



[ECtHR - Savickis and Others v. Latvia](#)

This case concerns the difference in treatment between citizens of Latvia and 'permanently resident non-citizens' of Latvia with regard to the calculation of their pension rights. For the latter group, employment periods accrued outside of Latvia prior to 1991 in other parts of the USSR are excluded from the calculation. The Court found that direct difference in treatment on the grounds of nationality in pensions does not violate the ECHR, as when determining that difference in treatment, Latvia pursued a legitimate aim and this measure was proportionate to that aim. It noted that applicants decided not to naturalise in Latvia, where they resided. The Court also found that the assessment of whether the difference in treatment is justified by 'very weighty reasons' (test applied where there is a direct difference of treatment on the sole ground of nationality) must be carried out considering the wide margin of appreciation in this case.

Case number: Application no. 49270/11

Citation: Savickis and Others v. Latvia, application no. 49270/11, 9 June 2022

Date of decision: 09/06/2022

State: Latvia

Court / UN Treaty Body: European Court of Human Rights

Language(s) the decision is available in: English, French

Applicant's country of residence: Latvia

Legal instruments: European Convention on Human Rights (ECHR)

Key aspects: Access to social and economic rights, Discrimination

Relevant Legislative Provisions:

- European Convention on Nationality
- European Convention on Human Rights, Article 14 and Protocol 1, Article 1
- Declaration on the Restoration of Independence of the Republic of Latvia of 4 May 1990
- Constitutional Law of 21 August 1991 on the status of the Republic of Latvia as a State

- State Pensions Act

Facts

The case was brought by a group of people born between 1938 and 1948 in various territories of the Soviet Union and living in Latvia. After the restoration of independence in Latvia, the applicants did not become Latvian nationals but were granted the status of “permanently resident non-citizens” (*nepilsoņi*) of Latvia. After having worked in Latvia until their retirement they were granted retirement pensions. However, in contrast to the situation pertaining for citizens of Latvia, the employment and equivalent periods accrued outside the territory of Latvia in other parts of the former USSR prior to the restoration of that State’s independence were not taken into account in calculating their pensions.

In 2001, the Constitutional Court reviewed the domestic legislation providing for the differences in the calculation of State pensions on the basis of Latvian citizenship and found no violation of Article 1 of Protocol 1 nor of Article 14 ECHR. It also found that the difference was objectively justified by the nature and principles of the Latvian pension system and did not amount to a discrimination within the meaning of the Constitution.

Relying on the Grand Chamber judgment in [Andrejeva v. Latvia](#) from 2009, the applicants submitted a complaint before the ECtHR claiming they had been discriminated against (Article 14 taken in conjunction with Article 1 of Protocol 1) on grounds of their nationality status, because their work outside of the borders of what used to be the Latvian SSR is not taken into account for the calculation of the pension as opposed to Latvian citizens.

Legal arguments by the applicant

The applicants declared that their complaint concerned solely their claim for the inclusion in the calculation of their retirement pensions of those same periods which were included in calculating the equivalent pensions for Latvian citizens; thus, they were not claiming any additional benefits.

The applicants reiterated that, had they been Latvian citizens, the respective employment and equivalent periods accrued in the territory of the former USSR would have been taken into account in calculating the “insurance period” which was subsequently used to determine their entitlement to state pensions and the amount

thereof. Thus, the impugned difference in treatment had been based solely on nationality.

While conceding that the difference pursued the aim of protecting the country's economic system, the applicants argued that this aim did not retain its full importance today. With regard to proportionality, they argued that Latvia was the only country with which they had stable legal ties and thus the only country which could assume responsibility for them on social security matters. Therefore, the facts of the present case could not be distinguished from those of the [Andrejeva case](#), where the ECtHR had found that a difference of treatment on pension rights based on nationality constituted a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1.

Legal arguments by the opposing party

The government argued that the applicants in this case were in a substantially different situation from that of the applicant in the [Andrejeva case](#), where the ECtHR had found a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1. While in that case, applicants had resided and worked in the territory of Latvia through the disputed periods, forming legal and factual ties with Latvia only, the applicants in the current case had worked or performed mandatory military service in other countries during the disputed periods, therefore creating no ties with Latvia during that time. They had not only been physically employed in the territory of another republic of the former USSR, but their residence had also been officially registered there.

Therefore, the government argued that the difference in treatment had at least two legitimate aims: protection of Latvia's economic system following the restoration of its independence, and respect for the principle of State continuity and constitutional identity. The impugned measure was also proportionate to these aims: all residents of Latvia received basic old-age pensions, irrespective of their citizenship; the applicants received additional social benefits for housing, health care and transportation, and their pensions had been recalculated following the entry into force of several bilateral agreements on social-security matters.

