantees as compared to other military pensioners of the [Soviet Union]. The Russian Federation undertook to provide a pension to the complainant as well, regardless of his nationality (Article 3 of the Agreement).

19. The complainant as a subject falling under the Agreement signed with the Russian Federation is not in the same position as the military pensioners who have served in the armies of those countries which belong to the same international organisations as Estonia such as NATO or the European Union.

...

22. On the basis of the above, the Court of Appeal considers that Article 5 § 2 of the Agreement was in conformity with the Constitution at the time of its signing and ratification.

23. Article 5 § 2 of the Agreement, in order to be applicable in the present case, also had to conform with the Constitution at the time when the disputed administrative decision was taken. A provision of an international agreement can become unconstitutional after its ratification when the provision depriving a person of a right has in the meantime become unreasonable because of changed circumstances, and a reasonable time for amending the agreement or resolution of the matter at the domestic level has elapsed.

24. The Ministry of Foreign Affairs has acknowledged that the conceptual bases of the international pension agreements had changed in the meantime. In the opinion of the Court of Appeal this gives no ground to argue that Article 5 § 2 of the Agreement has already by now become unconstitutional. The conceptual bases of international pension agreements do not amount to constitutional principles. The development of international social insurance law is a long-term process wherein Estonia also needs to be given considerable time to find the best legal and political solutions. The material referred to in the Supreme Court's judgment in the present case confirms that the parties to the Agreement are engaged with the question concerning the pensions of the military pensioners of the former [Soviet Union].

25. Nor can the Court of Appeal see that Article 5 § 2 of the Agreement has violated or currently violates any international obligations.”

On 5 November 2008 the Supreme Court declined to hear an appeal against the Court of Appeal's judgment.

26. In a judgment of 13 June 2008 (case no. 3-3-1-31-08) the Administrative Law Chamber of the Supreme Court dealt with a case where the main issue was whether the complainant in that case was covered by the provisions of the Agreement. It was also required to interpret Article 5 of the Agreement. Referring to its judgment of 28 April 2008 (see paragraph 25 above), the Supreme Court reaffirmed that, based on the grammatical interpretation of Article 5 and, above all, the common will and understanding of the parties to the Agreement in respect of the interpretation and application of this provision, its current wording and the will of the parties only provided for the possibility of receiving a pension granted by one of the countries at a time.

THE LAW

I. PRELIMINARY OBSERVATION

27. The Government objected to the succession in the proceedings of Mr P. Slepnev by his son Mr E. Slepnev and of Mr V. Rannasalu by his

widow Ms S. Rannasalu, the original two applicants having passed away on 19 September and 6 November 2009, respectively, noting that they had not submitted succession certificates issued by a notary and, in any event, pension rights were not inheritable.

28. In this respect, the Court has had regard to its findings in a series of earlier cases concerning the death of an applicant (see *Vääri v. Estonia* (dec.), no. 8702/04, 8 July 2008, with further references). It notes that Mr E. Slepnev and Ms S. Rannasalu were close relatives of the deceased. It further takes note of the Government's argument that pension rights were not transferrable; however, it considers that, while having no entitlement to any further pension payments, the original applicants' family members can be considered to have a pecuniary interest in so far as the case concerns payments which had been withheld, allegedly in violation of the applicants' rights, until the death of the original applicants. The Court is satisfied at this stage that it has been presented with copies of documents indicating that the persons seeking to pursue the case are close relatives of the original applicants, and attaches no decisive importance to the fact that no succession certificates issued by a notary have been submitted so far.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

29. The applicants complained that they had been deprived of their possessions and discriminated against by the failure of the Estonian authorities to pay them pensions. They relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

Article 14 provides:

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

Article 1 of Protocol No. 1 provides:

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

30. The Court who is the master of the characterisation to be given in law to the facts of the case (see, for example, *Scoppola v. Italy* (no. 2) [GC],

no. 10249/03, § 54, ECHR 2009-...) deems it appropriate to examine the case under Article 14 taken in conjunction with Article 1 of Protocol No. 1.

