



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

## GRAND CHAMBER

### CASE OF SAVICKIS AND OTHERS v. LATVIA

*(Application no. 49270/11)*

#### JUDGMENT

Art 14 (+ Art 1 P1) • Discrimination • Very weighty reasons for exclusion of employment periods accrued in other former USSR states in state pension calculation for permanently resident non-citizens, in contrast to Latvian citizens • Impugned difference in treatment justified by the legitimate aims of protecting Latvia's constitutional identity based on the State continuity doctrine and its economic system • Importance of specific context after decades of unlawful occupation and annexation as well as complex policy choices after restoration of independence • Wide margin of appreciation not overstepped • Weight given to applicants' personal choice to remain "permanently resident non-citizens" while acceding to citizenship was open to them • Case distinguished from *Andrejeva v. Latvia* in so far as it concerns employment periods completed outside, and before establishing any link with, Latvia • No loss of basic benefits or those based on financial contributions

STRASBOURG

9 June 2022

*This judgment is final but it may be subject to editorial revision.*



**In the case of Savickis and Others v. Latvia,**

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Robert Spano, *President*,  
Jon Fridrik Kjølbro,  
Síofra O’Leary,  
Yonko Grozev,  
Ksenija Turković,  
Paul Lemmens,  
Ganna Yudkivska,  
Aleš Pejchal,  
Krzysztof Wojtyczek,  
Branko Lubarda,  
Mārtiņš Mits,  
Pauliine Koskelo,  
Lətif Hüseyinov,  
Lado Chanturia,  
Erik Wennerström,  
Anja Seibert-Fohr,  
Mattias Guyomar, *judges*,

and Abel Campos, *Deputy Registrar*,

Having deliberated in private on 2 March 2022,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. The present case concerns the difference in treatment between citizens of Latvia and “permanently resident non-citizens” (*nepilsoņi*) of Latvia with regard to the calculation of their retirement pensions, through the exclusion, for the latter group, of employment and equivalent periods accrued outside Latvia prior to 1991, in other parts of the former Union of Soviet Socialist Republics (“the USSR”). The applicants rely on Article 14 of the Convention, taken together with Article 1 of Protocol No. 1.

## PROCEDURE

2. The case originated in an application (no. 49270/11) against the Republic of Latvia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a group of persons born between 1938 and 1948 and living in various cities of Latvia.

3. The applicants were represented by Ms. I. Nikuļceva, a lawyer practising in Riga. The respondent Government were represented by their Agent, Ms K. Līce. The Russian Government, which subsequently exercised

their right to intervene in the case (under Article 36 § 1 of the Convention and Rule 44 § 1 (b) of the Rules of Court), were represented by Mr M. Galperin, Representative of the Russian Federation at the European Court of Human Rights.

4. The application was allocated to the Fifth Section of the Court (Rule 52 § 1 of the Rules of Court). On 22 June 2015 the respondent Government were given notice of the application.

5. On 1 December 2020 a Chamber of the Fifth Section decided to relinquish jurisdiction in favour of the Grand Chamber, none of the parties having objected (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

7. The applicant and the Government each filed a memorial on the admissibility and merits of the case (Rule 59 § 1).

8. The fifth applicant (Ms Marzija Vagapova) having acquired Russian nationality, on 5 February 2021 the Russian Government expressed their intention to exercise their right to take part in the written and oral proceedings as a third party (Article 36 § 1 of the Convention and Rule 44 § 1). They subsequently filed written comments on the admissibility and merits of the case.

9. A hearing took place in the Human Rights Building, Strasbourg, on 26 May 2021; on account of the public-health crisis resulting from the Covid-19 pandemic, it was held via video-conference. The webcast of the hearing was made public on the Court's Internet site on the following day.

There appeared before the Court:

(a) *for the respondent Government*

Ms K. LĪCE, *Agent,*  
Ms E.L. VĪTOLA,  
Ms S. KAULIŅA,  
Ms B. FELSBERGA, *Advisers;*

(b) *for the applicants*

Ms I. NIKUĻCEVA, *Counsel,*  
Mr A. KUZMINS, *Adviser;*

(c) *for the Russian Government*

Mr M. GALPERIN, *Representative of the Russian Government,*  
Ms A. DZUTSEVA, *Counsel,*  
Mr S. ANDREYEV,  
Mr S. TOROPOV,  
Mr O. POLOKHOV, *Advisers.*

The Court heard addresses by Ms Līce, Ms Nikuļceva, Mr Kuzmins and Mr Galperin and the replies given by Ms Līce, Ms Nikuļceva and Mr Kuzmins to questions put by judges.

