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

SECOND SECTION

DECISION

Application no. 43480/17
Ljudmilla FIZGEJER
against Estonia

The European Court of Human Rights (Second Section), sitting on 2 June 2020 as a Chamber composed of:

Jon Fridrik Kjølbro, *President,*
Marko Bošnjak,
Egidijus Kūris,
Ivana Jelić,
Arnfinn Bårdsen,
Darian Pavli,
Peeter Roosma, *judges,*

and Hasan Bakircı, *Deputy Section Registrar,*

Having regard to the above application lodged on 8 June 2017,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Ljudmilla Fizgejer, is an Estonian national who was born in 1944 and lives in San Antonio, United States of America. She was granted leave to represent herself (Rule 36 of the Rules of Court).

2. The Estonian Government ("the Government") were represented by their Agent, Ms M. Kuurberg, of the Ministry of Foreign Affairs.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant was granted an old-age pension in 2003 under the State Pension Insurance Act (*riikliku pensionikindlustuse seadus* – hereinafter

"the SPIA"). The Social Insurance Board (*Sotsiaalkindlustusamet* – hereinafter "the SIB") relied on the information in the population register, according to which the applicant's residence was in Pärnu, Estonia.

5. In 2007 the SIB received information that the applicant was, in fact, residing in Germany. In June 2007, in response to a request lodged by the SIB, the national insurance authority in Germany forwarded information about the applicant's address in Heidelberg, Germany.

6. On 15 June 2007, the SIB issued a decision to suspend the applicant's pension payments as of 1 July 2007 as a result of her change of residence. That decision was sent to the applicant's address in Heidelberg, Germany, together with a cover letter explaining that as of Estonia's accession to the European Union on 1 May 2004, the SIB was the body authorised to deal with pension-related issues of pensioners living in the European Union. The letter also stated that if the applicant wished her pension payments to be resumed she had to fill in an enclosed application form and return it to the SIB. That letter was returned from Germany with a note stating that it could not be delivered to the addressee.

7. In her application to the Court the applicant noted that she had moved to the United States of America in 2009 in order to be reunited with her family.

8. On 14 September 2009 the applicant contacted the SIB for the first time, asking where her pension payments had been deposited for the past three years and where she could obtain authoritative information on the matter. She added that she could be reached in Texas, United States of America, where she lived. The letter included her postal address in the United States of America.

9. On 3 November 2009 the SIB responded to the applicant by letter, explaining that the pension payments had been stopped as there was no social security agreement between Estonia and the United States of America and that her pension payments would be resumed when she took up residence in the European Union or in a country with which Estonia at the time in question had such an agreement (Canada, Russia or Ukraine).

10. It appears that in December 2009 and September 2010 the applicant lodged further pension-related enquiries with the SIB. The content of those enquiries is unknown.

11. On 18 October 2011 the SIB received the applicant's application, as forwarded by the German pension insurance authority, to receive a pension from Germany.

12. On 7 November 2011 the SIB issued a decision rejecting the application. The decision was sent to the applicant's address in the United States of America by registered mail. The SIB explained that, in accordance with regulation no. 1408/71 of the Council of the European Communities, the applicant's pension request was to be dealt with under applicable Estonian law. It noted that on 23 October 2007 the SIB had received

information that the applicant was living in the United States of America. As Estonia had not concluded a social security agreement with the United States of America and since it appeared from the documents forwarded by the German authorities that her permanent place of residence was in the United States, she had no right to receive pension payments from Estonia. In that regard, the SIB referred to section 4 of the SPIA. The decision explained that the applicant had a right to submit a formal challenge (*vaie*) with the pension committee (*pensionikomisjon*). The decision of the pension committee could be challenged in the administrative court within three months from the date the person learned about such a decision or should have learned about it.

13. During the period between 2013 and 2017 the applicant sent letters to Parliament's committee on social affairs, the Chancellor of Justice, the President and the Supreme Court, complaining that she had not received her pension. In so far as the letters were forwarded to the SIB, the latter responded to them, reiterating its earlier explanations. The Supreme Court responded to the applicant by a letter dated 26 January 2017, explaining that it could express its opinion about the stopping of the applicant's pension payments only in the framework of ongoing court proceedings and referred to Section 4 of the Constitutional Review Court Procedure Act. It could thus not initiate constitutional review proceedings on the basis of the applicant's complaint.

14. On 5 May 2017 the SIB informed the applicant that owing to amendments to the SPIA that were to enter into force on 1 January 2018 (see paragraph 35 below), as of that date she would be entitled to receive the old-age pension again, regardless of her residence in the United States of America.

15. On 11 December 2017 the applicant lodged the relevant application with the SIB in order to be able to receive a pension. On 28 December 2017 the SIB decided to resume making pension payments to the applicant as of 1 January 2018.

B. Relevant domestic law and practice

1. Relevant domestic law

(a) The Constitution of the Republic of Estonia

16. Article 12 § 1 of the Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*) provides as follows:

> "Everyone is equal before the law. No one may be discriminated against on the basis of nationality, race, colour, sex, language, origin, religion, political or other views, property or social status, or on other grounds."

