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

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Different treatment regarding pension entitlements dating from the Soviet period was justified

In today's **Grand Chamber** judgment[1] in the case of Savickis and Others v. Latvia (application no. 49270/11) the European Court of Human Rights held, by 10 votes to 7, that there had been:

no violation of Article 14 (prohibition of discrimination) of the European 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 payment of employment pensions in Latvia to "permanently resident non-citizens", which did not take into account periods worked in other Soviet Republics at the time of the occupation of Latvia by the USSR, as compared with those to Latvian citizens, which did.

The Court found that the domestic authorities had acted within their discretion concerning the assessment of the applicants' pension entitlements. In particular, although the difference between payments had been solely down to nationality, the Court noted that taking Latvian nationality had been open to the applicants, especially given the long time-frame. It noted the broad discretion that Governments have in setting social-security payments, and held that rebuilding the Latvian nation's life following the restoration of independence was sufficient to justify the difference in treatment.

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

Principal facts

The applicants, Jurijs Savickis, Genādijs Ņesterovs, Vladimirs Podoļako, Asija Sivicka and Marzija Vagapova, were born between 1938 and 1942 and live in different parts of Latvia.

In 1996 Latvia created a social-security system which took into account periods of work in Latvia prior to restoration of its independence. For Latvian citizens periods of work in other then Soviet republics were also taken into account. However, for "permanently resident non-citizens" (*nepilsoņi*) – people who moved from other republics during the Soviet occupation of Latvia – work in other republics would be taken into account only in particular circumstances, as was the case for the applicants.

Mr Savickis was born in Kalinin Oblast in Russia. He worked for about 21 years in that State. He did succeed in getting a decision that that period be included in his pension, but that decision was not retroactive. Mr Savickis has since passed away. He had no close relative willing to continue the case in his stead.

Mr Nesterovs was born in Baku, Azerbaijan and, after time working in the USSR and as a military conscript in East Germany, started working in Latvia at the age of 30. His pension has never included his time working outside of Latvia.

Mr Podoļako was born in Vladivostok, Russia. He completed his military service in Russia and worked in Latvia from 1968. His pension has never taken into account his military service and he was denied early retirement on that basis.

1. Grand Chamber judgments are final (Article 44 of the Convention).
All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Ms Sivicka was born in Termez in Uzbekistan. She worked in that Uzbekistan, Germany, Russia and Belarus, also working in the military as a volunteer before beginning work in Latvia at the age of 41. Initially her pension was calculated without counting her time spent working outside of Latvia. That was later amended initially to take account of her time in Belarus, and then her time in Russia, but not the period in Uzbekistan. The applicant does not complain about her time in Germany or in the military not being taken into account.

Ms Vagapova was born in Syzran, Russia, and worked in that State, Uzbekistan, Turkmenistan and Tajikistan before moving to Latvia at the age of 44. Initially her time spent abroad was not included in the pension calculations. That was later amended to take account of the time spent working in Russia only. Since applying to the Court, the applicant has acquired Russian citizenship.

Four of the five applicants were refused early retirement on the basis of these pension calculations.

Relevant court rulings

In 2001 the Latvian Constitutional Court ruled on the matter, considering that pension payments were based on the principle of solidarity and did not as such create a link between contributions and later payments and thus were not a property right. It held that Latvia should not assume the responsibilities of other States in respect of such payments.

In 2009 the Grand Chamber of the European Court gave judgment in *Andrejeva v. Latvia* (55707/00), holding that there had been unjustifiably different treatment between Latvian nationals and "permanently resident non-citizens" and that the State could not be absolved of responsibility despite the lack of international agreements governing the area, and dismissing the Government's arguments that Ms Andrejeva could become a Latvian citizen to acquire the rights, finding violations of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 to the Convention.

Following the *Andrejeva* judgment, Mr Savickis, Mr Ņesterovs, Ms Sivicka and Ms Vagapova failed to have their pensions reviewed, and so commenced administrative proceedings. Their claim was dismissed in 2009. The domestic court held that the Court's decision applied only to Ms Andrejeva. It ruled that legislative change was required to allow the reopening of this case. These four applicants applied for review of that judgment to the Constitutional Court on the basis of the impugned difference in treatment between citizens and "permanently resident non-citizens" in the calculation of their retirement pensions being contrary to the Constitution and the Convention. Mr Podoļako's separate application was later joined to theirs.