A. Admissibility

1. The parties' submissions

(a) The Government

31. The Government considered that the applicants were dissatisfied with Article 5 § 2 of the Agreement signed between Estonia and the Russian Federation. However, the implementation or amendment of bilateral treaties was not a matter that could be dealt with under the Court's jurisdiction. Moreover, the Government emphasised that Estonia could not be held liable for the fact that the pension which the applicants received from the Russian Federation had not increased at the same pace as the pensions paid by Estonia. Therefore, they considered that the applications were incompatible *ratione personae* with the provisions of the Convention.

32. The Government further argued that the applications were incompatible *ratione materiae* with the provisions of the Convention, since the applicants did not have any "possessions" within the meaning of Article 1 of Protocol No. 1. Nor had they any legitimate expectation of payment of a pension simultaneously by the Russian Federation and Estonia as, from the very beginning, the Agreement enshrined the principle that the pension was guaranteed by the Russian Federation, and Estonia only paid it in the event that its payment by the Russian Federation was suspended.

33. Alternatively, the Government called upon the Court to declare the applications manifestly ill-founded.

(b) The applicants

34. The applicants reiterated that they did not complain about a violation of the Estonian-Russian Agreement but about a violation by the Estonian authorities of their rights guaranteed under Article 1 of Protocol No. 1 and Article 14 of the Convention. Furthermore, their complaints did not relate to the size of the Russian pension but rather to the payment of the Estonian pension.

35. The applicants argued that their pension claim was based on the fact that they had made insurance payments to the state budget. They also pointed out that for a limited period in 2006 the Estonian authorities had paid them the pension, which had been then suspended.

36. Lastly, the applicants disagreed with the Government's opinion that the applications were manifestly ill-founded.

2. *The Court's assessment*

37. The Court observes that the applicants complained about the refusal by the Estonian authorities to pay them a pension for their years of employment in Estonia. They considered such a refusal to be discriminatory and in violation of the Convention. Thus, this complaint relates to an alleged violation by the respondent State of the applicants' rights guaranteed under the Convention and therefore it is not incompatible *ratione personae* with the provisions of the Convention.

38. In respect of the complaint under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, the Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence, since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide. It is necessary but it is also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 39, ECHR 2005-X; *Andrejeva v. Latvia* [GC], no. 55707/00, § 74, ECHR 2009-...; and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, 16 March 2010).

39. Although there is no obligation on a State under Article 1 of Protocol No. 1 to create a welfare or pension scheme, if a State did decide to enact legislation providing for the payment as of right of a welfare benefit or pension – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stec and Others* (dec.), cited above, § 54, and *Carson and Others*, cited above, § 64).

40. In cases such as the present one, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right enforceable under domestic law, to receive the benefit in question. Although Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme it must do so in a manner which is compatible with Article 14 (see *Stec and Others* (dec.), cited above, § 55). The Court considers therefore

that in the present case the facts fell within the scope of Article 1 of Protocol No. 1.

41. As concerns the question whether Mr Gladõšev's complaint should be declared inadmissible for non-exhaustion of domestic remedies since he did not lodge an appeal with the Supreme Court in accordance with the applicable procedural requirements, the Court considers that, in the light of the Supreme Court's decisions in respect of the remaining applicants, Mr Gladõšev had no prospect of success before the Supreme Court and, accordingly, it would be wrong to declare his complaint inadmissible on this ground (see, *mutatis mutandis*, *Carson and Others*, cited above, § 58).

42. The Court concludes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. The merits

1. The parties' submissions

(a) The applicants

43. The applicants submitted that their claim concerned a period of civil employment in Estonia subsequent to their service in the Russian (Soviet) army; thus, their aim was not to receive two pensions for the same period but for different periods of employment. They specified that they did not claim any particular amount of pension; rather, they demanded that they be paid pension on the same conditions as all civil pensioners in Estonia in accordance with Estonian law without any discriminatory restrictions. According to the applicants, the essence of their right to a pension had been undermined since they received no pension whatsoever from Estonia.