17. Article 32 §§ 1 and 2 provide:

> "The property of every person is inviolable and equally protected. Property may be taken from the owner without his or her consent only in the public interest, in the cases and pursuant to a procedure provided by law, and for fair and immediate compensation. Everyone whose property has been taken from him or her without his or her consent has the right to bring an action in the courts to contest the taking of the property, the compensation, or the amount of the compensation.
>
> Everyone has the right to freedom from interference in possessing or using his or her property or making dispositions regarding the same. Limitations of this right are provided by law. Property may not be used in a manner that contravenes the public interest."

18. Article 15 provides as follows.

> "Everyone whose rights and freedoms are violated has the right of recourse to the courts. Everyone has the right, while his or her case is before the court, to petition for any relevant law, other legislation, or procedure to be declared unconstitutional.
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> The courts shall observe the Constitution and shall declare unconstitutional any law, other legislation or procedure which violates the rights and freedoms provided in the Constitution or which is otherwise in conflict with the Constitution."

19. The third and fourth sentences of Article 149 provide that the Supreme Court is the highest court of Estonia, that it reviews rulings of other courts in cassation proceedings, and that it also acts as the court of constitutional review.

20. Article 152 provides:

> "In court proceedings, the court shall not apply any law or other legislation that is in conflict with the Constitution.
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> The Supreme Court shall declare invalid any law or other legislation that is in conflict with the provisions and spirit of the Constitution."

(b) Constitutional Review Court Procedure Act

21. Section 3(1) of the Constitutional Review Court Procedure Act (*põhiseaduslikkuse järelevalve kohtumenetluse seadus*) provides that cases which, under that Act, fall under the jurisdiction of the Supreme Court are dealt with by the Constitutional Review Chamber or the full bench of the Supreme Court. Section 3(2) adds that the full bench of the Supreme Court adjudicates any case referred to it by the Constitutional Review Chamber if that Chamber deems it necessary for the case to be adjudicated by the Supreme Court in that composition. The full bench of the Supreme Court adjudicates any case referred to it by its Administrative Law Chamber, Civil Law Chamber, Criminal Law Chamber or Special Panel, if one of them has reason to believe that a legislative act (*õigustloov akt*) or omission to adopt such an act are contrary to the Constitution.

22. Section 4(1) provides that the Supreme Court can verify the constitutionality of a legislative act or of an omission to adopt such an act on the basis of a substantiated application, court judgment or court decision (*põhistatud taotluse, kohtuotsuse või -määruse alusel*). Section 4(2) adds

that such an application can be lodged with the Supreme Court by the President of the Republic, the Chancellor of Justice, a local council, or Parliament (*Riigikogu*).

23. Section 9(1) provides that in the event that (i) a court of first or second instance, when adjudicating a case, has set aside any legislative act relevant to that case and has declared that act to be contrary to the Constitution or (ii) such a court, when adjudicating the case, has declared a failure to adopt a legislative act to be contrary to the Constitution, it must transmit the relevant judgment or decision to the Supreme Court.

24. The first sentence of Section 14(2) provides that when resolving a case initiated by a court judgment or decision the Supreme Court may annul, or declare to be contrary to the Constitution, a legislative act or failure to adopt a legislative act that is relevant to the case. At the same time, the Supreme Court does not deal with legal disputes that are to be adjudicated under the provisions of court procedure applicable in administrative, civil or criminal offence cases.

25. Section 15(1)(2) provides that the Supreme Court may declare a legislative act (or a provision of such an act) that has entered into force to be contrary to the Constitution and annul that act or provision.

(c) Code of Administrative Court Procedure

26. Article 9 § 1 of the Code of Administrative Court Procedure (*halduskohtumenetluse seadustik*), as in force until 1 January 2012 (and – as of 1 January 2012 – Article 46 § 1) provided that an action for the annulment of an administrative decision could be brought within thirty days of that decision being notified to the person bringing such an action (*haldusakti teatavaks tegemine*).

27. Article 25 § 9, as in force until 1 January 2012, provided that when adjudicating a matter, a court had to set aside (*jätab kohaldamata*) any legislation enacted by Parliament or any other legislative act (*seadus või muu õigustloov akt*) if that legislation or legislative act contravened the Constitution of the Republic of Estonia. (Essentially the same is stated in Article 158 § 4 as of 1 January 2012). Article 25 § 10 provided that in the event that an administrative court set aside any legislative act, declaring it to be unconstitutional, it had to refer the judgment or ruling to the Supreme Court, thereby triggering constitutional review proceedings in the Supreme Court.

28. Article 70 (1-1) – and as of 1 January 2012, Article 228 § 1(3) – concerned the **referral** of cases to the full bench of the Supreme Court; it provided that by order of the Administrative Law Chamber of the Supreme Court, an administrative matter should be referred to the full bench of the Supreme Court if the resolution of the administrative matter in question required the adjudication of an issue that had to be dealt with under the Constitutional Review Procedure Act.

