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

Press Release
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ECHR 224 (2014)
18.07.2014

Legislation to restructure retired servicemen's pensions in Hungary was neither excessive nor discriminatory

In its decision in the cases of **Markovics v. Hungary, Béres v. Hungary and Augusztin v. Hungary** (application nos. 77575/11, 19828/13 and 19829/13) the European Court of Human Rights has unanimously declared the applications inadmissible. The decision is final.

These three applications concerned the restructuring of retired servicemen's pensions in Hungary. They are among the mass of applications (over 13,500 persons in 1,260 applications) that were lodged with the European Court in late 2011, early 2012. All these applications raised essentially identical issues, primarily the replacement – under legislation enacted in November 2011 – of former servicemen's retirement pensions, which were not subject to income tax, by an allowance of equal amount which is taxable under the general personal income tax rate. The applicants complained that this conversion constituted an unjustified and discriminatory interference with their property rights which could not be challenged effectively before any national authority. They relied in particular on Article 1 of Protocol No. 1 (protection of property), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention on Human Rights.

The Court found in particular that the reduction in the applicants' benefits had been reasonable and commensurate. The applicants continued to receive a service allowance reasonably related to the value of their previous service pension. Indeed, they had neither totally been divested of their only means of subsistence nor had they been placed at risk of having insufficient means with which to live. It was also satisfied that any difference in treatment had respected a reasonable relation of proportionality between the aim pursued, namely the rationalisation of the pension system, and the means employed, namely a commensurate reduction of benefits.

Principal facts

The applicants are, László Markovics, László Béres and Gábor Augusztin, Hungarian nationals who were born in 1968, 1957 and 1956, respectively. They all live in Budapest.

All three applicants benefited from early retirement and were entitled to a "service pension" (*szolgálati nyugdíj*). Mr Markovics, formerly a police officer, and Mr Augusztin, formerly an army doctor, retired in 2007 and 2005, respectively, on account of a deterioration in their health. Mr Béres, formerly a senior police commander, chose early retirement in December 2010.

On 28 November 2011 the Hungarian Parliament enacted Act no. CLXVII under which the service pensions, such as received by the applicants, were replaced with a "service allowance" (*szolgálati járandóság*), which – unlike pensions – was subject to personal income tax (at the time at a flat rate of 16%). The new legislation concerned all ex-members of the law enforcement agencies, fire brigades and defence forces.

Following the legislation's entry into force on 1 January 2012, Mr Markovics started to receive a monthly allowance of 137,620 Hungarian forints (HUF) (approximately 460 euros (EUR)) instead of the HUF 163,833 (EUR 550) he would have received as a pension; Mr Béres received an allowance of HUF 283,035 (EUR 940) instead of HUF 321,745 (EUR 1,070); and, Mr Augusztin HUF 219,590 (EUR 730) instead of HUF 249,625 (EUR 830).

Complaints, procedure and composition of the Court

The applications were lodged with the European Court of Human Rights on 12 December 2011 and 21 March 2012.

The applicants complained that the replacement of their pensions with an allowance had constituted an unjustified and discriminatory interference with their property rights which could not be challenged effectively before any national authority. They relied in particular on Article 1 of Protocol No. 1 (protection of property), Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) of the European Convention.

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

Guido **Raimondi** (Italy), *President*,
Işıl **Karakaş** (Turkey),
András **Sajó** (Hungary),
Nebojša **Vučinić** (Montenegro),
Egidijus **Kūris** (Lithuania),
Robert **Spano** (Iceland),
Jon Fridrik **Kjølbro** (Denmark)*, Judges*,

and also Stanley **Naismith**, *Section Registrar.*

Decision of the Court

The Court reiterated that Article 1 of Protocol No. 1 did not guarantee, as such, any right to a pension of a particular amount. Furthermore, it had already accepted in a number of cases the possibility of reductions in social security entitlements.

The Court considered that the core issue of the three applications was the conversion of the service pensions into an allowance which was subject to the general personal income tax rate. That conversion had interfered with the applicants' right to peaceful enjoyment of their possessions and had pursued the legitimate aim of serving the general interest of economic and social policies.

Rather than totally losing their entitlements, however, the applicants had continued to receive an allowance. On the basis of these calculations, the Court observed that the applicants had lost respectively 16%, 12% and 12% of the amounts of their pensions. The reduction concerned future amounts and it did not amount to a retrospective action depriving the applicants of an existing asset which they had previously possessed. The amount of benefits the applicants received had been decreased in comparison to their previous pensions but the Court found that this reduction was reasonable and commensurate. Indeed, they had neither totally been divested of their only means of subsistence nor had they been placed at risk of having insufficient means with which to live. The Court further noted that it was not uncommon to extend certain privileged pension benefits to former members of armed forces and the like, in view of their often demanding service. However, in the present case the curtailing of those benefits had not been found to impose an excessive individual burden on the applicants.

Furthermore, even assuming that the legislation had resulted in a difference in treatment, as argued by the applicants, the Court was satisfied that it could be justified as it respected a reasonable relation of proportionality between the aim pursued, namely the rationalisation of the pension system, and the means employed, namely a commensurate reduction of benefits.

Lastly, the Court reiterated that the applicants' complaint about not being able to challenge the interference with their property rights before any national authority was at odds with the principle that Article 13 did not go so far as to guarantee a remedy allowing a Contracting State's laws as such

to be challenged before a national authority on the ground of being contrary to the European Convention.

The Court therefore found that the applications had to be rejected as manifestly ill-founded within the meaning of Article 35 § 3 (a) (admissibility criteria).

The decision is available only in English. This press release is available in French and Hungarian.

Press contacts
echrpress@echr.coe.int | tel: +33 3 90 21 42 08

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)
Céline Menu-Lange (tel: + 33 3 90 21 58 77)
Nina Salomon (tel: + 33 3 90 21 49 79)
Denis Lambert (tel: + 33 3 90 21 41 09)