## THE FACTS

10. The applicants were born between 1938 and 1948 and live in various cities of Latvia.

11. The facts of the case, as submitted by the parties, may be summarised as follows.

### I. THE GENERAL HISTORICAL BACKGROUND TO THE CASE

12. The historical background, namely the incorporation of the Baltic States into the Soviet Union in 1940, has been described in the cases of *Ždanoka v. Latvia* [GC] (no. 58278/00, §§ 12-13, ECHR 2006-IV); *Kuolelis and Others v. Lithuania* (nos. 74357/01 and 2 others, § 8, 19 February 2008); *Vasiliauskas v. Lithuania* [GC] (no. 35343/05, §§ 11-12, ECHR 2015); and *Sõro v. Estonia* (no. 22588/08, § 6, 3 September 2015).

13. On 4 May 1990, the Supreme Council of the “Latvian Soviet Socialist Republic” (“SSR”, one of the fifteen “Soviet Socialist Republics” of the USSR), the legislative assembly elected on 18 March of the same year, adopted the Declaration on the Restoration of Independence of the Republic of Latvia, which declared Latvia’s incorporation into the USSR in 1940 unlawful under international law and acknowledged that the fundamental provisions of the 1922 Constitution (*Satversme*) were still in force. A transitional period, aimed at the restoration of *de facto* sovereignty, was instituted. Negotiations with the USSR were to be initiated in accordance with the 1920 Peace Treaty between Latvia and Russia. During this period, various provisions of the Constitution of the Latvian SSR and other applicable legal acts remained in force in so far as they did not contradict the fundamental provisions of the 1922 Constitution (see paragraphs 60-61 below).

14. On 21 August 1991, the Supreme Council passed a constitutional law proclaiming full independence with immediate effect (see paragraph 62 below). The transitional period established under the 4 May 1990 Declaration on the Restoration of Independence was abolished.

15. On 8 December 1991, Belarus, the Russian Federation and Ukraine signed the Minsk Agreement, declaring the end of the Soviet Union’s existence and setting up the Commonwealth of Independent States (CIS).

16. On 21 December 1991, eleven sovereign States, former polities of the USSR – but not Latvia, Lithuania, Estonia, and Georgia – signed the Alma-Ata Declaration, which confirmed and extended the Minsk Agreement setting up the CIS. It was noted in the Alma-Ata Declaration that “with the establishment of the CIS, the USSR ha[d] cease[d] to exist” and that the CIS

was neither a State nor a supra-State entity. A Council of the Heads of State of the CIS was set up. They decided on the same date that (UN Doc. A/47/60):

“The States of the Commonwealth support Russia’s continuance of the membership of the USSR in the United Nations, including permanent membership of the Security Council, and [membership of] other international organisations.”

## II. PARTICULAR CIRCUMSTANCES OF THE CASE

### A. The initial calculation of the applicants’ retirement pensions

17. In 1996, the Republic of Latvia created a social security system under which periods of employment and equivalent periods accrued prior to 1991 in the territory of Latvia were to be taken into account in the calculation of retirement pensions. Such periods were also to be taken into account for citizens of Latvia if they had been accrued in the other territories of the former USSR. However, in relation to “permanently resident non-citizens” the employment and equivalent periods accrued in the other territories of the former USSR were to be taken into account only in a limited number of situations (see paragraphs 66-68 below).

18. The applicants were all born in various territories of the Soviet Union, were nationals of the former USSR, and came to live in Latvia while its territory was incorporated in the Soviet Union. Some of them arrived at a young age, others shortly before the restoration of Latvia’s independence in 1990-91. Following the restoration of independence 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.

#### 1. First applicant (*Mr Jurijs Savickis*)

19. The first applicant was born in the Kalinin Oblast (Russia) in 1939. Before the Court, he complained that the period of his employment in Russia, which had lasted 21 years, 3 months and 13 days, was not initially included in the calculation of his retirement pension, and although it was later included this was only on an *ex nunc* basis, without retroactive effect.

20. By a letter received by the Registry on 30 October 2020, the applicants’ representative informed the Court of the first applicant’s death. By a letter of 16 February 2021, the applicant’s representative informed the Court that no heir or close relative had come forward with a wish to pursue the application on the first applicant’s behalf.

2. *Second applicant (Mr Genādijs Nesterovs)*

21. The second applicant was born in Baku (Azerbaijan) in 1938. According to his submissions, he was employed in the territory of Azerbaijan from 1956 to 1957 and from 1960 to 1968 (that is, 9 years, 1 month and 8 days). From 1957 to 1960 he was conscripted for compulsory military service, which he served in East Germany (3 years, 2 months and 12 days). In 1968, at the age of 30, he started working in Latvia.