(d) Administrative Procedure Act

29. Section 26 of the Administrative Procedure Act (*haldusmenetluse seadus*) concerns the service of documents by post. Section 26(4) provides that if a party to administrative proceedings has not informed the administrative authority of a change of his or her address, a document is to be sent to the most recent address known to the administrative authority; the document will thereby be deemed to have been served.

30. Section 32(1), which covers the service of documents abroad, states that documents are to be served in foreign States pursuant to the procedure provided in international agreements. Section 32(3), as in force at the relevant time, set out that if such international agreements had not been entered into and if a law or regulation prescribed that a document be served by post, the document had to be served in accordance with the procedure provided for in section 26 of the Act.

31. In accordance with section 75, a challenge concerning an administrative decision or measure has to be lodged within thirty days of the day on which a person becomes or should have become aware of such an administrative decision or measure, unless otherwise provided by law.

(e) State Pension Insurance Act

32. Section 4(1) of the SPIA, as in force until 31 December 2017, provided that pensions were granted and paid to permanent residents of Estonia and to aliens residing in Estonia on the basis of a temporary residence permit or temporary right of residence.

33. Section 4(3) provided that if an international agreement entered into by the Republic of Estonia contained provisions that differed from the provisions laid down in the SPIA in respect of the payment of pensions, then the international agreement applied.

34. Section 4(1-1) made an exception in respect of persons who had residence in more than one State. It provided that if a person mentioned in section 4(1) of the SPIA resided in several States (*kelle elukoht on mitmes riigis*), he or she had the right to receive a pension if he or she was a resident of Estonia within the meaning of section 6(1) of the Income Tax Act or if he or she resided permanently in Estonia, within the meaning of section 6 of the Aliens Act.

35. As of 1 January 2018, section 4(1)(3) provides that, assuming that certain conditions stipulated in the SPIA are fulfilled, pensions are also granted and paid to persons residing in foreign States that have not entered into international agreements with Estonia.

(f) Population Register Act

36. Section 39-1 of the Population Register Act (*rahvastikuregistriseadus*), as in force at the relevant time, set out the obligation to ensure that the information held by the authorities about one's residential address (*elukoha aadress*) was correct. The authorities had to be notified of any change of residential address within 30 days, so that the information in the population register could be updated. Section 40(1) provided that a person living abroad had to submit information about his place of residence (*elukoha andmed*) to a foreign representation authority of Estonia.

(g) State Legal Aid Act (riigi õigusabi seadus)

37. Section 6(1) of the State Legal Aid Act (*riigi õigusabi seadus*) provides that a natural person may receive state legal aid if he or she is unable to pay for competent legal services due to his or her financial situation at the time of needing legal aid or if he or she is able to pay for legal services only partially or in instalments or if his or her financial situation does not allow for meeting basic subsistence needs after paying for legal services.

2. Relevant domestic practice

(a) Concerning the challenging of administrative decisions

38. In judgment no. 3-3-1-88-16 of 17 May 2017, the Supreme Court addressed the question of whether a letter could be considered to constitute an administrative decision. The court found that a failure to observe the formal requirements in respect of an issuing an administrative decision did not exclude the regulatory nature of such a letter. The Supreme Court explained that in any event a person must have the right to complain, be it in the form of bringing an action for the annulment of an administrative action or an action for the prohibition of the adoption of an administrative decision; in the event of other types of action being ruled inadmissible, a complainant's interest in ascertaining the unlawfulness of a contested letter or a complainant's obligations in connection with such a letter could be considered relevant.

39. In judgment no. 3-3-1-19-09 of 29 April 2009, the Supreme Court explained that proceedings for the issuing of an administrative decision ended when the person concerned was notified (*teatavakstegemine*) of the administrative decision in question. If a person had not been notified of the administrative decision, but had otherwise learned of its existence, yet had unreasonably delayed lodging an action, the time-limit for lodging that action would be deemed to have lapsed. If a person had become clearly aware that an administrative decision affecting him or her existed and had reason to believe that it might violate his or her rights (and accordingly

wished to challenge it in the courts), he or she had to take appropriate steps within a reasonable time in order to have the administrative act notified.

(b) Concerning constitutional review proceedings

(i) Initiation of constitutional review proceedings

40. The Supreme Court's case-law concerning (i) the initiation of constitutional review proceedings by the domestic courts and (ii) the possibility of lodging an individual constitutional complaint with the Supreme Court has been summarised in the case of *Ovsjannikov v. Estonia*, no. 1346/12, §§ 33-35, 20 February 2014) as follows:

