



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

FOURTH SECTION

DECISION

Application no. 75916/13
Danutė MOCKIENĖ
against Lithuania

The European Court of Human Rights (Fourth Section), sitting on 4 July 2017 as a Chamber composed of:

Ganna Yudkivska, *President*,

Vincent A. De Gaetano,

Faris Vehabović,

Egidijus Kūris,

Carlo Ranzoni,

Georges Ravarani,

Péter Paczolay, *judges*,

and Marialena Tsirli, *Section Registrar*,

Having regard to the above application lodged on 22 November 2013,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Danutė Mockienė, is a Lithuanian national who was born in 1959 and lives in Mažeikiai.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant was employed as an official at the Prisons Department until 31 January 2004, when she was discharged for health reasons. She was entitled to a service pension (*valstybinė pensija*) of 854 Lithuanian litai

(LTL; approximately 247 euros (EUR)) per month from the date she left her job.

4. According to Lithuanian law, service pensions are not related to social insurance contributions but are paid from the State budget to individuals because of their merits or for service to the State (see paragraphs 19-20 below). State officials who are entitled to service pensions are also insured by the mandatory State social insurance scheme and are entitled to other types of welfare benefit, save in exceptional cases provided by law (see paragraph 21 below).

1. Provisional Law on the Recalculation and Payment of Welfare Benefits

5. On 9 December 2009 the Lithuanian Parliament enacted the Provisional Law on the Recalculation and Payment of Welfare Benefits (*Socialinių išmokų perskaičiavimo ir mokėjimo laikinasis įstatymas*; hereinafter, “the Provisional Law”), which entered into force on 1 January 2010. According to the law’s preamble, the State budget deficit had been constantly increasing because of the economic crisis of that time and measures were needed to stabilise it (see paragraph 23 below). The Provisional Law set down rules for recalculating various welfare benefits, such as retirement pensions, disability benefits, maternity and paternity benefits, sickness benefits, unemployment benefits and service pensions, among others (see paragraph 24 below).

6. An explanatory report appended to the Provisional Law stated that the economic crisis had led to numerous legal acts being amended in an attempt to stabilise the State budget deficit – civil servants’ salaries had been reduced and there had been changes in tax law. However, further measures were considered necessary to address the crisis. The explanatory report referred to the work plan of the Government, which had set down the guidelines for addressing the economic slowdown in the face of the global financial crisis (see paragraph 22 below). It also referred to several Constitutional Court rulings adopted in 2002-2007, which had held that individuals entitled to certain welfare benefits had a legitimate expectation that they would continue to receive them; however, in the face of an exceptional situation, when the State was unable to acquire sufficient funds to continue the payment of welfare benefits, they could be temporarily reduced to the extent necessary to ensure the protection of constitutional values and the balance between the interests of individuals and those of society.

7. In line with Article 4 of the Provisional Law, service pensions were reduced by 5-20%, depending on their size, but the final amount after the recalculation could not be below LTL 650 (approximately EUR 188) a month (see paragraphs 25-26 below).

8. Article 15 of the Provisional Law stated that the law would expire on 31 December 2011, but that provision was subsequently amended several times. The Provisional Law ceased to apply on 31 December 2011 with regard to retirement pensions, disability benefits, maternity and paternity benefits, sickness benefits, and child benefit, but remained applicable with regard to service pensions until 31 December 2013.

9. Article 16 § 4 of the Provisional Law instructed the Government to prepare the necessary legal acts to establish a compensation mechanism for reduced retirement pensions and benefits for lost working capacity. It did not make any mention of a compensation mechanism for the other benefits that had been reduced (see paragraph 10 below).

10. On 29 June 2010 the Constitutional Court found that Article 16 § 4 of the Provisional Law (see paragraph 9 above) was not in compliance with the Constitution in so far as it had not required a compensation mechanism for those service pensions which had been reduced significantly (*dideliu mastu*; see the relevant excerpts in paragraph 27 below).