22. On 12 January 1999 the State Social Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*) granted the second applicant a retirement pension. The insurance period was set at 30 years, 1 month and 14 days. The years of employment and of military service outside the territory of Latvia were not included in the calculation. The monthly amount of his pension was set at 79.05 Latvian lati (LVL) (approximately 113 euros (EUR)), payable from 3 December 1998.

23. On 11 February 2008 the second applicant's pension was recalculated in view of his continued employment. The insurance period was set at 39 years, 1 month and 13 days, and he was granted a pension amounting to LVL 177.46 (approximately EUR 253), payable from 1 January 2007.

24. According to the most recent information provided by the applicants, as of December 2015 the second applicant was receiving a pension of EUR 359.15 and a supplement of EUR 26.89. The employment periods accrued in Azerbaijan and the compulsory military service served in Germany remain excluded from the calculation.

3. *Third applicant (Mr Vladimirs Podoļako)*

25. The third applicant was born in Vladivostok (Russia) in 1948 and came to Latvia in 1951, at the age of three. He worked in the territory of Latvia from 1968 onwards. He states that his compulsory military service was carried out in Russia (2 years and 1 month).

26. On 20 October 2009 the third applicant requested an early retirement pension. On 2 December 2009 his application was refused on the grounds that he did not meet the requirement of having accrued an insurance period of at least 30 years. As the period of compulsory military service had not been taken into account, the insurance period was set at 28 years, 5 months and 14 days. An appeal before the administrative courts was not examined on the grounds that he failed to establish that he had complied with the procedural requirements.

27. On 2 August 2010, after the third applicant had reached the official retirement age, he was granted a retirement pension of LVL 186.17 (approximately EUR 265), payable from 11 July 2010. In view of his continued employment, his insurance period was set at 29 years, 3 months and 16 days.

28. According to the most recent information provided by the third applicant, as of December 2015 he was receiving a pension of EUR 283.05 and a supplement of EUR 16.93. The years of his compulsory military service in Russia remain excluded from the calculation.

4. *Fourth applicant (Ms Asija Sivicka)*

29. The fourth applicant was born in Termez (Uzbekistan) in 1946. According to data from the State Social Insurance Agency, from 1963 to 1971 she worked in the territory of Uzbekistan (a total of 7 years, 10 months and 14 days of employment, and 2 months of parental leave). From 1971 to 1973 (1 year, 11 months and 26 days) the fourth applicant was on parental leave, although the documents before the Court do not clearly specify in which country this time was spent. In the period between 1973 and 1976 the fourth applicant was employed in Germany (2 years, 9 months and 16 days of employment and 1 month and 4 days of parental leave). From 1976 until 1981 she was employed in Russia (4 years, 11 months and 25 days). From 1981 to 1985 she served in the Soviet armed forces as a volunteer. From 1985 to 1987 (1 year, 5 months and 5 days) the fourth applicant worked in the territory of Belarus. She started working in Latvia in 1987, at the age of 41.

30. On 28 March 2008, the State Social Insurance Agency granted the fourth applicant a retirement pension. The insurance period was set at 19 years, 11 months and 12 days, as the years of employment and the equivalent periods accrued outside the territory of Latvia were not included in the calculation. The monthly amount of her pension was set at LVL 49.50 (approximately EUR 70), payable from 27 February 2008.

31. On 28 September 2010, the Agreement between the Republic of Latvia and the Republic of Belarus on Cooperation in the Field of Social Security ("Latvia-Belarus Social Security Agreement") entered into force. On the basis of this agreement, the Republic of Belarus granted the fourth applicant a retirement pension of EUR 6.55 with respect to the employment period in Belarus. There are no documents establishing when this decision was taken. In her application form lodged on 4 August 2011, the fourth applicant submitted that she had filed the relevant request in October 2010 but had not yet received a response. However, the Government alleged that this decision had already been taken on 27 October 2010.

32. On 19 January 2011, the Agreement between the Republic of Latvia and the Russian Federation on Cooperation in the Field of Social Security ("Latvia-Russia Social Security Agreement") entered into force. By a decision of 8 June 2011 the employment period in Russia was included in the calculation on the basis of the Latvia-Russia Social Security Agreement. Accordingly, the insurance period was set at 27 years, 2 months and 7 days (including periods accrued through continued employment following her retirement). The monthly pension was set at LVL 82.05 (approximately



EUR 117) with a supplement of LVL 9.10 (approximately EUR 13), payable from 1 February 2011.