> "33. In a decision of 28 May 2008 (case no. 3-4-1-4-08) the Constitutional Review Chamber of the Supreme Court dealt with the courts' powers to declare legal acts unconstitutional and initiate constitutional review proceedings before the Supreme Court. It held that under Article 15 § 2 and Article 152 § 1 of the Constitution every court had to declare a legal act unconstitutional if it conflicted with the Constitution even if the parties to the proceedings had not made such a claim during the examination of their case. The Supreme Court's plenary session found similarly in a judgment of 8 June 2009 (case no. 3‑4‑1‑7‑08). The Supreme Court later reiterated that position, for example in a decision of 30 May 2012 (case no. 3-1-1-48-12) of the Criminal Chamber where it held that a party's claim to have a legal act declared unconstitutional was to be considered a procedural request but that the court examining the case was not bound by it and also had an obligation to declare a legal act unconstitutional where it conflicted with the Constitution but the parties did not make such a claim. According to the Supreme Court, courts had to provide reasons for rejecting a request concerning unconstitutionality.
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> 34. In a decision of 1 November 2011 (case no. 3-4-1-21-11) the Constitutional Review Chamber of the Supreme Court dealt with an individual constitutional complaint concerning an allegation that in criminal proceedings a request by the complainant for a review of constitutionality had been overlooked. The Supreme Court referred to its long-standing case-law according to which the Constitutional Review Court Procedure Act (*põhiseaduslikkuse järelevalve kohtumenetluse seadus*) did not explicitly provide for a possibility to lodge an individual constitutional complaint with the Supreme Court. However, proceeding from Articles 13, 14 and 15 of the Constitution and the practice of the Convention, the Supreme Court had heard such complaints in cases where the person had no other effective way to obtain judicial protection of his right of recourse to the courts established in Article 15 of the Constitution. In the said case the Supreme Court noted that in the impugned criminal proceedings the complainant had not made an explicit request for the initiation of constitutional review proceedings. Therefore, the court of appeal in that case could not be reproached for not having interpreted the complainant's arguments before it as a request for constitutional review. The Supreme Court concluded that the complainant had had an effective opportunity to protect his fundamental rights by requesting the initiation of constitutional review proceedings. Therefore, his individual constitutional complaint was inadmissible.
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> 35. In a decision of 10 June 2010 (case no. 3-4-1-4-10) the Constitutional Review Chamber of the Supreme Court dealt with a complaint where a person who was to be detained was denied access to the evidence on the basis of which his detention had been decided. The Supreme Court declined to rule on the merits of the case in

constitutional review proceedings, noting that other proceedings were available to the person concerned for the judicial protection of his rights. He could seek protection of his rights and also challenge the constitutionality of the rules of criminal procedure within the criminal proceedings in his case. The Supreme Court noted that in the case of the complainant's request for the review of the reasons for his arrest, he was in substance complaining about the acts of the prosecutor. However, he had not made a complaint to the State Prosecutor's Office, from which an appeal lay to the preliminary investigation judge of a county court. The latter was entitled to declare the relevant regulation unconstitutional, order the prosecutor to release the evidence, and initiate constitutional review proceedings before the Supreme Court. In respect of the initial arrest warrant, the Supreme Court found that the complainant could have requested a declaration of unconstitutionality of the underlying legislation when challenging the arrest warrant before a court of appeal."

41. On 20 May 2012 the Supreme Court in case no. 3-1-1-48-12 explained that the decision by which a court declared a legislative act unconstitutional had to be reasoned. Stressing a general obligation to provide reasons for decisions, as well as referring to Article 6 § 1 of the Convention and the Court's judgment in the case of *Pronina v. Ukraine* (no. 63566/00, 18 July 2006), the Supreme Court concluded that the courts also had an obligation to provide reasons if they decided to dismiss a party's application for constitutional review or decided not to examine it. The Supreme Court added that the extent of the obligation to provide reasons depended on the circumstances of the particular case and the content of the relevant application.

In the same judgment the Supreme Court explained that in the event that an application for constitutional review had been submitted in the course of proceedings in which a possibility of appeal existed, the same application could be submitted again during appeal proceedings if the lower-instance court had dismissed it or had decided not to examine it. On appeal, a person with an interest in the proceedings could also raise a complaint that the lower-instance court had ignored an application for constitutional review lodged by him or her or had not given sufficient reasoning in respect of its decision. Such insufficient reasoning could normally be remedied by the higher-instance court without the case having to be remitted, although the latter course of action could not be excluded. It was also possible to lodge an application for constitutional review for the first time during the appeal or cassation stage of proceedings.

(ii) Examples of the Supreme Court declaring legislative acts unconstitutional

42. The Government submitted several examples of case-law where persons had contested in administrative courts certain administrative decisions; those courts had, in turn, initiated constitutional review proceedings in which the Supreme Court had declared the provisions of the relevant legislative acts unconstitutional.

43. On 21 January 2004 the Supreme Court Constitutional Review Chamber in case no. 3-4-1-7-03 declared section 22-1(4) of the Social Welfare Act (the version in force from 1 January 2002 until 5 September 2003) unconstitutional in so far as the granting of a subsistence benefit to destitute persons and families using a dwelling not covered by the Social Welfare Act failed to take into account and compensate such persons and families for expenses arising from that dwelling. In that case, the application of the person in question for a subsistence benefit had been refused because the place of residence did not meet the criteria set out in the Act. The person had contested that refusal in an administrative court.