11. On 6 February 2012 the Constitutional Court issued a ruling which examined the compliance, *inter alia*, of Article 4 § 1 of the Provisional Law (see paragraph 7 above) with the Constitution. It reiterated that the State was justified in introducing temporary reductions in various welfare benefits when faced with an economic crisis, as long as those reductions respected the constitutional principles of the rule of law and non-discrimination, among others. The Constitutional Court concluded that Article 4 § 1 of the Provisional Law was in compliance with the Constitution because it had provided that service pensions could not be reduced by more than 20%, which could not be considered as “significant”. The absence of a compensation mechanism for service pensions reduced in line with Article 4 § 1 had therefore not breached the Constitution (see the relevant excerpts in paragraph 28 below). The ruling was published in the Official Gazette and entered into force on 21 September 2012.

12. On 14 May 2015 the Constitutional Court found that the different expiry dates for reductions in service pensions and other welfare benefits in Article 15 of the Provisional Law (see paragraph 8 above) were compatible with the Constitution in view of the “different nature and character” of service pensions compared with other benefits (see the relevant excerpts in paragraph 29 below).

2. *Reduction of the applicant’s service pension*

13. In accordance with Article 4 § 1 of the Provisional Law (see paragraphs 7 above and 26 below), the applicant’s service pension was reduced on 1 January 2010 by approximately 15% to LTL 724 (approximately EUR 210) per month.

14. On 4 March 2011 the applicant brought a claim against the State. She requested that her service pension be restored to its pre-2010 level and that she be compensated for the period of reduced pension. The applicant also asked the court to seek a ruling from the Constitutional Court as to whether various provisions of the Provisional Law were in compliance with the Constitution.

15. On 2 November 2011 the Vilnius Regional Administrative Court adjourned the applicant's case on the grounds that several requests concerning the compliance of the Provisional Law with the Constitution were pending before the Constitutional Court. The case was adjourned until the entry into force of the Constitutional Court's ruling of 6 February 2012 (see paragraphs 11 above and 28 below).

16. On 13 November 2012 the Vilnius Regional Administrative Court dismissed the applicant's claim. It held that the applicant's service pension had been reduced in accordance with Article 4 § 1 of the Provisional Law, which the Constitutional Court had found to be in compliance with the Constitution (see paragraphs 7 and 11 above and 28 below). There were therefore no grounds to restore her pension to its pre-2010 level or compensate her for the period of reduction.

17. On 6 June 2013 the Supreme Administrative Court dismissed an appeal by the applicant and upheld the findings of the first-instance court.

B. Relevant domestic law and practice

1. Constitutional provisions

18. The relevant provisions of the Constitution read:

Article 7

“Any law or other act that contradicts the Constitution shall be invalid.
...”

Article 23

“Property shall be inviolable.

The rights of ownership shall be protected by law.

Property may be taken only for the needs of society according to the procedure established by law and shall be justly compensated for.”

Article 29

“All persons shall be equal before the law, courts, and other state institutions and officials.

Human rights may not be restricted; no one may be granted any privileges on the grounds of gender, race, nationality, language, origin, social status, belief, convictions, or views.”

Article 52

“The State shall guarantee its citizens the right to receive retirement and disability pensions, as well as social assistance in the event of unemployment, sickness, widowhood, loss of the breadwinner, and in other cases provided for by law.”

Article 107

“A law (or part thereof) of the Republic of Lithuania ... may not be applied from the day of the official publication of the decision of the Constitutional Court that the act in question (or part thereof) is in conflict with the Constitution of the Republic of Lithuania.

The decisions of the Constitutional Court on the issues assigned to its competence by the Constitution shall be final and not subject to appeal.

...”

2. *Service pensions*

19. Articles 1 and 4 of the Law on Service Pensions (*Valstybinių pensijų įstatymas*) list the categories of people who are entitled to service pensions, such as State officials, soldiers, judges, scientists, former deportees, resistance fighters, Olympic medalists, and others; separate laws set out the specific regulations for each category (see, for example, paragraph 20 below). Article 2 provides that service pensions are paid from the State budget. Article 3 provides that a person who is entitled to several service pensions can only receive one, of his or her choice.