33. According to the most recent information provided by the applicants, as of December 2015 the fourth applicant was receiving a pension of EUR 152.06 and a supplement of EUR 12.95 from Latvia. The applicant receives a pension of EUR 12.50 from Belarus for the periods worked in Belarus. The employment and equivalent periods accrued in Uzbekistan remain excluded from the calculation. While the employment periods accrued in Germany and the voluntary military service in Russia are also excluded from the calculation, the fourth applicant does not complain about those periods, as they also remain excluded from the relevant calculation for Latvian citizens.

*5. Fifth applicant (Ms Marzija Vagapova)*

34. The fifth applicant was born in Syzran (Russia) in 1942. According to the data provided by the State Social Insurance Agency, she worked in the territory of Russia from 1960 to 1970 (9 years, 10 months and 14 days), in Uzbekistan from 1970 to 1971 (7 months and 10 days), in Turkmenistan from 1972 to 1980 (4 years, 9 months and 15 days, or, according to the applicant's submissions, 5 years, 3 months and 12 days), and in Tajikistan from 1980 to 1986 (6 years, 1 month and 15 days). She started working in Latvia in 1987, at the age of 44.

35. On 16 February 2005, the State Social Insurance Agency granted the fifth applicant a retirement pension. The insurance period was set at 10 years and 4 days, as the years of service outside the Latvian territory were not included in the calculation. The monthly amount of her pension was set at LVL 38.50 (approximately EUR 55), payable from 1 December 2004.

36. By a decision of 11 March 2011, the employment periods accrued in the territory of Russia were included in the calculation on the basis of the Latvia-Russia Social Security Agreement. The insurance period was set at 21 years, 1 month and 18 days (including periods of employment accrued following her retirement). The monthly amount of the pension was set at LVL 88.76 (approximately EUR 126). She was granted a supplement of LVL 12.60 (approximately EUR 18), payable from 1 February 2011.

37. According to the most recent information provided by the fifth applicant, as of December 2015 she was receiving a pension of EUR 137.08, with a supplement of EUR 17.93. The employment periods accrued in Uzbekistan, Turkmenistan, and Tajikistan remain excluded from the calculation.

38. On an unspecified date (after the introduction of the application before the Court but prior to its relinquishment to the Grand Chamber), the fifth applicant acquired Russian nationality.

## **B. The Constitutional Court's initial ruling (2001)**

39. The domestic legislation providing for the differences in the calculation of State pensions on the basis of Latvian citizenship was reviewed by the Constitutional Court (*Satversmes tiesa*) in 2001, in proceedings instituted by twenty members of the Parliament. The Constitutional Court considered that the contested provision, namely Paragraph 1 of the transitional provisions of the State Pensions Act, did not concern the right of property, as the pension entitlements for the respective time periods were based on the principle of solidarity and did not create a direct link between the contributions and the amount of pensions. Accordingly, it found that the contested provision was not at variance with Article 1 of Protocol No. 1 and did not infringe Article 14 of the Convention. Additionally, the Constitutional Court pointed out that the distinction made under the domestic law 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. The question of the aggregate periods of employment outside Latvia prior to 1991 with respect to persons not holding Latvian citizenship had to be resolved by means of international agreements, and Latvia should not be required to assume the obligations of another State (for a translation of the Constitutional Court's main arguments, see *Andrejeva v. Latvia* [GC], no. 55707/00, § 37, ECHR 2009).

## **C. The Court's judgment in the *Andrejeva* case**

40. The conformity of Paragraph 1 of the transitional provisions of the State Pensions Act with Article 1 of Protocol No. 1 and Article 14 of the Convention was put before the Court in the *Andrejeva* case, cited above. In its judgment, the Court started by pointing out that in *Stec and Others v. the United Kingdom* ((dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X) it had abandoned the distinction between contributory and non-contributory benefits for the purposes of the applicability of Article 1 of Protocol No. 1. The Government's argument that, from the standpoint of public international law, Latvia had not inherited the rights and obligations of the former Soviet Union as regards welfare benefits, was found to be misconceived in the instant case, as the Latvian State had decided of its own accord to pay pensions to individuals in respect of periods of employment outside its territory, thereby creating a sufficiently clear legal basis in its domestic law. Accordingly, the presumed entitlement to such benefits fell within the scope of Article 1 of Protocol No. 1 and rendered Article 14 of the Convention applicable (*ibid.*, §§ 76-80).

41. Having regard to the conclusions it would reach later in its judgment, the Court considered it unnecessary to determine whether the domestic courts' finding that the fact of having worked for an entity established outside

Latvia, despite having been physically in Latvian territory, had not constituted “employment within the territory of Latvia” was reasonable or, on the contrary, manifestly arbitrary (see *Andrejeva*, cited above, § 85). The Court then accepted that the difference in treatment pursued at least one legitimate aim, namely the protection of the country’s economic system (*ibid.*, § 86) and then noted that the national authorities’ refusal to take into account the years of the applicants’ employment “outside Latvia” had been based exclusively on the consideration that she had not had Latvian citizenship. Therefore, the Court concluded that nationality had been the sole criterion for the distinction complained of (*ibid.*, § 87).