44. On 30 September 2008 the Supreme Court Constitutional Review Chamber in case no. 3-4-1-8-08 declared unconstitutional (and repealed) section 28(2)(3) of the SPIA because it did not allow the inclusion of the period of compulsory military or alternative service in the calculation of the length of a person's work record if that person had lived in Estonia before being dispatched to perform military or alternative service outside Estonia and had returned to Estonia after that, and had then accumulated fifteen years of pensionable service in Estonia. In that case, the person in question had brought an action with Tallinn Administrative Court challenging the decision of the Tallinn pension department by which the above-mentioned period had been excluded from the calculation of his pension.

45. On 14 May 2013 the Supreme Court Constitutional Review Chamber in case no. 3-4-1-7-13 declared unconstitutional and repealed the first sentence of Section 3(7) of the Parental Benefit Act under which, in the event that a person earned income in addition to parental benefit, the latter had to be reduced to the extent that that person's total income amounted to a sum lower than the parental benefit initially granted to him or her. In that case, the concerned person had brought an action challenging a decision of the SIB according to which the amount by which a benefit had been overpaid had to be deducted from the benefit that was to be paid over future months.

46. Other examples include the Supreme Court declaring unconstitutional the first sentence of section 3(7) of the Parental Benefit Act (in so far as it provided the reduction of parental benefit in the event that an employer had delayed paying an employee his or her salary – judgment no. 3-3-1-86-15 of 30 June 2016); section 41(1) of the Labour Market Services and Benefits Act (in so far as the Estonian Unemployment Insurance Fund did not have a right to exercise discretion as to whether or not to bring a claim for the return of wrongfully paid benefits – judgment no. 3-3-1-51-13 of 22 April 2014); section 27(7) and (8) and section 28(2)(12) of the SPIA (in so far as they did not allow additional years of pensionable service to be split between parents – judgment no. 5-17-9 of 8 November 2017); and section 22-2(2) of the Social Welfare Act (in so far as it did not allow excluding from the income used as a basis for the calculation of subsistence

benefit a special allowance paid from a special allowance fund established by an educational institution – judgment no. 3-4-1-33-14 of 2 February 2015).

COMPLAINT

47. The applicant complained under Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1 to the Convention, of discrimination in respect of her right to enjoy her property rights in so far as her pension payments had been stopped following her departure from Estonia. She also complained of not having at her disposal an effective domestic remedy via which to address her Convention complaint.

THE LAW

A. Alleged violation of Article 14, in conjunction with Article 1 of Protocol No. 1

48. The applicant complained that she had been deprived of her old-age pension on the grounds of her place of residence, in violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, which read respectively as follows:

Article 14

"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

"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."

1. The parties' submissions

(a) The Government

49. The Government submitted that the applicant had not exhausted the domestic remedies before lodging her application with the Court.

50. The Government firstly pointed out that by the decision of the SIB dated 15 June 2007, the applicant's pension payments had not been

terminated altogether, but had only been suspended after the SIB had received information that the applicant no longer lived in Estonia. Under the relevant European Union legislation, the applicant's pension payments would have continued had she submitted an application to that effect, as requested by the SIB (see paragraph 6 above).

Although the SIB had sent the above-mentioned decision to the applicant's (presumed) address in Heidelberg – as it had been affirmed by the respective German authority – the decision had been returned to Estonia without being delivered. The State could not be held responsible for the failure to deliver the decision to the applicant, as the latter had notified neither the Estonian nor the German authorities of her move. The Government referred to the obligation (arising from the Population Register Act) for each person to ensure that his address of residence as specified in the register was correct, even if that person lived aboard. In any event, the applicant must have noticed quite soon that she was no longer receiving pension payments and, pursuant to the Code of Administrative Court Procedure and the relevant case-law of the Supreme Court, should have taken steps to have the relevant administrative decision to cease the payment of her pension served on her (see paragraphs 39 above). If she disagreed with that decision, she could then have challenged it. The applicant had not done so. The Government pointed out that the instructions concerning the resumption of the applicant's pension payments in Germany, given in June 2007, were no longer relevant, given her move to the United States of America.

51. The Government furthermore noted that the applicant had informed the SIB for the first time of her residence in the United States of America in her letter of 14 September 2009. She had not taken any steps to challenge the response of the SIB (see paragraph 9 above), according to which her pension could not be continued to be paid to her in the United States of America. Although it had been communicated in the form of a letter, the SIB's response could be interpreted as constituting an administrative decision (see paragraph 38 above) that could be challenged in an administrative court. In any event, the applicant had failed to challenge the decision of the SIB of 7 November 2011, which in particular had contained instructions to that effect (see paragraph 12 above).

52. The Government maintained that the applicant's sending of various letters to Parliament's committee on social affairs, the Chancellor of Justice, the President and the Supreme Court should be categorised as simple correspondence and that could not be seen as constituting an effective remedy.