44. The applicants pointed out that Estonian law did not allow two Estonian pensions to be paid at the same time but no regulation prohibited receiving an Estonian pension concurrently with one or more foreign pensions, given that the conditions for the receipt of the Estonian pension had been fulfilled. Nevertheless, the applicants were prevented from receiving an Estonian pension simultaneously with a foreign pension on the basis of Article 5 of the Agreement – as interpreted by the Estonian authorities –, which took precedence over domestic law, as stipulated by section 4(3) of the State Pension Insurance Act. However, this provision of the Agreement, which had been signed fifteen years earlier, was completely obsolete. The applicants noted that the Russian Federation had, on several occasions, proposed the amendment of Article 5 of the Agreement but the Estonian authorities had not agreed to these proposals. Moreover, the

Agreement was discriminatory as none of Estonia's other bilateral agreements on social insurance prohibited the award of an Estonian pension to persons who were permanent residents of Estonia, had completed fifteen years of pension-qualifying employment in Estonia and had reached pensionable age.

45. The applicants admitted that, although an Estonian pensioner who was entitled to a special pension could not simultaneously receive an Estonian special pension (for example, a military pension) and a regular old-age pension, he or she was entitled to the old-age pension for the whole period of his or her employment, including the period giving entitlement to the special pension. However, service in the Russian (Soviet) army – unlike service in the Estonian army – was not included in the pension-qualifying period under Estonian law.

46. The applicants rejected the Government's argument that the Russian Federation could pay them pension for their years of employment in Estonia, alleging that during their employment in Estonia they had made obligatory payments to the pension insurance budget of that country. They noted, in turn, that nothing prevented Estonia from taking into account the applicants' years of service in the Russian (Soviet) army upon calculation of Estonian civil pensions.

47. The applicants considered that they had been discriminated against based on their language and ethnic (national) origin, and their association with a national minority, arguing that most of the Russian military pensioners were ethnic Russians or native speakers of Russian. They considered it inappropriate to compare Russian military pensioners with Estonian military pensioners and considered that the group they should properly be compared with was that of foreign military retirees of other countries. They argued that Russian military pensioners were the only group of persons forced to refuse a foreign pension in order to receive an Estonian pension for civil employment in Estonia.

48. The applicants rejected the idea that the Russian military pensioners constituted a special group not comparable to any other group because they were former members of an army of a country that had occupied Estonia. In their view, such arguments merely demonstrated the biased attitude against them.

49. The applicants further rejected budgetary considerations as a legitimate justification for their different treatment. They conceded that an excessive burden on the state budget could have been an argument to be considered in the context of the scope of social assistance but it could not be used to justify unequal treatment of individuals. Nor could the fact of the existence of the Agreement as such justify their disadvantageous treatment which in the absence of any reasonable justification amounted to discrimination.

(b) The Government

50. The Government referred to the historic context of the conclusion of the Agreement and emphasised that it was closely connected to the treaty on the withdrawal of Russian troops from Estonia. According to the Agreement, retired personnel of the armed forces were allowed, as a rule, to remain living in Estonia if they so wished, with one of the reasons given having been the consideration that their resettlement could have caused practical problems and been burdensome for the Russian Federation. From the Estonian viewpoint the retired servicemen did not pose the same threat to the Estonian national security as persons in active service.

51. The Government emphasised that the military pensioners had served for a significant period of their life in the armed forces of the Soviet Union, the Russian Federation's legal predecessor. Thus, it was natural that the Russian Federation assumed an obligation to pay their pensions. The Government pointed out that the Agreement provided a double guarantee for them. Firstly, according to Article 3 of the Agreement, the Russian Federation had to pay them pension pursuant to the legislation of the Russian Federation in at least the amount of the minimum pension established in Estonia, whereby, according to the Government, nothing prevented the Russian Federation from taking into account the years of pensionable employment accumulated in Estonia. In any event, even without this period having been taken into account, the size of the military pension was comparable to an average pension in Estonia. Secondly, Article 5 of the Agreement provided for an additional guarantee according to which the applicants could opt for an Estonian old-age pension in case they were not in receipt of a Russian pension. Thus, the applicants received a pension either from the Russian Federation or Estonia according to their own preferences. The Government also emphasised that, unlike in the above-cited case of *Andrejeva*, where no agreement between the countries existed, Estonia had a bilateral Agreement with the Russian Federation regulating the payment of pensions in such a way that none of the subjects to the Agreement was deprived of his or her social guarantees.