42. Relying on the judgments in *Gaygusuz v. Austria* (16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV), and *Koua Poirrez v. France* (no. 40892/98, § 46, ECHR 2003-X), the Court reiterated that very weighty reasons would have to be put forward before it could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention. No such reasons could be discerned in the *Andrejeva* case. Firstly, it had not been alleged that the applicant had not satisfied the other statutory conditions entitling her to a pension in respect of all her years of employment. She had therefore been in an objectively similar situation to persons who had had an identical or similar career involving periods of employment outside Latvian territory but who, after 1991, had been recognised as Latvian citizens. Secondly, there was no evidence that during the Soviet era there had been any difference in treatment between nationals of the former USSR as regards pensions. Thirdly, the applicant was not a national of any State. She had the status of a “permanently resident non-citizen” of Latvia, the only State with which she had any stable legal ties and thus the only State which, objectively, could assume responsibility for her in terms of social security (*ibid.*, § 88). Accordingly, the Court was not satisfied that there was a “reasonable relationship of proportionality” rendering the impugned difference of treatment compatible with the requirements of Article 14 of the Convention (*ibid.*, § 89).

43. Additionally, while the Court acknowledged the importance of the bilateral inter-State agreements on social security in the effective solution of problems such as those arising in the case before it, it noted that the Latvian State could not be absolved of its responsibility under Article 14 of the Convention on the ground that it was not bound by inter-State agreements on social security (*ibid.*, § 90). Finally, the Court rejected the Government’s argument that it would be sufficient for the applicant to become a naturalised Latvian citizen in order to receive the full amount of the pension claimed. Dismissing the victim’s claims on the ground that he or she could have avoided the discrimination by altering one of the factors listed in Article 14 – for example, by acquiring a nationality – would render that provision devoid of substance (*ibid.*, § 91). Accordingly, the Court found a violation of

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

#### **D. The applicants' requests subsequent to the *Andrejeva* judgment**

##### *1. Requests for administrative review*

44. On 14 August 2009, following the delivery of the judgment in the *Andrejeva* case, the first, second, fourth, and fifth applicants applied to the State Social Insurance Agency seeking a recalculation of their pensions and the inclusion of the employment and equivalent periods accrued in the territory of the former USSR outside Latvia, as well as compensation for the pecuniary damage sustained. As these requests were refused, the applicants brought proceedings before the administrative courts, seeking the reopening of the administrative proceedings related to their claims.

45. By final decisions of 20 November 2009, 27 November 2009, and 16 December 2009 the District Administrative Court (*Administratīvā rajona tiesa*) dismissed the applicants' requests. The District Administrative Court declared that the Court's judgment had been adopted only in respect of Ms Andrejeva; conversely, no similar judgments had been given by the Court with respect to any of the applicants in the present case. Furthermore, reopening could not be based on an alleged change in the legal circumstances, as the State had a margin of appreciation in deciding how to execute the Strasbourg Court's judgment. In particular, the District Administrative Court pointed out that draft amendments to the State Pensions Act were pending before Parliament and had been adopted at first reading. These amendments proposed that the insurance periods accrued outside the territory of Latvia be excluded from the calculation of pensions in respect of both Latvian citizens and "permanently resident non-citizens". The explanatory note to the draft amendments argued that the *Andrejeva* judgment could be executed either by including those periods in the calculation with respect to both of these groups or by excluding them from the calculation entirely. As the inclusion of these periods in the calculation of pensions for "permanently resident non-citizens" was seen as contradicting the doctrine of continuity of the Latvian State despite its occupation or annexation by foreign powers, a complete exclusion was proposed. In view of these circumstances, the District Administrative Court considered that only following the legislative amendments would it be possible to speak of a change in legal circumstances warranting or justifying the reopening of the administrative proceedings.

##### *2. The Constitutional Court's review*

###### **(a) Application before the Constitutional Court**

46. On 5 March 2010, relying on the Court's judgment in *Andrejeva*, the first, second, fourth, and fifth applicants lodged an application with the

Constitutional Court seeking a reassessment of the compatibility of Paragraph 1 of the transitional provisions of the State Pensions Act, instituting the impugned difference in treatment between citizens and “permanently resident non-citizens” in the calculation of their retirement pensions, with Article 91 of the Constitution (guaranteeing the principle of equality and non-discrimination) and Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1 to the Convention.