53. In the Government's opinion, recourse to an administrative court – which had been available to the applicant – constituted an effective remedy that the applicant should have exhausted. Not only would it have offered the applicant a chance to invoke the unconstitutionality of the underlying

provisions of the SPIA, but the domestic courts dealing with the case (at whatever instance) would have had both the right and the obligation to assess the constitutionality of the applicable provisions and to declare them unconstitutional if the basis for such a finding existed. Had the domestic courts considered that the claim of unconstitutionality did not need to be examined or had they found that the relevant legal provisions were in accordance with the Constitution, they would have had to justify such a finding. The effectiveness of such a remedy was confirmed by the extensive case-law of the Supreme Court. As the applicant had not lodged any actions with the domestic courts, the latter had not had any possibility to assess the relevant administrative decisions or the underlying legislation. In the case at hand, the Estonian courts had not been afforded any possibility to put right the alleged violations of the Convention.

54. Alternatively, should the Court find that the applicant had not had an effective remedy to be exhausted at the domestic level, the Government asserted that the applicant had lodged her complaints with the Court out of time. Her pension had been suspended in 2007 and by 2011 at the latest she had received the decision of the SIB explaining the reasons for stopping her pension payments. However, she had only lodged her application with the Court on 2 June 2017.

55. In addition, the Government also submitted that the complaint was inadmissible *ratione materiae.* The applicant did not have possessions, within the meaning of Article 1 of Protocol No. 1, as she could not have had any legitimate expectations of receiving pension payments after her move to the United States of America, with which Estonia had not concluded a social security agreement.

(b) The applicant

56. The applicant asserted that the domestic authorities had failed to determine her permanent residence correctly. They should have considered her address in Pärnu, Estonia – which she had maintained as her residence and as her mailing address until the sale of her apartment in 2012 and which had been entered in the Population Register – to be the correct address. All relevant correspondence should have been sent to that address. Moreover, the pension payments should have been continued considering that the address had continued to constitute her residence. She stated that the State authorities had failed to respond to her letter of 14 September 2009 and that the six-month rule should therefore not apply.

2. The Court's assessment

57. On the basis of the facts of the case and taking into account the Government's observations, the Court notes that in the case at hand, although the exact dates of the applicant moving from one country to

another are not known, two periods can nevertheless be distinguished: firstly, the period during which the applicant resided in Germany; and secondly, the period after she had taken up residence in the United States of America. The Court will address the admissibility of the applicant's claims separately with respect to those separate periods.

(a) General principles

58. It is a fundamental feature of the machinery of protection established by the Convention that it is subsidiary to the national systems safeguarding human rights. This Court is concerned with the supervision of the implementation by Contracting States of their obligations under the Convention. It should not take on the role of Contracting States, whose responsibility it is to ensure that the fundamental rights and freedoms enshrined therein are respected and protected on a domestic level. States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system, and those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (*Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 69, 25 March 2014).

59. The Court reiterates that under Article 35 § 1 it may only deal with a matter after all domestic remedies have been exhausted. Applicants must have provided the domestic courts with the opportunity – in principle intended to be afforded to Contracting States – of preventing or putting right the violations alleged against them. That rule is based on the assumption that there is an effective remedy available in the domestic system in respect of the alleged breach. The only remedies that Article 35 § 1 requires to be exhausted are those that relate to the breach alleged and are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness; it falls to the respondent State to establish that those conditions are satisfied (see, among many other authorities, *Parrillo v. Italy* [GC], no. 46470/11, § 87, ECHR 2015*; McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; *Mifsud v. France* (dec.) [GC], no. 57220/00, § 15, ECHR 2002‑VIII; *Leandro Da Silva v. Luxembourg*, no. 30273/07, §§ 40 and 42, 11 February 2010; *Vučković and Others* cited above, §§ 69-77; and *Živković and others v. Slovenia* (dec.), no. 42670/16, ECHR 5 September 2017). The existence of mere doubts as to the prospects of success of a particular remedy that is not obviously futile does not constitute a valid reason for failing to exhaust that avenue of redress (*Vučković and Others,* cited above, §§ 74, 84).

(b) Application of these principles in the present case

(i) With respect to the applicant's residence in Germany

60. Although the applicant did not mention it in her application to the Court, the Government informed the Court that according to the information received by the SIB, the applicant had for a period of time lived in Germany. The applicant did not contest that in her observations, but argued that the domestic authorities ought to have continued to consider her address in Pärnu, Estonia, to be her place of residence for the purposes of correspondence and of making pension payments.

61. The Court considers it important that when the SIB suspended the applicant's pension payments in July 2007, believing that she had moved to Germany, it did not mean that the applicant had no right under the domestic law to continue receiving a pension from Estonia. It appears that the applicant only had to provide the SIB with certain information to have her pension payments resumed (see paragraph 6 above). The SIB sent the relevant decision and a cover letter containing a request for information to the address that the German authorities had confirmed to be the applicant's place of residence.

62. Although there is no dispute that the applicant did not receive the above-mentioned decision and request for information, the Court considers that that could be attributed to the fact that she had not informed the Estonian authorities of the change of her residence, as required under the domestic law (see paragraph 36 above). Even assuming that the SIB should have sent the decision and the request for information to the applicant's address in Pärnu, Estonia (the address stated in the Population Register), the Court considers that the applicant should have become aware of the fact that she was no longer receiving pension payments, even without having received a decision to that effect. However, it appears that she contacted the SIB for the first time concerning the suspension of her pension payments only in 2009 (see paragraph 8 above), by which time – as she noted in her letter of 14 September 2009 – she had already moved to the United States of America. The Court observes that, contrary to what the applicant claims, the SIB responded to this letter (see paragraph 9 above).