20. Article 1 of the Law on the Service Pensions of Officials and Soldiers (*Karių ir pareigūnų valstybinių pensijų įstatymas*) lists the categories of State officials who are entitled to service pensions, such as Interior Ministry service officials, professional soldiers, prosecutors, Prisons Department officials, customs and border officers, and others. Article 3 § 1 provides that officials become eligible for a service pension after serving for a certain length of time or after being discharged for health reasons related to their duties. Article 7 sets the rules for calculating the amount of service pension, linking it to length of service and the average salary received during that time.

21. Article 2 § 1 of the Law on State Social Insurance Pensions (*Valstybinių socialinio draudimo pensijų įstatymas*) provides that State officials are insured by the mandatory State social insurance scheme. Article 5 § 3 provides that individuals who are entitled to a State social insurance pension do not lose the right to receive service pensions or other benefits, save for exceptional cases provided by law.

3. *Reduction of service pensions and other welfare benefits*

22. The work plan of the Lithuanian Government, adopted in December 2008, stated that one of the main priorities of the Government was to prepare for the economic slowdown in the face of the serious global financial crisis. It set down guidelines for decreasing public spending, reforming tax law, balancing cash flows, and encouraging private businesses, among other things.

23. The preamble to the Provisional Law (see paragraph 5 above), provides:

“The Parliament of the Republic of Lithuania,

Acknowledging that forecasts for the State budget and the budget of the State Social Insurance Fund indicate constant increases in the deficit caused by the economic crisis in Lithuania;

Emphasising the need to stabilise the increase in the deficit in the State budget and the budget of the State Social Insurance Fund and to balance cash flows;

Aiming, as far as possible, to protect vulnerable groups in society and to ensure the timely payment of benefits during the economic crisis;

Having regard to the fact that the Constitutional Court of the Republic of Lithuania has repeatedly held that in exceptional situations (economic crises, natural disasters, and so forth), when it is impossible to acquire sufficient funds for the payment of welfare benefits, the legal regulation concerning such benefits can be amended and the benefits temporarily reduced for the duration of the exceptional situation to the extent necessary for ensuring the protection of the vitally important interests of society and other constitutional values;

Hereby enacts this provisional law.”

24. Article 1 § 2 of the Provisional Law lists the categories of welfare benefits to which it applies:

“2. The present law is applicable to recipients of the following benefits:

1) service pensions awarded in accordance with the Law on Service Pensions, the Law on the Service Pensions of Officials and Soldiers, the Law on Judges’ Service Pensions, and the Provisional Law on the Service Pensions of Scientists;

2) compensation awarded in accordance with the Law on Theatres and Concert Halls;

3) annuities awarded in accordance with the Law on the President’s State Annuity, the Law on the Status of Signatories of the Act of Lithuanian Independence and the Law on Physical Training and Sport;

4) relief benefits paid to employable individuals of working age and benefits for nursing or care awarded in accordance with the Law on Relief Benefits;

5) state social insurance retirement pensions, except for recipients who have a high level of special needs; early retirement pensions; benefits for lost working capacity (disability) awarded to those who have lost 45-70% of their working capacity (disability of the second and third category) [and other welfare benefits] awarded in

accordance with the Law on State Social Insurance Pensions and the Law on State Social Insurance Early Retirement Pensions;

6) sickness, professional rehabilitation, maternity and paternity benefits awarded in accordance with the Law on Sickness and Maternity Social Insurance;

7) sickness benefits awarded in accordance with the Law on Work-Related Accidents and Professional Sickness Social Insurance;

8) maternity (paternity) benefits awarded to State officials and soldiers from the State budget in accordance with the relevant legal acts;

9) child benefit awarded in accordance with the Law on Child Benefit;

10) unemployment benefits awarded in accordance with the Law on Unemployment Social Insurance.”

