



## Retroactive legislation modifying Supreme Court judges' pensions is not disproportionate

In today's Chamber judgment in the case of [Khoniakina v. Georgia](#) (application no. 17767/08), which is not final<sup>1</sup>, the European Court of Human Rights held, by a majority, that there had been:

**no violation of Article 6 § 1 (right to a fair trial)** of the European Convention on Human Rights; and,

**no violation of Article 1 of Protocol No. 1 (protection of property)** to the Convention.

The case concerned the retirement pension of a former Supreme Court judge, which had been modified under a retroactive legislative amendment.

The Court reiterated that the legislature could not be prevented from regulating pension rights via new retrospective provisions. It found in particular that the adjustment requirement of Ms. Khoniakina's initial pension entitlement had been preserved, as well as the idea of a more generous welfare scheme for retired Supreme Court judges.

The modification to Ms. Khoniakina's retirement pension was similarly applied to 850 persons affected by the general reform of retired civil servants' pensions. 30 cases similar to Ms. Khoniakina's - lodged by civil servants - are currently pending before the Court. This is the first judgment in which the Court examined the modification of Georgian civil servants' pensions under the amended Supreme Court Act.

### Principal facts

The applicant, Adelina Khoniakina, is a Georgian national who was born in 1926 and lives in Tbilisi (Georgia). She retired from her post as a Supreme Court judge in 2000 and was granted, under the Supreme Court Act<sup>2</sup>, a pension of 1,073 Georgian laris (GEL)<sup>3</sup> corresponding to her final salary. The Supreme Court Act in force at the time stated that, upon retirement, a Supreme Court judge was entitled to a life-long pension in an amount equal to his or her final salary and adjustable in line with changes in the salary scales of serving Supreme Court judges. This "adjustment clause" was removed by an amendment of 16 March 2001, the lawfulness of which the applicant challenged in proceedings – also seeking compensation – she brought in September 2004. In February 2006, a bench of the Administrative Division of the Supreme Court allowed Ms Khoniakina's claim in full. One of the members of the Supreme Court, Judge S.,

<sup>1</sup> 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.

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](http://www.coe.int/t/dghl/monitoring/execution)

<sup>2</sup> Act of 12 May 1999 on the Supreme Court of Georgia

<sup>3</sup> 492 euros

expressed a dissenting opinion, reasoning that the removal of the adjustment clause had not necessarily caused Ms Khoniakina's situation to deteriorate, as there was an equal chance of her pension being increased as there was of it being reduced.

The Supreme Court Act was further amended on 23 December 2005 – with entry into force on 1 January 2006 and retroactive effect. It stated that a retired Supreme Court judge was entitled to 1,200 GEL<sup>4</sup> compensation from the State. On 31 May 2006, Ms. Khoniakina brought another action for damages, challenging the application of this amendment to her situation.

On 10 October 2007, her complaint was declared inadmissible by a bench of the Administrative Division of the Supreme Court, composed of Judge S. and two other judges who had not participated in the examination of Ms. Khoniakina's first pension dispute. In a final decision of 26 December 2007, the Supreme Court rejected Ms Khoniakina's request as unsubstantiated and found that Judge S.' dissenting opinion on the judgment of February 2006 did not prove any bias against her.

## Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property), Ms Khoniakina complained that her pension had been modified under a retroactive legislative amendment. Further relying on Article 6 § 1 (right to a fair trial), she alleged that the proceedings she had brought concerning her pension had not been impartial as a judge participating in the case had already expressed his opinion in a previous set of proceedings she had brought. She further complained that the incorrect reading and application of the relevant domestic law to her situation had amounted to a violation of her rights under Articles 6 § 1 and 14 (prohibition of discrimination).

The application was lodged with the European Court of Human Rights on 21 March 2008.