47. The Constitutional Court accepted their application and instituted proceedings on 24 March 2010 (case no. 2010-20-0106). It considered that the applicants had provided sufficient evidence that no possibility was open to them to defend their rights through the generally available remedies.

48. On 22 March 2010, the third applicant lodged a similar application, specifically pointing to the exclusion of the periods of compulsory military service from the calculation of the insurance period and the resulting refusal to grant him an early retirement pension. On 16 April 2010 the Constitutional Court instituted proceedings with respect to the third applicant also, having held that the contested legal provision had personally affected him and that he had substantiated that he was unable to protect his rights by using the general remedies. On 17 June 2010 the two applications were joined.

**(b) The Constitutional Court’s second judgment (2011)**

49. By a judgment delivered on 17 February 2011, the Constitutional Court found that the impugned legal provision was compatible with the principle of non-discrimination. Analysing the historical context in which the social security system had been created, the Constitutional Court reasoned that, once Latvia’s independence had been restored, the State had to resolve the issue of how to calculate retirement pensions for those persons who had made no contributions to the Latvian State budget, either because they had retired prior to the restoration of independence or because their insurance periods had been entirely or partly accrued during the Soviet regime. With regard to Latvian citizens, the legislature had chosen to include in the calculation all the employment periods and equivalent periods accrued both in Latvia and in the territory of the former USSR outside Latvia. Conversely, with respect to foreign citizens, stateless persons and “permanently resident non-citizens” of Latvia, only the periods of work in the Latvian territory were to be counted (with some exceptions). The treatment of Latvian citizens and “permanently resident non-citizens” of Latvia was thus clearly different and it had to be determined whether this difference was justified.

50. Referring to the Court’s judgment in the *Andrejeva* case, the Constitutional Court noted that the European Court of Human Rights had only analysed the particular circumstances of that case, rather than the general compliance of the relevant domestic regulation with legal provisions of a higher legal force. The Constitutional Court then drew a distinction between the factual circumstances in the *Andrejeva* case and those in the case at hand.

In particular, even though Ms Andrejeva had been an employee of a Soviet enterprise, the regional department where she was physically present during her work had been located in Latvia. In contrast, in the case at hand the applicants had been working outside the Latvian territory for periods of considerable length over which time they could not have acquired legal ties with Latvia.

51. The relevant part of the Constitutional Court's reasoning reads as follows:

“9. ... The factual circumstances in the case of *Andrejeva v. Latvia* and in the present case put before the Constitutional Court differ considerably. In particular, Ms N. Andrejeva lived in Latvia from 1954 onwards and was an employee of an enterprise that was placed under the authority of the central government of the USSR, that is, an all-Union enterprise; the regional department where she worked was nonetheless located in the territory of Latvia.

However, the total length of the insurance period for the [first] applicant is 37.2 years, of which 21.3 years (57 percent) was worked outside the territory of Latvia. [The fifth applicant] worked outside the territory of Latvia for 21.4 years (68 percent) of the total length of her insurance period (31.4 years). [The fourth applicant] accrued 21.8 years (52 percent) of the total length of her insurance period (41.7 years) outside Latvia, whilst [the second applicant] [accrued outside Latvia] 12 years (28 percent) of the total length of his insurance period (42.1 years). The Constitutional Court has no information that the above-mentioned applicants had only formally been employees of the enterprises placed under the authority of other Republics of the USSR but had in reality resided and worked in the territory of Latvia, as was the case for Ms N. Andrejeva. Consequently, during these periods, no legal ties could have formed between them and Latvia.”

52. Relying, *inter alia*, on the case-law of the European Court of Human Rights, the Constitutional Court emphasised the wide margin of appreciation enjoyed by the States in creating their social security schemes, including pension schemes. Further, relying on such cases as *Jasinskij v. Lithuania* ((dec.), no. 38985/97, 9 September 1998); *Kuna v. Germany* ((dec.), no. 52449/99, 10 April 2001); *Kireev v. Moldova and Russia* ((dec.), no. 11375/05, 1 July 2008); *Kovačić and Others v. Slovenia* ([GC], nos. 44574/98 and 2 others, § 256, 3 October 2008); and *Si Amer v. France* (no. 29137/06, 29 October 2009), the Constitutional Court noted that the Court had indeed paid due regard to considerations of the State succession and continuity of legal obligations.

53. The Constitutional Court continued (emphasis as in the original):

“11.1. ... On 18 November 1918 the People's Council of Latvia proclaimed the Republic of Latvia as an independent State. Latvia and the other Baltic States lost their independence *de facto* in 1940 when the USSR occupied Latvia in breach of international law.