25. Article 3 § 1 of the Provisional Law establishes a minimum threshold (*ribinis dydis*) of LTL 650 (approximately EUR 188).

26. Article 4 § 1 of the Provisional Law establishes that service pensions and some other welfare benefits are to be recalculated in accordance with the rules set forth in Annex 1 of the Law. Annex 1 sets recalculation coefficients ranging from 5-20%, with a higher coefficient being applied to higher benefits. Article 4 § 5 provides that the minimum set out in Article 3 § 1 (see paragraph 25 above) is paid if the amount after the recalculation is below or equal to that level.

27. In its ruling of 29 June 2010 the Constitutional Court held:

“In an exceptional situation when, *inter alia*, it is impossible because of an economic crisis to bring in sufficient funds to pay service pensions, the legislature, when reducing service pensions significantly, must establish ... a compensation mechanism to oblige the State, once the exceptional situation is over, to provide compensation, fairly and without an unreasonable delay, for the losses endured by such persons because of their reduced service pensions ...

Therefore, according to the Constitution, compensation must be provided for losses resulting from a significant reduction in service pensions ... Article 16 § 4 of the Provisional Law ... which instructs the Government to establish a compensation mechanism only for retirement pensions and benefits for lost working capacity and not for significantly reduced service pensions, cannot be justified under the Constitution.”

28. In its ruling of 6 February 2012 the Constitutional Court held:

“The Provisional Law, as stated in its preamble, was enacted to limit increases in the deficit of the State budget and the budget of the State Social Insurance Fund caused by the economic crisis. Having regard to the especially difficult economic and financial situation in the State, and aiming to protect, to the greatest extent possible, socially vulnerable groups, the Law set down the rules for the recalculation of welfare benefits, which led to the reduction of those benefits. At the same time, the Law established certain thresholds: welfare benefits which did not exceed a minimum threshold could not be reduced, whereas those which exceeded that minimum threshold could be reduced only to the extent provided for in the Law.

It must be emphasised that the Provisional Law is of only temporary application. Furthermore, it instructs the Government to adopt the necessary regulations to establish a compensation mechanism for reduced retirement pensions and benefits for lost working capacity.

...

The Constitutional Court has repeatedly held that service pensions, which are not explicitly provided for in Article 52 of the Constitution, differ from social insurance pensions by their nature and character. They are awarded to people for their service or merits to the State of Lithuania ... and they are paid from the State budget. Receipt of those pensions is not linked to contributions to the social insurance system, but to a certain status (such as service, merits or other relevant circumstances). The specific character of service pensions permits the legislature to establish the conditions for awarding them; the legislature's discretion in that regard is wider than in the regulation of other pensions. The conditions for awarding service pensions can vary greatly and depend on, *inter alia*, the nature of the service and the State's financial resources. The legislature can also establish a maximum number for such pensions. Nonetheless, the people who fulfil the conditions established by law are entitled to receive the corresponding service pension and the State owes them a legal obligation to pay such a pension ...

The Constitutional Court has also held that the specific character of service pensions ... implies that the legislature may amend the legal regulation and reduce those pensions to a greater extent than retirement pensions or disability benefits ...

The specific character of service pensions also implies that the compensation provided for losses incurred because of a reduction in those pensions may be smaller than for losses incurred because of a reduction in retirement or disability pensions ...

As to the compliance of Article 4 § 1 of [the Provisional Law] with [the Constitution]

...

As already stated above, the Provisional Law was enacted to limit increases in the deficit of the State budget and the budget of the State Social Insurance Fund caused by the economic crisis; it set down rules for the recalculation of welfare benefits which led, *inter alia*, to the temporary reduction of those benefits ... It must be underlined that when recalculating service pensions in line with Article 4 § 1, the pension cannot be reduced by more than 20% ...

Taking into account the fact that in line with Article 4 § 1 of the Provisional Law a service pension ... cannot be reduced by more than 20%, there are no grounds to find that such a legal regulation reduces service pensions significantly.

