



Amendment to pension legislation resulted in discrimination in payment of pensions

In today's **Chamber** judgment¹ in the case of **Fábián v. Hungary** (application no. 78117/13) the European Court of Human Rights held, unanimously, that there had been:

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

The case concerned a pensioner's complaint that, following an amendment to the Pension Act, his old-age pension was suspended because he had taken up post-retirement employment as a civil servant. The new rule under the Pension Act notably targeted certain categories of pensioners such as Mr Fábián, the applicant, who benefitted from two incomes at the same time paid by the State. Those working in the private sector were not affected by the rule.

The Court found in particular that the difference in treatment between publicly and privately employed retirees on the one hand, and between various categories of civil servants on the other hand (namely, pensioners working as government ministers or mayors were exempt from the new rule), as regards their continued entitlement to receive an old-age pension, had not been objectively and reasonably justified.

Principal facts

The applicant, Gyula Fábián, is a Hungarian national who was born in 1953 and lives in Budapest. Already in receipt of an old-age pension, he started working as a local civil servant from 1 July 2012. However, following an amendment to the 1997 Pension Act, his pension was suspended from 2 July 2013 on the ground that he could not receive a pension and simultaneously be employed in the public sector. No such rule was put in place for pensioners working in the private sector. Mr Fábián made an appeal to the National Pension Board, without success.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) and Article 14 (prohibition of discrimination), Mr Fábián complained that the suspension of his pension had been unjustified and discriminatory. He notably alleged discrimination between the private and public sectors and between various State employments (for example, pensioners working as government ministers or mayors were exempt from the new rule).

The application was lodged with the European Court of Human Rights on 5 December 2013.

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

Vincent A. de Gaetano (Malta), *President*,
András Sajó (Hungary),
Boštjan M. Zupančič (Slovenia),

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.

Nona Tsotsoria (Georgia),
Paulo Pinto de Albuquerque (Portugal),
Krzysztof Wojtyczek (Poland),
Iulia Antoanella Motoc (Romania),

and also Françoise Elens-Passos, *Deputy Registrar*.

Decision of the Court

First of all, the Court accepted the Government's submission that the suspension of Mr Fábíán's pension had had the legitimate aim of reducing public expenditure.

However, the Government had not given any reason at all for limiting the scope of the amendment to the 1997 Pension Act to certain categories of State employees such as Mr Fábíán, whereas pensioners taking up public service as government ministers or mayors were exempt from the new rule and continued to receive their pensions. The Court could not see any justification for not including all public employments in the new rule and for the resulting difference in treatment between various categories of civil servants.

As regards the difference in treatment between the public and the private sphere, the Government's core argument – namely, that State pensions should not be paid to individuals who are employed and therefore do not need a substitute for their salary – should hold true for retirees who take up employment and earn a salary, be it in the private or public sphere. Indeed, pensions paid out to retirees employed in the private sphere could also be regarded as redundant public expenditure.

Therefore the difference in treatment between publicly and privately employed retirees on the one hand, and between various categories of civil servants on the other hand, as regards their continued entitlement to receive an old-age pension, had not been objectively and reasonably justified. Accordingly, the Court held that there had been a violation of Article 14 in conjunction with Article 1 of Protocol 1. Given that finding, it considered that it was not necessary to examine the alleged violation of Article 1 of Protocol No. 1 alone.

Article 41 (just satisfaction)

The Court held that Hungary was to pay Mr Fábíán 15,000 euros (EUR) in respect of non-pecuniary damage EUR 3,000 for costs and expenses.

The judgment is available only in English.

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Press contacts

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

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

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

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

Inci Ertekin (tel: + 33 3 90 21 55 30)

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.