Latvia's independence was restored in 1990, based on the doctrine of State continuity. If a State in respect of which independence was discontinued unlawfully restores its statehood on the basis of the doctrine of State continuity, it is entitled to recognise itself as the same State as that which was unlawfully liquidated ...

The continuity of Latvia as a subject of international law was emphasised in the Declaration [“On the Restoration of Independence of the Republic of Latvia”, adopted on 4 May 1990 by the Supreme Council of the Latvian SSR]. Its Preamble notes that the incorporation of the Republic of Latvia into the Soviet Union was null and void from the perspective of international law and that the Republic of Latvia still existed *de jure* as a subject of international law. Establishing the doctrine of the continuity of the Latvian State in the Latvian legal system may be considered to be the main function of the Preamble to the Declaration ...

11.2. A State’s legal identity determines its rights and obligations. In determining a State’s legal identity it must be noted, and recognised, that the illegal annexation of a State, or part thereof, into other State has no effect in legal terms. ... According to the principle *ex injuria ius non oritur*, States or parts thereof can join other States on a voluntary basis only, complying with the procedures established by international and national law ...

11.3 The doctrine of State continuity directly influences the State’s actions, not only in the area of international law, where it continues to comply with the obligations undertaken prior to the *de facto* termination of its independence and does not assume the international obligations of the State of which it formerly unlawfully formed part, but also in internal affairs. The acts of the illegally established public authorities of the other State in the field of public law are not binding on the State which has restored its independence. ... To claim or to imply indirectly that Latvia has any automatic obligations based on the Soviet period would be tantamount to denying the fact of the unlawful occupation and annexation of Latvia within the meaning of international law and would be contrary to the principle *ex injuria ius non oritur* and the obligation of non-recognition established in international law (see the partly dissenting opinion of Judge Ziemele in the case of *Andrejeva v. Latvia*, paragraph 22).

**Accordingly, the Republic of Latvia is not a successor to the rights and obligations of the former USSR and, in accordance with the doctrine of State continuity, the restored State is not required to undertake any obligations emanating from the obligations of the occupying State.”**

54. The Constitutional Court then noted that a difference in treatment in the sphere of social rights was based on the idea that the State had to assume particular responsibility for its citizens. Some social rights could only be ensured partially and an absolute application of the prohibition of discrimination could have serious financial consequences. The mere fact that a person did not enjoy certain social rights did not violate his or her fundamental rights, as a violation would only be caused if this restriction was without sufficient justification. Referring to the Court’s decision in *Janković v. Croatia* ((dec.), no. 43440/98, ECHR 2000-X), the Constitutional Court noted that the State enjoyed a margin of appreciation of granting privileges to those persons that it deemed appropriate in view of the particular circumstances. The Convention did not prevent the Contracting Parties from introducing measures that treated certain groups of people differently, in so far as this interference could be justified under the Convention. The case-law of the European Court of Human Rights also showed that Article 1 of Protocol No. 1 did not guarantee the right to a pension of a specific amount, instead calling for a determination of whether the essence of the right to receive the

pension had not been impaired (the Constitutional Court referred to *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX, and *Janković*, cited above). Likewise, the Convention did not guarantee the right to receive a pension for the work carried out in another country (referring to *L.B. v. Austria* (dec.), no. 39802/98, 18 April 2002).

55. The Constitutional Court then continued (emphasis as in the original):

“12.2. Since the restoration of its independence, Latvia has developed a social security system which applies to all persons who were resident in Latvia on 1 January 1991.

The collapse of the USSR and the restoration of the Latvian State gave rise to considerable difficulties. During the occupation, the State and social budgets were controlled by the USSR State Bank. After the collapse of the USSR, those resources were not shared; they remained the property of the Russian Federation. Therefore, Latvia decided to ensure a minimum pension for all the inhabitants of Latvia. Pursuant to the disputed provision, periods of work accrued within the territory of Latvia are taken into consideration when calculating pensions for both citizens and [“permanently resident non-citizens”]. The legislature chose this particular regulatory framework because, in fact, this was the same administrative territory, with the same body of inhabitants, that Latvia “inherited” when it restored its independence. Furthermore, it could be considered that during the periods preceding 31 December 1991 when they worked within the territory of Latvia, the inhabitants had contributed to the national economy and the development of Latvia.