52. The Government noted that other international agreements on pension insurance signed by the Russian Federation at that time had also been based on the principle "one State pays". An agreement of 13 March 1992 on pension insurance in the member States of the Commonwealth of Independent States (CIS) and a special agreement concerning military pensioners, signed between the members of the CIS on 15 May 1992, served as examples. The only exception in the present case, according to the Government, was that under the Agreement the responsibility to pay the pensions lay with the Russian Federation and not with the country of residence. However, the Government had no influence over the changes in the amount of pension paid to the applicants by the Russian authorities or any pension reforms carried out by them.

53. The Government made reference to Estonia's social insurance agreements with Latvia, Lithuania, Finland, Canada and the Ukraine and two agreements with the Russian Federation (the Agreement and a general pension insurance agreement), all of which were necessarily different, reflecting the results of negotiations between different countries and regulating situations which had developed under different historical, economic and political circumstances. Furthermore, in respect of EU Member States, EU regulations applied. The Government submitted that the social insurance agreements signed in the 1990s were characterised by the fact that the obligation of paying the pension rested with one party; besides the Agreement, the same principle was also enshrined in the Estonian-Russian general pension insurance agreement.

54. Furthermore, the Government informed the Court about ongoing negotiations on a new pension agreement between Estonia and the Russian Federation (see paragraph 24 above). However, the signing of the new agreement and its entry into force depended on both parties.

55. The Government contended that the applicants had not been discriminated against on the basis of their ethnic origin or nationality. Article 3 of the Agreement unequivocally stipulated that the Agreement applied to military pensioners of the Russian Federation regardless of their nationality. It could also be seen from the list of the applicants in the present case that they were of diverse ethnic origin and nationality.

56. The Government pointed out that the Russian military pensioners were not treated differently to other pensioners living in Estonia. Those entitled to an Estonian special pension (for example, members of the defence forces, police officers, judges and prosecutors) also had to choose whether they wished to receive the special pension or an ordinary old-age pension; in the latter case they were not simultaneously entitled to the special pension.

57. The Government considered that the Russian military pensioners could not be compared to any other group since no other relevantly similar group of persons existed. There was no identifiable group of "military pensioners of other countries who were not denied Estonian civil pensions" in Estonia. The Russian military pensioners were a unique group of persons who were granted the exceptional right to stay in Estonia on the basis of the Agreement after the withdrawal of Russian troops. According to the Agreement, the Russian Federation undertook to provide them with social guarantees regardless of the fact that they did not live on the territory of the Russian Federation; Estonia only assumed the responsibility of paying their pensions if they met the criteria for receiving an Estonian pension and on the condition that the person in question gave up the special status obtained as a result of having served in the armed forces that had previously occupied Estonia. Everyone subject to the Agreement, including the applicants, had been aware of these conditions when they had decided to stay in Estonia.

2. *The Court's assessment*

58. The Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14. Moreover, in order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. Such a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The scope of this margin will vary according to the circumstances, the subject-matter and the background. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. Because of their direct knowledge of their society and its needs, the national authorities are, in principle, better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is “manifestly without reasonable foundation” (see *Carson and Others*, cited above, § 61, with further references).

59. The Court recalls that the applicants in the present case are former Russian (Soviet) servicemen who after the withdrawal of Russian troops from Estonia in 1994 remained in Estonia on the basis of the Estonian-Russian Agreement and who receive a Russian military pension on the basis of that Agreement. The Court notes that the applicants' different treatment as compared to other persons who have completed at least fifteen years of pensionable employment in Estonia is based on the fact that they are in receipt of another pension, that is a pension paid by the Russian Federation under the Russian legislation and in accordance with the Agreement. The Court observes that the distinction in question is not based on the applicants' nationality or ethnic origin and finds it questionable whether this difference in the applicants' treatment can be considered to be based on any other personal characteristic or “status”. However, it considers it not necessary to determine this matter because of the reasons set out below.

