



NEWS REPORT

Date: 29 November 2010
Expert: Vadim Poleshchuk
Title: Alleged ethnic discrimination of Soviet/Russian military retirees in access to civil pensions (Tarkoev and Others v. Estonia)
Country: Estonia
Context
Issue at stake: Alleged ethnic discrimination
Ground of discrimination: Race/ethnic origin
Source: ECtHR, Chamber judgment in the case *Tarkoev and Others v. Estonia* (application no 14480/08), 4 November 2010
Field: Social protection

Content

Case: In 1994 Russia and Estonia concluded an agreement concerning the provision of social security guarantees to the retired military personnel of the armed forces of the Russian Federation on the territory of Estonia (“the Agreement”). This was concluded in the context of the withdrawal of Russian troops from Estonia. In accordance with Article 5 of the Agreement, “[t]he authorities of the Republic of Estonia may establish and pay at the cost of the Republic of Estonia pensions to the military retirees who have a right to pension under the laws of the Republic of Estonia, subject to the wish of these military retirees. In this case the payment of the pensions that had been earlier established by the Russian Federation shall be suspended for the period of payment of pensions by the authorities of the Republic of Estonia and vice versa”.

The Russian military retirees faced the choice: either to receive the military pension from Russia (for years of military service) or to receive the Estonian civil old-age pension for less years of service (for working as civilians only). Since January 2006 numerous Russian military retirees have applied for the Estonian civil pension. The Social Department of the Russian Embassy did not react to the notifications of the Estonian Pension Department that the Estonian pensions were granted to the military retirees and continued paying the Russian pensions. The Estonian Pension Departments started in

April 2006 to suspend payment of the Estonian pension to the Russian military retirees. 45 military retirees passed all the judicial authorities (exhausted domestic remedies) in Estonia and their claims were not satisfied. Therefore the applicants addressed the European Court of Human Rights. They claimed inter alia direct violation of Article 14 ECHR in conjunction with Article 1 of Protocol 1. This claim of the application was recognised as admissible.

According to the applicants only Russian military retirees (unlike military retirees of other countries) are deprived of the right to receive both military pension of a foreign country and Estonian civil old-age pension. All members of the group fulfilled their obligations towards the State: they paid compulsory insurance payments in the pension insurance budget of Estonia, are of pensionable age and have pensionable service in Estonia. On several occasions Russia proposed to allow the Russian military retirees receive both pensions but Estonia rejected it. The applicants claimed that the Russian military retirees are treated less favourably than military retirees of other foreign countries are, have been or would be treated in a comparable situation. As supposedly most of the Russian military retirees are ethnic Russians and Russian-speaking people, and Russian is their mother tongue, the applicants claimed (indirect) discrimination on the ground of language, national origin, and association with a national minority.

Decision of the Court: The Court highlighted that the Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment. The Court observed that the distinction in question is not based on the applicants' nationality or ethnic origin. However, it did not provide any explanations/arguments to this end. As for other personal characteristic or "status", it considered it not necessary to determine this matter mostly due to the fact that the applicants are not in a comparable situation with any other group of pensioners, such as, for example, military or civil pensioners of other countries or ordinary Estonian civil pensioners who are eligible for the receipt of an Estonian pension.

The court referred to specific historical context of the case. The Agreement was signed at the same time as the conclusion of a treaty on the withdrawal of Russian troops from Estonia. The conditions on which the Estonian authorities agreed to accept the continued presence of Russian military

retirees in their territory have to be seen “in the context of the Russian Federation’s primary obligation to secure the withdrawal of its forces from the occupied territory”. The applicants were fully aware at the time and after the signing of the Agreement that if, being in receipt of a Russian military pension, they started or continued to be employed in the civil sphere in Estonia, such employment would not give them any entitlement to a further Estonian civil pension. The amount of the pension the Russian military pensioners receive is comparable to the size of ordinary Estonian old-age pensions. The applicants do have the right to apply for the Estonian old-age pension, given that they have attained the age of sixty-three years, have completed at least fifteen years of pensionable employment in Estonia and, at the same time, are not in receipt of the Russian military pension. Estonia cannot be considered responsible for any pension payments for service in the Russian (Soviet) armed forces. The Court found no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 in the present case.

Internet link source and additional information:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=876790&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>