



Russian Military Pensioners in Estonia Not Entitled to Two Pensions

In today's Chamber judgment in the case *Tarkoev and Others v. Estonia* (application no 14480/08), which is not final¹, the European Court of Human Rights held, unanimously, that there had been:

No violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property) of the European Convention on Human Rights.

The case concerned the complaint by a group of former Russian (Soviet) army servicemen living in Estonia about not being able to receive a pension from the Estonian authorities unless they gave up the pension paid to them by the Russian Federation.

Principal facts

The applicants, Boris Tarkoev and 44 other people, are Russian or Estonian nationals who live in Estonia.

In January 2006, they were granted an Estonian old-age pension for life, in particular, as they had worked for more than 15 years in Estonia. However, a few months later, the Estonian social insurance authorities learned from the Russian Embassy that the Russian Federation was continuing to pay the applicants a Russian military pension. As a result, the Estonian authorities stopped the payment of the old-age pension to the applicants and informed them that if they wished to have it restored, they had to prove that the Russian Federation was no longer paying them military pensions.

According to the Estonian Government, the average monthly military pension paid by Russia in 2008 was higher than the average old-age pension in Estonia at the time. Even though the average old-age pension in Estonia had increased since 1994, the average Russian military pension remained higher than the minimum Estonian old-age pension. The amount of the minimum old-age Estonian pension was almost half that of the average Russian military pension. On the basis of an agreement, concluded between Russia and Estonia on 26 July 1994 and covering social security guarantees to retired Russian military personnel residing in Estonia, the applicants had been guaranteed a minimum old-age pension in Estonia on condition that they did not receive a Russian military pension at the same time. If they opted for a Russian military pension, their Estonian old-pension would be suspended, and vice versa.

The applicants contested some of the figures provided by the Estonian Government.

¹ Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day. Under Article 28 of the Convention, judgments delivered by a Committee are final.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution

Complaints, procedure and composition of the Court

Relying on Article 14 and Article 1 of Protocol No 1, the applicants complained about having been deprived of their property and discriminated against by the failure of the Estonian authorities to pay them pensions.

The application was lodged with the European Court of Human Rights on 24 March 2008.

Judgment was given by a Chamber of seven, composed as follows:

Peer **Lorenzen** (Denmark), *President*,
 Renate **Jaeger** (Germany),
 Rait **Maruste** (Estonia),
 Isabelle **Berro-Lefèvre** (Monaco),
 Mirjana **Lazarova Trajkovska** (the Former Yugoslav Republic of Macedonia),
 Zdravka **Kalaydjieva** (Bulgaria),
 Ganna **Yudkivska** (Ukraine), *Judges*,

and also Claudia **Westerdiek**, *Section Registrar*.

Decision of the Court

Article 14 in conjunction with Article 1 of Protocol No 1

The Court noted that only a difference in treatment based on identifiable characteristics could amount to discrimination within the meaning of Article 14 of the Convention. In addition, in order for an issue under that Article to arise, a difference had to exist in the treatment of people in analogous or relevantly similar situations. States had, in general, wide discretion in the choice of measures they wished to adopt of an economic or socially strategic nature.

The Court then recalled that the applicants had been former Russian (Soviet) servicemen who had remained in Estonia after the withdrawal of the Russian troops in 1994. The applicants had been receiving a Russian military pension on the basis of an agreement concluded between the two countries at that time. The applicants' difference in treatment, as compared to other people who had completed at least 15 years of employment in Estonia, had been explained with the fact that they had been receiving another pension, on the basis of a bilateral agreement between Estonia and Russia.

Further, the applicants, like all the other Russian military pensioners who had remained in Estonia after the Russian troops withdrawal in 1994, had been fully aware that if they received a Russian military pension, they would not be entitled to an old-age Estonian pension even if they had worked in the civil sphere in Estonia for the requisite number of years required under Estonian legislation.

The Court also noted that, according to the agreement between the two countries, the applicants had had the guarantee of receiving at least the minimum Estonian old-age pension. At the same time, the amount of the average Russian military pension had been comparable in size to the average Estonian old-age pension.

Finally, the applicants had the right to apply for an Estonian old-age pension, if, among other things, they were not receiving a Russian military pension. While it had been true that in such a case their years of service in the Russian (Soviet) army would not have been taken into account for the calculation of their Estonian pension, Estonia could not be considered responsible for any pension payment for such service. Given that service in the Russian army was not a type of employment which created pension rights in

Estonia under Estonian legislation, there had been no difference in treatment of the applicants in that respect.

The Court concluded that the applicants were not in a comparable situation with any other group of pensioners, such as, for example, military or civil pensioners of other countries or Estonian civil pensioners. There had, therefore, not been a violation of Article 14 in conjunction with Article 1 of Protocol No 1.

The judgment is available only in English.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.