63. Given the circumstances, and noting also the relevant domestic case-law (see paragraph 39 above), the Court considers that the applicant could be expected to have been more diligent about seeking information, in a timely manner, about the reasons for the suspension of her pension payments. Had she done so, she could have used the opportunity to provide the domestic authorities with the necessary information about her residence in Germany, and the pension payments could have been resumed. However, she only contacted the domestic authorities after her move to the United States of America, which placed her in a yet another legal situation, which is addressed below.

64. In the light of the reasoning above, the Court is led to conclude that, for as long as the applicant was resident in Germany, the suspension of her pension payments was temporary, pending her providing the SIB with the relevant information. In the circumstances of the case at hand, the State cannot be held responsible for her failure to do so.

65. The Court accordingly considers that this part of the applicant's complaint is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

(ii) With respect to the applicant's residence in the United States of America

66. Although it is not entirely clear when the applicant moved to the United States of America (compare paragraphs 7 and 12 above), it is undisputed that by September 2009 at the latest she was living there. Accordingly, it was by that time at the latest that the territorial restriction stemming from section 4(1), in conjunction with section 4(3) of the SPIA, became applicable to the applicant's situation, given that there was no international agreement about effecting pension payments between Estonia and the United States of America.

67. Noting the obligation to exhaust effective domestic remedies, the Court firstly agrees with the Government that sending letters to various institutions (the President, the Chancellor of Justice, and Parliament's committee on social affairs) cannot be seen as making use of such a remedy. Moreover, the Court is not convinced that any of those institutions had the authority to decide on the question of the applicant's pension payments. Although the applicant also complained about her situation to the Supreme Court, the latter explained that it could not initiate constitutional review proceedings on the basis of such an application and noted that it could review questions of constitutionality only within the framework of ongoing court proceedings.

68. Against that background, the Court has to examine whether the applicant had an accessible and effective remedy via which to challenge the termination of her pension payments owing to her having taken up residence in the United States of America.

69. On the one hand, it was open to her to challenge the decision of the SIB to stop her pension payments – an individual administrative decision – in an administrative court (see paragraph 26 above). In that regard the Court considers that even accepting that it might not have been evident to the applicant that she could have challenged the decision detailed in the letter of 3 November 2009, the decision of 7 November 2011 explicitly contained a reference to the possibility of challenging it if the applicant disagreed with its contents (see paragraph 12 above). On the other hand, it is clear that the "non-exportability" of the old-age pension in the applicant's case stemmed directly from statutory principles according to which pension payments to people not residing in Estonia could only be made if there was an

international agreement to that effect. The Court notes that the relevant provisions of the SPIA left no discretion to the authorities to transfer pension payments to persons living in countries with which Estonia had not concluded a relevant social security agreement. In fact, the law has subsequently been amended in order to allow pension payments to be made in such countries. Accordingly, it appears that at the time that the applicant's pension payments were stopped owing to her residence in the United States of America, an action brought by her in the domestic courts could have been successful only if the underlying provisions of the relevant legislation had been declared unconstitutional and annulled.

70. The Court observes that under domestic law, first- or second-instance courts are empowered (and indeed obliged) to assess the constitutionality of legislative acts and, if necessary, declare such acts unconstitutional and set them aside. If they do so, they have to initiate constitutional review proceedings in the Supreme Court, which has authority to repeal a legislative act if it agrees with the lower-instance court's assessment that it is unconstitutional. Constitutional review proceedings could also be initiated by any of the chambers of the Supreme Court (see paragraphs 18 and 20, paragraphs 21 to 25 and paragraph 40 above). The above-mentioned provisions do not grant direct access to constitutional review by the Supreme Court.

71. In addition, the Court notes that the Supreme Court has in its case-law recognised the possibility of lodging an individual constitutional complaint directly with the Supreme Court in the event that the person in question has no other effective way to obtain the protection of his or her right of recourse to the courts, as established in Article 15 of the Constitution (see paragraph 40 above and the case-law summarised in the case of *Ovsjannikov*, cited above, §§ 34-35).

72. It must also be pointed out that the Court has analysed – specifically addressing the system of legal remedies in Estonia – whether in order to exhaust the domestic remedies, applicants were obliged to lodge a separate request for constitutional review with the domestic courts in the course of ongoing court proceedings. It found that applicants did not have to submit such a request, but that it was sufficient to raise a Convention issue in substance before the domestic courts, which were empowered to set aside unconstitutional legal provisions of their own motion (ibid., §§ 60-62).