60. The applicants argued that they had been treated differently from military pensioners of other countries, for example, those of NATO countries. Thus, the Court is called to determine whether the applicants are in a similar situation to military pensioners of other countries in respect of whom Estonia has not signed international agreements limiting their pension rights or, more generally, as compared with any other persons who have completed at least fifteen years of pensionable employment in Estonia and who, again in the absence of any restrictive international agreements,

are not prevented from receiving several pensions from several countries at the same time.

61. In doing so, the Court has had regard to the specific historical context of the present case. It notes that the Estonian-Russian Agreement is only applicable to persons who had already retired by the time the Agreement was signed in 1994 and who were already in receipt of the Russian military pension at that time. Furthermore, as the Agreement was signed at the same time as the conclusion of a treaty on the withdrawal of Russian troops from Estonia, the conditions on which the Estonian authorities agreed to accept the continued presence of Russian military retirees in their territory have to be seen in the context of the Russian Federation's primary obligation to secure the withdrawal of its forces from the occupied territory.

62. The Court observes that the Agreement did not concern any further military pensioners who might have moved to Estonia after it was signed. Moreover, the Russian military pensioners who remained in Estonia on the basis of the Agreement were fully aware at the time and after the signing of the Agreement that if, being in receipt of a Russian military pension, they started or continued to be employed in the civil sphere in Estonia, such employment would not give them any entitlement to a further Estonian civil pension.

63. The Court has also had regard to the facts that according to Article 3 of the Agreement the applicants are guaranteed a pension at least in the amount of the minimum pension in Estonia and that, according to the submissions of the parties, the amount of the pension the Russian military pensioners receive is comparable to the size of ordinary Estonian old-age pensions (according to the information provided by the Government, the Russian military pension is higher than an average Estonian old-age pension whereas according to the applicants the Russian military pension was about 12% lower in 2008). Moreover, the value of the Russian military pension received by the applicants in Estonia, and its relation to the Estonian old-age pension, depends on a variety of circumstances, such as the size of Russian pensions as set down by Russian legislation, the two countries' comparative costs of living, interest and exchange rates, their comparative rates of economic growth, inflation, taxation and even the availability of other welfare benefits and the eligibility of the persons concerned for such benefits (see, for comparison, *Carson and Others*, cited above, § 86).

64. The Court also notes that the applicants do have the right to apply for the Estonian old-age pension, given that they have attained the age of sixty-three years, have completed at least fifteen years of pensionable employment in Estonia and, at the same time, are not in receipt of the Russian military pension. While it is true that in such a case their years of service in the Russian (Soviet) armed forces would not be taken into account for calculation of their pensions, Estonia cannot be considered

responsible for any pension payments for such service. Service in the Russian (Soviet) armed forces forms no part of pensionable employment for anyone under the Estonian legislation, so there is no room to find any different treatment of the applicants in this respect.

65. Lastly, the Court considers that the fact that Estonia and the Russian Federation hold negotiations on a new pension agreement possibly determining the matters differently from the agreements in force does not in itself lead to a conclusion that the application of the present regulations is discriminatory.

66. Based on the above considerations, the Court concludes that the applicants are not in a comparable situation with any other group of pensioners, such as, for example, military or civil pensioners of other countries or ordinary Estonian civil pensioners who are eligible for the receipt of an Estonian pension upon completion of at least fifteen years of pensionable employment in Estonia.