Accordingly, there are no grounds to find that the absence of a mechanism in the Provisional Law designed to compensate people whose service pensions were reduced in line with Article 4 § 1 ... is not in compliance with Articles 23, 29 and 52 of the Constitution or the constitutional principle of a State under the rule of law.

...”

29. In its ruling of 14 May 2015 the Constitutional Court held:

“The State's constitutional duty to accumulate the funds necessary for the payment of benefits in order to repeal laws which have reduced them, ... cannot be interpreted as a duty to repeal [such laws] only when it becomes possible to accumulate sufficient

funds to restore all the reduced benefits. When it becomes possible to accumulate a part of such funds, the legislature, taking into account the State's economic and financial situation, its means, and the various obligations which it has undertaken, can decide to restore benefits of a different nature and character at different times or to a different extent. When making such a decision, the legislature must comply with the Constitution and the constitutional requirements of, *inter alia*, a State under the rule of law, equality of persons, equity, and proportionality, and with the requirement to take into consideration the specific circumstances and differences between the legal status of the persons who will be subject to a different legal regulation.

...

Accordingly, the legal regulation which established a longer period of reduction in service pensions ... than in some other welfare benefits ... is considered as a reduction in service pensions to a greater extent in view of their different nature and character in comparison with other welfare benefits (*inter alia*, retirement pensions and disability benefits), that is to say, as an objectively justified difference in the treatment of different categories of beneficiaries ...

Therefore, there are no grounds to find that [the amended Article 15 of the Provisional Law] violated the constitutional principles of a State under the rule of law, equality of persons, equity, and proportionality."

4. Length of court proceedings

30. The relevant domestic law and practice concerning the length of court proceedings and available domestic remedies is summarised in *Savickas and Others v. Lithuania* ((dec.), nos. 66365/09 and 5 others, §§ 21-39, 15 October 2013).

COMPLAINTS

31. The applicant complained under Article 1 of Protocol No. 1 to the Convention that she had been deprived of her property because her service pension had been reduced and she had not been compensated for that reduction.

32. She also complained under Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1, that she had been discriminated against because other categories of beneficiaries – in particular those who had been receiving retirement pensions – had been entitled to compensation for their reduced benefits.

33. Lastly, she complained under Article 6 § 1 of the Convention about the length of the proceedings before the administrative courts (see paragraphs 14-17 above).

THE LAW

A. Complaint under Article 1 of Protocol No. 1 to the Convention

34. The applicant alleged that the reduction of her service pension had violated Article 1 of Protocol No. 1, which reads:

“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. Applicability of Article 1 of Protocol No. 1

35. The Court reiterates that all the principles which apply generally in cases concerning Article 1 of Protocol No. 1 are equally relevant when it comes to welfare benefits. Thus, Article 1 of Protocol No. 1 does not, as such, guarantee any right to become the owner of property, nor does it guarantee any right to a particular amount of pension. Furthermore, Article 1 of Protocol No. 1 places no restriction on the freedom of Contracting States to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefit to provide under any such scheme. If, however, a Contracting State has legislation in force providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a pecuniary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, ECHR 2009, and the cases cited therein). The reduction or the discontinuance of a pension may therefore constitute an interference with possessions that needs to be justified (see *Da Conceição Mateus and Santos Januário v. Portugal* (dec.), nos. 62235/12 and 57725/12, § 18 *in fine*, 8 October 2013, and the cases cited therein).

36. In the present case, the applicant was discharged from the Prisons Department and became entitled to a service pension amounting to LTL 854 (approximately EUR 247) per month, in accordance with the relevant domestic law (see paragraphs 3-4 above). The Court considers that the applicant had a legitimate expectation that she would continue to receive a service pension of that amount. Article 1 of Protocol No. 1 to the Convention is therefore applicable.

2. Compliance with Article 1 of Protocol No. 1

(a) Existence of an interference

37. Having found that the applicant had a legitimate expectation to continue to receive a service pension amounting to LTL 854 (approximately EUR 247) per month (see paragraph 36 above), the Court has no doubt that its reduction on a temporary basis, provided by the Provisional Law (see paragraphs 7 and 13 above), constituted an interference with the applicant's property rights.