73. Turning to the present case, the Court notes that the applicant did not attempt to initiate any court proceedings to challenge the decision to stop her pension payments after she took up residence in the United States of America. The Government did not argue that the applicant had had a right to lodge an individual constitutional complaint directly with the Supreme Court. In the response given to the applicant, the Supreme Court did not indicate that to be a possibility either (see paragraph 13 above). The Court is prepared to accept that in the instant case the applicant did not have direct

access to the Supreme Court, which, through constitutional review proceedings, could have repealed the impugned statutory provisions (compare *Myroshnychenko v. Ukraine* (dec.), no. 10205/04, 3 April 2007, and *Parrillo,* cited above, § 101).

74. However, the Court considers that the question of whether or not the possibility of raising her Convention complaint before the ordinary domestic courts constituted such a remedy must be examined, taking into account the specifics of the functioning of constitutional review proceedings under the particular legal system of Estonia.

75. In that regard, the Court firstly reiterates that it suffices for individuals to raise a Convention complaint in substance before the domestic courts, without having to make a specific application for constitutional review (see paragraph 72 above). However, if such an application is made, the domestic courts are obliged to address it. If they find the legislative act in question to be unconstitutional, they have to set it aside and initiate constitutional review proceedings in the Supreme Court; alternatively, they could dismiss the application or refuse to examine it. In any event, their decision has to contain reasoning (see paragraph 41 above). In the event that the court adjudicating a case ignores an application for constitutional review, decides not to examine it or dismisses it, the person concerned can challenge that on appeal (provided that an appeal is possible in the proceedings in question). The issue of constitutionality could be raised at any level of jurisdiction – that is to say, there is no obligation to raise it already when the first-instance court is adjudicating the case (ibid.). It is the Supreme Court that is empowered to declare the unconstitutional legislative act in question null and void (see paragraph 24 above). It is to be noted that the Supreme Court operates both as a court of cassation and as the constitutional review court (see paragraph 19 above). The Government provided a number of examples of how, in constitutional review proceedings initiated by lower-instance courts, the Supreme Court has declared various statutory provisions to be unconstitutional (see paragraphs 42 to 46 above).

76. In the light of the reasoning above, the Court considers that it was open to the applicant to challenge in the administrative court proceedings the decision by which the SIB stopped her pension payments (see paragraph 69 above). This would have offered her the possibility to put the complaint – which she has now lodged with the Court – to the domestic courts first and would have enabled the latter to take a position on the constitutionality of the relevant provisions of the SPIA. The Court notes that the applicant's complaint relates to the protection of property in conjunction with the prohibition of discrimination, both of which are enshrined in the Estonian Constitution (see paragraphs 16-17 above). The applicant has not indicated that in Estonia there existed settled domestic case-law on the

constitutionality of the impugned provisions of the SPIA, suggesting that such a procedure had no reasonable prospect of success.

77. Taking into account the domestic legislation and case-law concerning the functioning of constitutional review proceedings in Estonia, the Court concludes that the applicant should (in accordance with the principle of subsidiarity), before lodging her application with the Court, have presented her arguments to the domestic courts.

78. As the applicant did not initiate any proceedings that could be considered to constitute an effective domestic remedy, it follows that this part of the application must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

B. Alleged violation of Article 13

79. The applicant also complained that she had had no remedy at her disposal for her Convention complaints. She relied on Article 13, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

80. The Government contended that the applicant had had at her disposal effective domestic remedies that she had not used.

81. The applicant replied that she had not been aware of any of the remedies before the Government had pointed them out in their observations and that in any event she doubted that they could have been accessible to an elderly person who did not speak Estonian as a mother tongue and who could not afford a lawyer.

82. As regards the part of the complaint concerning the stopping of the applicant's pension payments during her residence in the United States of America, the Court reiterates that Article 13 of the Convention does not go so far as to guarantee a remedy allowing Contracting States' laws as such to be challenged before a national authority on the ground of being contrary to the Convention (see *Paksas v. Lithuania* [GC], no. 34932/04, § 114, ECHR 2011 (extracts), and *Maurice v. France* [GC], no. 11810/03, § 107, ECHR 2005-IX). In any event, the Court has established above that the applicant had at her disposal an effective remedy. As she did not challenge in the domestic courts the decision to stop the pension payments, the Court cannot foresee whether she would have encountered any difficulties. However, it notes that it would have been possible, in principle, for the applicant to request State legal aid to pursue her case (see paragraph 37 above). It reiterates that the existence of mere doubts as to the prospects of success of a particular remedy cannot exonerate the applicant from making use of that remedy (see *Vučković and Others,* cited above, §§ 74, 84).

83. As regards the part of the complaint concerning the applicant's residence in Germany, the Court reiterates that Article 13 requires a remedy in domestic law only in respect of grievances which can be regarded as "arguable" in terms of the Convention (see, among many authorities, *Baka v. Hungary* [GC], no. 20261/12, § 180, 23 June 2016). Given that this limb of the applicant's complaint was found to be manifestly ill-founded, the Court considers that the applicant did not have an "arguable claim" calling for the application of Article 13 of the Convention.

84. It follows that the complaint under Article 13 is manifestly ill-founded and must be rejected, in accordance with Article 35 §§ 3 and 4 of the Convention

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 July 2020.

Hasan Bakırcı Deputy Registrar	Jon Fridrik Kjølbro President