There were no other less restrictive measures to achieve the same legitimate aim. Accordingly, when adopting that difference in treatment, Latvia had acted within its margin of appreciation which, in the circumstances of the present case, was wide.

Decision & Reasoning

The Court reiterated at the outset that Article 1 of Protocol No. 1 does not guarantee as such any right to a pension of a particular amount, any right to a pension in respect of activities carried out in a State other than the respondent State, and, indeed, any right to a pension at all. In the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment without an objective and reasonable justification of persons in relevantly similar situations

The Court applied the four-step analysis of proportionality: (i) grounds for the difference in treatment; (ii) relevantly similar situations; (iii) legitimate aim; and (iv) proportionality. It also reminded the 'very weighty reasons' test (reduced margin of appreciation) which is required by a direct difference of treatment on the sole ground of nationality (paragraph 205). However, considering in particular the historical and demographic circumstances of Latvia's situation when the country determined criteria for entitlement to the employment-based retirement pension system, 'the Court considers that the assessment of whether the impugned difference in treatment is justified by "very weighty reasons" must be carried out against the background of the wide margin of appreciation to be applied in the circumstances of the present cases' (paragraph 213)

First, the Court observes that the ground for the difference in treatment introduced in the transitional provisions of the occupational pension system set up by the Latvian legislature is directly linked with the stated aim of protection of Latvia's economic system following the restoration of its independence; therefore, the preferential treatment accorded to Latvian citizens is in line with that legitimate aim.

Second, the Court notes that the difference in treatment depended on the possession of Latvian citizenship, or lack thereof, a legal status distinct from the national origin of the persons concerned and available to the applicants as "permanently resident non-citizens". The status of "permanently resident non-citizen" was devised as a temporary instrument so that the individuals concerned could obtain Latvian citizenship or choose another State with which to establish legal ties. The Court observed that 'in the context of difference in treatment based on nationality there may be certain situations where the element of personal choice linked with the legal status in question may be of significance with a view to determining the margin of appreciation left to the domestic authorities, especially in so far as privileges, entitlements and financial benefits are at stake'. The Court

observed that it ‘does not appear from the case file that any of the applicants has ever tried to obtain citizenship of Latvia – the country in which they have already been permanently settled for many years – or that they did so but were met with obstacles’ (paragraph 215).

Third, the difference in treatment only concerned past periods of employment, completed prior to the introduction of the pension scheme in question. As opposed to the [Andrejeva case](#), the difference in treatment was limited to periods of employment outside Latvia, before applicants settled in Latvia or had any other links with that country (paragraph 216).

Finally, the Court considers that trade-offs in social welfare systems, such as the Latvian system which was based on social insurance contributions and functioned according to the principle of solidarity, generally call for a wide margin of appreciation (paragraph 218).

Judge Wojtyczek delivered a brief concurring opinion. Judges of the minority expressed their dissents through two opinions: a joint dissenting opinion of Judges O’Leary, Grozev and Lemmens and a dissenting opinion of Judge Seibert-Fohr, joined by Judges Turković, Lubarda and Chanturia.

Decision documents

[Savickis and Others v. Latvia, application no. 49270/11](#)

Outcome

The Court found no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

[Strasbourg Observers, ‘It’s their own fault’: The new non-discrimination standard in Savickis v. Latvia is about blaming minorities for their State-mandated statelessness \(August 2022\)](#)

Caselaw cited

- [Andrejeva v. Latvia \[GC\], no. 55707/00, § 37, ECHR 2009](#)
- Nottebohm Case (Liechtenstein v. Guatemala, judgment of 6 April 1955, ICJ Reports 1955)

- Case of the Girls Yean and Bosico v. Dominican Republic, judgment of 8 September 2005, Series C No. 130
- Expelled Dominicans and Haitians v. Dominican Republic, judgment of 28 August 2014, Series C No. 282
- C-135/08 Janko Rottmann v. Freistaat Bayern

Third party interventions

The Russian Government stated that, during the period in question, Latvia had been a full-fledged part of the USSR, which had been a unified formation. Soviet citizens had been entitled to travel all over the territory of the USSR. Taking into account the State-guaranteed pension support that had existed in the USSR for many years, they had had a reasonable expectation that their employment records would be valid throughout the entire territory of the USSR. In these circumstances, the difference in the amount of pension paid to citizens and to non-citizens was obviously unfair and discriminatory.