The Constitutional Court stated that Latvia was not a successor to the rights and obligations of the former USSR and so "in accordance with the doctrine of State continuity, the restored State [was] not required to undertake any obligations emanating from the obligations of the occupying State". It furthermore held that "the difference in treatment when calculating pensions for citizens and ["permanently resident non-citizens" had] objective and reasonable grounds".

The court deemed that the applicants had not been deprived of their pensions and that the difference in treatment was justified and proportionate, and dismissed the case.

Complaints, procedure and composition of the Court

Relying on Articles 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No. 1 (protection of property), the applicants complained that in their status as "permanently resident non-citizens" they had been treated unfairly *vis-à-vis* Latvian citizens in respect of the amount of their retirement pension and eligibility for early retirement.

The application was lodged with the European Court of Human Rights on 4 August 2011. On 22 June 2015 the respondent Government were given notice of the application. On 1 December 2020 the

Chamber relinquished jurisdiction in favour of the Grand Chamber. A hearing was held on 26 May 2021.

Third-party comments were received from the Government of the Russian Federation.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Robert **Spano** (Iceland), *President*,
Jon Fridrik **Kjølbro** (Denmark),
Síofra **O'Leary** (Ireland),
Yonko **Grozev** (Bulgaria),
Ksenija **Turković** (Croatia),
Paul **Lemmens** (Belgium),
Ganna **Yudkivska** (Ukraine),
Aleš **Pejchal** (Czech Republic),
Krzysztof **Wojtyczek** (Poland),
Branko **Lubarda** (Serbia),
Mārtiņš **Mits** (Latvia),
Pauliine **Koskelo** (Finland),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),
Erik **Wennerström** (Sweden),
Anja **Seibert-Fohr** (Germany),
Mattias **Guyomar** (France),

and also Abel **Campos**, *Deputy Registrar.*

Decision of the Court

The Court noted the passing of Mr Savickis and that no close relative wished to take up the application and struck out his part of the application.

The remaining four applicants' complaints concerned only those periods working outside the State which would have been counted in the pension calculations of a Latvian citizen. They also complained of having been denied early retirement owing to their situation.

The Court reiterated that the Convention does not provide a right to a pension or a pension of a particular amount. If a State does create a pension scheme, however, it had to do so in accordance with Article 14 of the Convention. The Court held that Article 1 of Protocol No. 1 and Article 14 applied in this case.

In particular, it noted the following: all the applicants bar Mr Podoļako had moved to Latvia as adults; the lack of bilateral agreements with Azerbaijan and Uzbekistan, which had affected some of the applicants' pensions; the lack of a treaty on time spent in military service; the recalculation of pensions following a bilateral agreement being reached between Latvia and Russia, which had improved some of the applicants' situations.

The Court reiterated its conclusion from the *Andrejeva* judgment – that nationality was the sole criterion distinguishing pension entitlements between different categories of people in Latvia, in particular citizens and "permanently resident non-citizens" – and found that that also applied in this case. Given this, the Court stated that weighty reasons were needed to justify such a difference, taking into account the specifics of the case and the discretion ("margin of appreciation") allowed to the member States.

The Court was satisfied that the applicants had been in a relatively similar situation to Latvian citizens regarding pensions. It also held that the stated aims of the State – rebuilding the nation's life

following the restoration of independence and the protection of the country's economic system – were legitimate.

Concerning the proportionality of the measures taken by the Latvian authorities, the Court held that Latvia had no obligation to take on pension obligations dating from the Soviet period or resulting from its annexation. It stated that preferential treatment being accorded to Latvian citizens was in accordance with the aim of rebuilding the nation's life.

It noted that the applicants' legal status had been largely a matter of personal aspiration rather than an immutable situation, especially considering the long period in which the applicants had been able to acquire Latvian nationality, unlike Ms Andrejeva's case. The applicants had not been denied basic pension benefits, nor lost the benefits accruing from the employment periods in question. The Court reiterated that employment pensions in Latvia were based on social-insurance contributions through the principle of solidarity, and that States had broad discretion in this area. The Court was satisfied that the difference in treatment had pursued the stated aims, and that the reasons given by the Government for this were indeed sufficiently weighty.

Thus the Court concluded that the domestic authorities had acted within their discretion concerning the assessment of the applicants' pension entitlements and therefore found no violation.

Separate opinions

Judge Wojtyczek expressed a concurring opinion. Judges O'Leary, Grozev and Lemmens expressed a joint dissenting opinion. Judges Seibert-Fohr expressed a dissenting opinion which was joined by Judges Turković, Lubarda and Chanturia. These opinions are annexed to the judgment.

The judgment is available in English and French.

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