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

Josep **Casadevall** (Andorra), *President*,  
Corneliu **Bîrsan** (Romania),  
Alvina **Gyulumyan** (Armenia),  
Ineta **Ziemele** (Latvia),  
Luis **López Guerra** (Spain),  
Nona **Tsotsoria** (Georgia),  
Kristina **Pardalos** (San Marino),

and also Santiago **Quesada**, *Section Registrar*.

## Decision of the Court

### Article 6 § 1

In accordance with its case-law, the Court examined this complaint by means of two approaches: a subjective approach, attempting to ascertain a judge's personal conviction or interest in a particular case, and an objective approach, determining whether he offered sufficient guarantees to exclude any legitimate doubt about his impartiality.

Applying the subjective test, the Court reiterated that a judge's personal impartiality was to be presumed until there was proof to the contrary. The mere fact that Judge S. had

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<sup>4</sup> 551 euros

expressed a separate, unfavourable opinion concerning Ms. Khoniakina's first pension dispute was not sufficient to conclude that he had been biased against Ms. Khoniakina in the examination of her second dispute.

As to the objective test, the Court noted that Ms. Khoniakina's two pension disputes, even if thematically related, had not concerned "the same case" or "the same decision". Furthermore, it was unavoidable and only natural for the same judges to be involved in the examination of similar issues in different cases, given the limited number of judges sitting in the relevant Division of the Supreme Court of Georgia. Therefore, Judge S.' involvement in both of Ms. Khoniakina's unconnected but similar pension disputes, could not justify her doubts as to his impartiality. Consequently, there had been no violation of Article 6 § 1.

#### Article 1 of Protocol No. 1

Ms Khoniakina's right, under the Supreme Court Act in force at the time of her retirement, to receive a life-long pension equal to her final salary and adjustable in accordance with changes in the salary of serving Supreme Court judges, had constituted a possession within the meaning of Article 1 of Protocol No. 1. The Court further observed that the subsequent discontinuation of the adjustment clause, as a result of which she could not claim a higher pension despite the significant rise in the salary of acting Supreme Court judges, had interfered with her right to the peaceful enjoyment of her possessions.

Examining the lawfulness of this interference, the Court reiterated that the legislature could not be prevented from regulating pension rights via new retrospective provisions and that a final judicial decision on a comparable matter could not be validly used as a shield against such changes in the future. The lawfulness requirement under Article 1 of Protocol No. 1 was thus satisfied.

The Court, while reiterating that the authorities were better placed than the international judge - especially concerning social and economic policies - to decide what was in the public interest, observed that, in Ms. Khoniakina's case, they had pursued the legitimate aim of rationalising public expenditure. Moreover, it was of particular relevance that the new amount of her retirement had slightly exceeded the sum granted to her in 2000. The adjustment requirement of her initial pension entitlement had therefore been preserved in substance, as well as the idea of a more generous welfare scheme for retired Supreme Court judges. Finally, the discontinuation of the adjustment clause had not placed an excessive burden on her, as this measure had been similarly applied to 850 persons affected by the general reform of retired civil servants' pensions.

The Court, having regard to Georgia's broad discretion (wide margin of appreciation) in implementing social policies in a situation of complex transition and, observing the overall public interests, concluded that the discontinuation of the adjustment clause applied to Ms. Khoniakina pension had not been disproportionate to the legitimate aim pursued. There had therefore been no violation of Article 1 of Protocol No. 1.

#### Other Articles

The remainder of the applicant's complaints under Articles 14 and 6 § 1 were declared inadmissible as manifestly ill-founded.

*The judgment is available only in English.*

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**Press contacts**

[echrpess@echr.coe.int](mailto:echrpess@echr.coe.int) | tel: +33 3 90 21 42 08

**Céline Menu-Lange (tel: + 33 3 90 21 58 77)**

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Kristina Pencheva-Malinowski (tel: + 33 3 88 41 35 70)

Nina Salomon (tel: + 33 3 90 21 49 79)

Denis Lambert (tel: + 33 3 90 21 41 09)

**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.