



No violation in prisoners' disqualification from receiving State pension

In today's **Chamber judgment**¹ in the case of [P.C. v. Ireland](#) (application no. 26922/19) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned the statutory disqualification of a convicted prisoner from receipt of the State-contributory-pension for the duration of his or her imprisonment.

Concerning the allegation of discrimination in the policy, the Court found, in particular, that: the applicant had not provided any evidence of discrimination against older people; that comparisons with prisoners with alternative sources of income did not fall under Article 14; and that the applicant's situation was not sufficiently analogous to that of either individuals detained in secure psychiatric units or those detained on remand to make out an argument of discrimination on that basis.

A legal summary of this case will be available in the Court's database HUDOC ([link](#))

Principal facts

The applicant, P.C., is an Irish national who was born in 1940 and lives in Dublin.

Owing to pay-related social-insurance contributions made during his time in work, Mr P.C. was eligible for a State pension at the age of 66.

On 25 March 2011 he was convicted of 60 counts of sexual assault and 14 counts of rape, for which he received a 15-year prison sentence.

Pursuant to the Social Welfare Consolidation Act 2005, individuals in prison or detention were not allowed to receive many of the social payments set out in that law, including the State contributory pension.

Mr P.C. issued proceedings against the State, arguing, in particular, that the stopping of his pension had left him destitute, and claiming 100,000 euros (EUR) in lost income, citing several Convention Articles. In 2016 the High Court dismissed the case, holding, in a wide-ranging judgment, that the contributory pension was not a property right, and citing, among other things, the need to have flexibility in the social-security system. The court entirely rejected the discrimination argument *vis-à-vis* prisoners in receipt of private pensions, which were clearly private property, stating overall that the measure was proportionate. The applicant appealed to the Supreme Court.

The Supreme Court delivered two judgments in the case in 2017 and 2018. In the first, it found it established that the non-payment of the contributory pension applied only to those who were "fully criminally culpable". It was therefore a form of punishment that was being applied extra-judicially. As "the process of trial, adjudication and sentence are integral aspects of the administration of

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.

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.

justice in criminal matter, consigned by the Constitution to the courts”, the Supreme Court found for the applicant. It did not proceed with the ordering of remedies. The Government made an interim payment to the applicant of EUR 7,500.

In the second judgment, the court decided on the remedies. It invalidated the relevant provision of the Social Welfare Consolidation Act (section 249(1)(b)). But that did not mean that the applicant was automatically entitled to compensation.

It held that if the applicant were entitled to receive benefits while in prison, that would create a new legislative entitlement that ran directly counter to the legislature’s intent – there was no lawful way the State could have made the payments to the applicant. It awarded the applicant EUR 10,000 in total (including the interim payment already made).

Overall, pension payments were withheld from 25 March 2011 to 28 November 2017.

Complaints, procedure and composition of the Court

Relying on Articles 14 (prohibition of discrimination) and 13 (right to an effective remedy), and Article 1 of Protocol No. 1 (protection of property), the applicant complained of having been disqualified from receipt of his pension, of being discriminated against on several grounds, and of not having an effective remedy for these allegations.

The application was lodged with the European Court of Human Rights on 8 May 2019.

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

Mārtiņš Mits (Latvia), *President*,
Síofra O’Leary (Ireland),
Lətif Hüseynov (Azerbaijan),
Lado Chanturia (Georgia),
Ivana Jelić (Montenegro),
Mattias Guyomar (France),
Kateřina Šimáčková (the Czech Republic),

and also Victor Soloveyitchik, *Section Registrar*.

Decision of the Court

Article 14 in conjunction with Article 1 of Protocol No. 1

The applicant alleged three types of discrimination.

With regard to the allegation of **age discrimination**, the Court noted that the stopping of social-security payments had applied to benefits for people of working age too and so could not be directly discriminatory against prisoners of retirement age. As for indirect age discrimination, it would be necessary to show that the measure had had a disproportionate effect on older people. The applicant had spoken of his personal situation, but had given no evidence that related to the group in question, whereas the evidence in the domestic proceedings had shown that older prisoners had been able to take on work in prison. The Court found the question of age discrimination unsubstantiated.

Concerning **discrimination linked to source or level of income**, the Court noted that everyone irrespective of their income level was disqualified from receiving their State contributory pension while serving a prison sentence. The applicant claimed indirect discrimination, as the measure had had a disproportionate effect on people who had no other source of income. However, the Court held that the different impact between the removal of the State pension from prisoners with and

without other sources of income was not related to any aspect of their personal status within the meaning of Article 14, and therefore did not fall under that provision.

Lastly, the Court examined **discrimination based on status as a convicted prisoner**, which certainly could be an “other status” within the meaning of Article 14, as compared with other people denied their liberty.

It determined that the holding of *individuals in secure psychiatric facilities* under civil law was for the purpose of treatment; convicted prisoners were detained under criminal law mainly for a punitive purpose. Therefore these two groups were not in a comparable position, ruling out a claim of discrimination in this respect.

When compared to the situation of *remand prisoners*, the Court stated that the defining differences between that group and the applicant’s – the presumption of innocence and immediate release (as opposed to rehabilitation, conditional release and so forth) – meant that, as with psychiatric patients, their situations were not analogous and so he could not complain of a difference in treatment.

The Court overall concluded that there had been no discrimination and therefore no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

Other articles

As regards the applicant’s complaint under Article 1 of Protocol No. 1 taken alone, as the applicant had had his pension payments withheld at a time when he had been disqualified by law from receiving them, they could not be considered a “possession” under this Article. The Court therefore rejected this complaint.

Concerning Article 13 of the Convention, the Court reiterated that the effectiveness of a remedy did not depend on the certainty of a favourable outcome for the applicant. Noting that the applicant had raised this complaint under the Constitution, it reiterated that States had discretion (“margin of appreciation”) in determining constitutional questions. It underlined that in this case the applicant’s challenge to the disqualification had been successful and that he had received a payment. Even if the redress granted had not been in line with what he had sought, the State had not failed in its obligation to make effective remedies available. It consequently rejected the complaint as manifestly ill-founded.

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.