67. It follows that there has been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 in the present case.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

68. The Court has also examined the remainder of the applicants' complaints under Articles 6 § 1 and 14 of the Convention as submitted by them, including a complaint about the lack of impartiality of the courts and Mr V. Gladžev's complaint about him having been denied access to the Supreme Court owing to his failure to pay the court fee. However, having regard to all the material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Decides* to join the applications;
2. *Declares* the complaint concerning the alleged discrimination under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 admissible and the remainder of the application inadmissible;
3. *Holds* that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English, and notified in writing on 4 November 2010, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Claudia Westerdiek
Registrar

Peer Lorenzen
President

ANNEX**Application no. 14480/08**

No.	Applicant	Nationality	Born	Number of pensionable years in Estonia as determined by the Estonian authorities in 2006	Supreme Court decision to reject the appeal
1.	Boris Tarkoev	Russian	1933	No information	24.09.2007
2.	Victor Baranov	Russian	1936	23.193	24.09.2007
3.	Albert Kropachev	Russian	1937	22.635	24.09.2007
4.	Rudolf Heinsoo	Estonian	1929	28.278	24.09.2007
5.	Elmu Kruuser	Estonian	1936	28.368	24.09.2007
6.	Victor Lesnoy	Russian	1926	22.873	24.09.2007
7.	Mikhail Ryazantsev	Russian	1923	25.499	24.09.2007
8.	Yury Tsivilskiy	Russian	1930	26.493	24.09.2007
9.	Vassili Gladõšev	Estonian	1959	No information	-

Application no. 47916/08

No.	Applicant	Nationality	Born	Number of pensionable years in Estonia as determined by the Estonian authorities in 2006	Supreme Court decision to reject the appeal
1.	Yury Minin	Russian	1936	20.849	30.04.2008
2.	Anatoly Afanasiev	Russian	1928	18.435	07.05.2008

3.	Madad Aliev	Russian	1938	18.476	07.05.2008
4.	Georgy Dzevulskiy	Russian	1929	20.386	07.05.2008
5.	Aleksander Grünstein	Estonian	1925	35.550	30.04.2008
6.	Valeri Guilimson	Russian	1940	18.735	30.04.2008
7.	Arvo Haljak	Estonian	1933	28.553	07.05.2008
8.	Boris Klepinin	Russian	1939	20.930	30.04.2008
9.	Yury Kokurin	Russian	1933	19.055	30.04.2008
10.	Petr Lavrichenko	Russian	1939	16.540	30.04.2008
11.	Grigori Maksyutin	Russian	1919	28.867	30.04.2008
12.	Moisey Medvedik	Russian	1925	No information	30.04.2008
13.	Konstantin Nesterenko	Russian	1939	21.650	30.04.2008
14.	Dmitri Novikov	Russian	1919	23.945	30.04.2008
15.	Feodor Parfenyuk	Russian	1931	19.868	07.05.2008
16.	Serafim Philippov	Russian	1937	16.093	07.05.2008
17.	Leonhard Puksand	Estonian	1933	30.072	30.04.2008
18.	Valdur Rannasalu	Estonian	1933	19.349	30.04.2008
19.	Valentin Rubtsov	Russian	1937	37.932	30.04.2008
20.	Lidia Sazanova	Russian	1930	15.878	30.04.2008
21.	Anatoly Shalaev	Russian	1939	17.955	30.04.2008
22.	Nikolay Sholokhov	Russian	1928	15.831	07.05.2008
23.	Ivan Simon	Russian	1942	17.088	30.04.2008

24.	Petr Slepnev	Russian	1936	23.075	30.04.2008
25.	Nikolai Smerdov	Russian	1924	24.570	07.05.2008
26.	Sergey Solodkiy	Russian	1927	23.389	30.04.2008
27.	Yury Stepanov	Russian	1928	16.562	30.04.2008
28.	Gennady Studenetskiy	Russian	1937	16.855	07.05.2008
29.	Jevgeni Sulai	Estonian	1935	22.178	30.04.2008
30.	Nikolay Tiranov	Russian	1935	17.278	30.04.2008
31.	Nikolay Trushkov	Russian	1923	29.823	30.04.2008
32.	Arkady Tulyakov	Russian	1927	23.985	30.04.2008
33.	Semen Valdman	Russian	1933	No information	07.05.2008
34.	Vasily Yurkevich	Russian	1933	20.644	30.04.2008
35.	Georgy Zhdanov	Russian	1928	28.403	30.04.2008
36.	German Znoev	Russian	1936	21.162	30.04.2008