38. The Court considers that the restrictions introduced by the impugned legislation should not be considered as a "deprivation of possessions", but rather as interference with the right to the peaceful enjoyment of possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 88, 25 October 2011, and *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, § 34, 7 May 2013).

(b) Lawfulness of the interference

39. The Court reiterates that an essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with this provision is that it should be lawful (see, among many other authorities, *Bélané Nagy v. Hungary* [GC], no. 53080/13, § 112, ECHR 2016).

40. In the present case, the applicant's service pension was temporarily reduced in accordance with Article 4 § 1 of the Provisional Law, which, in its ruling of 6 February 2012, the Constitutional Court found to be in compliance with the Constitution (see paragraphs 7, 11 and 28 above). The Court therefore has no doubts that the interference was in accordance with the law, as required by Article 1 of Protocol No. 1.

(c) Whether the interference pursued a legitimate aim

41. The Court further reiterates that any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions. The notion of "public interest" is necessarily extensive (see, among many other authorities, *Broniowski v. Poland* [GC], no. 31443/96, §§ 148-49, ECHR 2004-V). In particular, the decision to enact laws concerning

social-insurance benefits will commonly involve consideration of economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation. This is particularly so, for instance, when passing laws in the context of a change of political and economic regime, the adoption of policies to protect the public purse or to reallocate funds, or of austerity measures prompted by a major economic crisis (see *Bélané Nagy*, cited above, §§ 113-14, and the cases cited therein).

42. Turning to the circumstances of the present case, the Court observes that the temporary reduction of service pensions and other welfare benefits, provided by the Provisional Law, aimed to decrease State expenses during the economic crisis, to stabilise the increase in the budget deficit, and to ensure its continued ability to provide protection to the most vulnerable groups (see the aims of the Provisional Law stated in its preamble and the explanatory report – paragraphs 23 and 6 above – the restatement of those aims by the Constitutional Court – paragraph 28 above – and the acknowledgment in the Government's work plan that Lithuania had been affected by the global financial crisis – paragraph 22 above). In cases concerning similar austerity measures adopted during an economic crisis with the aim of reducing public spending in Romania (see *Panfile v. Romania* (dec.), no. 13902/11, § 21, 20 March 2012), Greece (see *Koufaki and ADEDY*, decision cited above, §§ 36-41), and Portugal (see *Da Conceição Mateus and Santos Januário*, decision cited above, §§ 25-26), as well as during a previous economic crisis in Lithuania (see *Savickas and Others v. Lithuania* (dec.), nos. 66365/09 and 5 others, § 92, 15 October 2013), the Court considered such aims to be legitimate for the purposes of Article 1 of Protocol No. 1. It sees no reason to reach a different conclusion in the present case. Accordingly, the Court is satisfied that the temporary reduction of service pensions and other welfare benefits sought a legitimate aim in the public interest.

(d) Proportionality of the interference

43. The Court reiterates that any interference with the peaceful enjoyment of possessions must be reasonably proportionate to the aim sought to be realised. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights. That balance will be lacking where the person concerned has to bear an individual and excessive burden. In that regard, it is also important to verify whether an applicant's right to derive benefits from the social security scheme in question has been infringed in a manner resulting in the

impairment of the essence of his or her pension rights. At the same time, it must not be overlooked that Article 1 of Protocol No. 1 does not restrict a State's freedom to choose the type or amount of benefits that it provides under a social security scheme (see *Valkov and Others*, cited above, § 91, and the cases cited therein). The nature of the benefit taken away – in particular, whether it has originated in the special advantageous pension scheme available only to certain groups of persons – may also be taken into account. The assessment would vary depending on the particular circumstances of the case and the applicant's personal situation; while a total deprivation of entitlements resulting in the loss of means of subsistence would in principle amount to a violation of the right of property, the imposition of a reasonable and commensurate reduction would not (see *Da Conceição Mateus and Santos Januário*, decision cited above, § 24, and the cases cited therein).

44. The Court further reiterates that the possible existence of alternative solutions to addressing the economic crisis does not in itself render the contested measures unjustified. Provided that the authorities remain within the bounds of their margin of appreciation, it is not for the Court to decide whether the contested measures represented the best solution for dealing with the problem or whether the authorities should have exercised their discretion in another way (see *Koufaki and ADEDY*, decision cited above, § 48; *Da Conceição Mateus and Santos Januário*, decision cited above, § 28; and *Markovics and Others v. Hungary* (dec.), nos. 77575/11 and 2 others, § 39, 24 June 2014).

45. Turning to the circumstances of the present case, the Court observes that the applicant's complaint concerned a service pension – a special type of benefit awarded to her because of her service in the Prisons Department and one that was not dependent on the prior payment of contributions. The Court notes in particular that individuals who are entitled to service pensions are at the same time insured by the mandatory State insurance scheme and are thereby also eligible to receive other types of welfare benefits (see paragraphs 4 and 21 above). It further observes that by virtue of the Provisional Law the applicant's service pension was reduced by approximately 15% (see paragraphs 3, 7 and 13 above). The Constitutional Court held that such a reduction could not be considered "significant" (see paragraphs 11 and 28 above). The Court, having regard to its limited role to substitute its own assessment for that of domestic courts, does not see compelling reasons to question the Constitutional Court's assessment in the present case. In that connection, it also notes that after the reduction the applicant's service pension (approximately EUR 210 – see paragraph 13 above) was higher than the minimum set in the Provisional Law (approximately EUR 188 – see paragraphs 7 and 25 above). Taking all those circumstances into account, the Court cannot conclude that the reduction of

the service pension totally divested the applicant of her only means of subsistence or placed her at risk of having insufficient means to live on (see, *mutatis mutandis*, *Markovics and Others*, decision cited above, § 42; compare and contrast *N.K.M. v. Hungary*, no. 66529/11, § 68, 14 May 2013).

46. The Court further observes that the reduction of the applicant's service pension was temporary – as provided in Article 15 of the Provisional Law, it lasted four years (from 1 January 2010 until 31 December 2013 – see paragraphs 5 and 8 above), and the applicant has not submitted any information to show that the reduction was extended beyond that period. The interference with the applicant's right to the peaceful enjoyment of her possessions was thus limited, not only in quantitative terms but in time as well (see *Da Conceição Mateus and Santos Januário*, decision cited above, §§ 28-29, and *Da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, § 45, 1 September 2015; compare *Koufaki and ADEDY*, decision cited above, § 44).

47. Lastly, the Court takes note of the fact that the reduction of service pensions formed part of a wider programme of austerity measures, which affected many other types of welfare benefit, civil servants' salaries, and which also included various changes in tax law (see paragraphs 6 and 24 above; see also, *mutatis mutandis*, *Savickas and Others*, decision cited above, § 93).

48. Therefore, in the light of the serious economic difficulties faced by Lithuania at the time of a global financial crisis and given the limited extent and the temporary effect of the reduction in the applicant's service pension, the Court sees no grounds to find that the authorities had failed to strike a fair balance between the demands of the general interest of the community and the requirements of the protection of the applicant's individual fundamental rights. In particular, there is no appearance that the applicant had to bear an individual and excessive burden.

49. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and should be rejected in accordance with Article 35 § 4 of the Convention.

B. Complaint under Article 14 taken in conjunction with Article 1 of Protocol No. 1 to the Convention

50. The applicant further complained under Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1, that the absence of compensation for reduced service pensions had been discriminatory because such compensation had been provided for some other categories of beneficiaries, in particular those receiving retirement pensions.

Article 14 reads:

“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.”

51. The Court reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and the Protocols thereto. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention – it is necessary but it is also sufficient for the facts of the case to fall “within the ambit” of one or more of the provisions in question (see *Andrejeva*, cited above, § 74, and the cases cited therein). In the present case, the Court considered that the applicant’s complaint concerning the reduction of her service pension fell within the scope of Article 1 of Protocol No. 1 and the right to the peaceful enjoyment of possessions which it safeguards (see paragraph 36 above). This is sufficient to render Article 14 of the Convention applicable.

52. According to the Court’s settled case-law, discrimination means treating differently, without an objective and reasonable justification, persons in similar situations (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 175, ECHR 2007-IV). The Court reiterates that in order for an issue to arise under Article 14, there must be a difference in the treatment of persons who are in analogous, or relevantly similar, situations (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010).

53. In the present case, the applicant complained that she had been treated differently from people who received other types of welfare benefit – in particular, that a compensation mechanism had been provided for reduced retirement pensions but not for service pensions. However, the Court is not convinced that the two groups – the recipients of service pensions and the recipients of retirement pensions – are in analogous or relevantly similar situations. As elaborated by the Constitutional Court, the State’s obligation to provide individuals with retirement pensions stems from the Constitution, whereas the award of service pensions is discretionary and depends on the State’s financial resources (see paragraph 28 above). The Court further observes that service pensions are awarded on the basis of individuals’ service in State institutions, their merits, or other similar circumstances, rather than on the basis of need or vulnerability; they are paid from the State budget and not from the budget of the State Social Insurance Fund, which is made up of individuals’ contributions (see paragraphs 4 and 19 above). The Constitutional Court considered that those differences justified the difference in treatment

between recipients of service pensions and recipients of retirement pensions (see paragraphs 11-12 and 28-29 above), and the Court sees no reasons to hold otherwise (see, *mutatis mutandis*, *Valkov and Others*, cited above, § 117; *Panfile*, decision cited above, § 28; and *Giavi v. Greece*, no. 25816/09, §§ 52-53, 3 October 2013).

54. Accordingly, the Court is of the view that the applicant, who was a recipient of a service pension, cannot be considered as being in an analogous or relevantly similar situation to recipients of retirement pensions for the purposes of Article 14 of the Convention. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 (a) and should be rejected in accordance with Article 35 § 4 of the Convention.

C. Complaint under Article 6 § 1 of the Convention

55. Lastly, the applicant complained that the length of the proceedings before the administrative courts had been excessive. She relied on Article 6 § 1 of the Convention, the relevant parts of which read:

“In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ...”

56. The Court considers it unnecessary to determine whether Article 6 § 1 of the Convention was applicable under its civil head to the proceedings concerning the applicant's service pension because, even assuming that it was, this complaint is in any event inadmissible for the following reasons.

57. The proceedings at issue started on 4 March 2011, when the applicant brought a claim against the State (see paragraph 14 above), and ended on 6 June 2013, when the Supreme Administrative Court dismissed the applicant's appeal (see paragraph 17 above). They thus lasted two years and three months before two court instances. During that period, the case was adjourned for more than ten months until the entry into force of the Constitutional Court's ruling which had addressed the compliance of the Provisional Law with the Constitution (see paragraphs 11 and 15 above). In this connection, the Court notes that the applicant herself asked the first-instance court to seek a ruling from the Constitutional Court (see paragraph 14 above). In such circumstances, and considering the total length of the proceedings, the Court has doubts whether it could be considered excessive. In any event, the Court has previously found that Lithuanian law provides for an effective domestic remedy in cases of the excessive length of proceedings – a civil claim for damages against the State – and that this remedy must be used before lodging an application with the Court after 6 August 2007 (see paragraph 30 above; see *Savickas and Others*, cited above, §§ 86-88; *Buterlevičiūtė v. Lithuania*, no. 42139/08, § 75,

12 January 2016; and *Dungveckis v. Lithuania*, no. 32106/08, § 50, 12 April 2016). The applicant lodged her application on 22 November 2013 but had not previously brought a claim for damages for excessive length of proceedings before the domestic courts. Accordingly, the Court holds that this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 27 July 2017.

Marialena Tsirli
Registrar

Ganna Yudkivska
President