12.3. When devising the new pension system, it was decided that, in addition to the minimum pension already awarded, periods of work which had been accrued outside the territory of Latvia would be included in everyone’s insurance period. Latvian citizens were credited with a broader range of work periods accrued outside the territory of Latvia for inclusion in the insurance period, as compared to [“permanently resident non-citizens”], aliens and stateless persons. When assessing the periods which the legislature has chosen to count towards the length of the insurance periods for [“permanently resident non-citizens”], it can be seen that these are the periods during which [“permanently resident non-citizens”] acquired education or upgraded their qualifications so that they would later contribute to the development of the Latvian national economy, as well as those periods during which politically persecuted persons were held in custody, were resettled or were deported because they were regarded as opponents of the occupying regime. Accordingly, in creating its pension system the State exercised its margin of appreciation and took into account its citizens’ special link with the State, as well as the contribution their predecessors had made to the development of the national economy. The inclusion of certain periods of work accrued outside the territory of Latvia towards the insurance period for [“permanently resident non-citizens”] can be regarded as a manifestation of good will by the restored State (see also *Epstein and Others v. Belgium* (dec.), no. 9717/05, 8 January 2008).

13. As a result of the Soviet occupation in June 1940, Latvia not only lost its independence but also experienced mass deportations, killings of its inhabitants and an influx of Russian-speaking immigrants. On 25 March 1949 2.3% of the inhabitants of Latvia were deported – that is, about three times as many people as in the deportation of 14 June 1941. After the Second World War mass immigration into Latvia of USSR citizens occurred ...

After the restoration of independence, the legislature had to decide how to establish the body of Latvian citizens. In view of the continuity of Latvia as a subject of



## SAVICKIS AND OTHERS v. LATVIA JUDGMENT

international law, the citizenry of Latvia was restored in the same way as it had been determined in the Nationality Act of 1919. Accordingly, instead of granting citizenship to persons who had held citizenship prior to Latvia's occupation, Latvia restored the rights of those persons *de facto* ... Consequently, the continuity of Latvia as a subject of international law was the legal grounds for not automatically granting citizenship status to a certain group of people, and it was necessary to create a special legal status for those persons who had come to Latvia during the period of occupation without acquiring any other citizenship. The granting of the status of ["permanently resident non-citizens"] to a certain group of people was the result of a complicated political compromise. Moreover, when enacting the Law "On the Status of those Citizens of the Former USSR who do not have the Citizenship of Latvia or any other State", Latvia had also to observe international human-rights standards, which prohibit increasing the number of stateless persons ...

The status of ["permanently resident non-citizens"] of Latvia cannot be equated with the status of either stateless persons or aliens, as defined in international legal instruments, as the level of rights granted to ["permanently resident non-citizens"] does not fully correspond to [those granted to persons] of either of those statuses. The status of ["permanently resident non-citizens"] is not and cannot be regarded as a variety of Latvian citizenship ...

The present case does not concern long-term immigrants who arrived in the country pursuant to the provisions of a regulated immigration procedure, as happens nowadays. The majority of ["permanently resident non-citizens"] in Latvia settled in Latvian territory as a result of the immigration policy implemented by the USSR. Over the employment periods accrued outside the territory of Latvia these persons made no contribution to the Latvian economy and development. For these persons, the Latvian SSR was one corner of the USSR, where they could live and work for a shorter or longer while, thereby implementing part of the *Sovietisation* and *Russification* policy of the Communist Party of the Soviet Union (see the partly dissenting opinion of Judge Ziemele in the case of *Andrejeva v. Latvia*, paragraph 27).

The Constitutional Court recognises that ["permanently resident non-citizens"] have legal ties with Latvia that are the basis for certain mutual rights and obligations. Nonetheless, the context of the State continuity is decisive, and it serves as a weighty reason justifying the difference in calculation of pensions for citizens and ["permanently resident non-citizens"]. A State that has been occupied as the result of an aggression by another State does not have the obligation to guarantee social security to persons who had travelled to its territory as the result of the immigration policy of the occupying State. This is particularly so if the *erga omnes* obligation not to recognise and justify breaches of international law is taken into account (see the judgment of 5 February 1970 of the International Court of Justice in the case of *Belgium v. Spain (Barcelona Traction case)*, *ICJ Reports* 1970, No. 3, paragraph 33).

Although the applicants do not regard the possibility of obtaining citizenship of the Republic of Latvia as proportionate, this option is open to ["permanently resident non-citizens"]. The legislature has expressed the view that the status of ["permanently resident non-citizens"] was devised as a temporary instrument, so that the persons could obtain Latvian citizenship or choose another State with which to establish legal ties ... After the acquisition of Latvian citizenship, the employment periods accrued outside the territory of Latvia would also be counted towards the length of the insurance period. Many ["permanently resident non-citizens"] have used this possibility as a means of obtaining the rights and duties stipulated with respect of citizens. However, many ["permanently resident non-citizens"] have not wished to take advantage of this possibility, for a variety of reasons.

**Consequently, the difference in treatment when calculating pensions for citizens and [“permanently resident non-citizens”] of Latvia has objective and reasonable grounds.”**

56. Further, referring to the Court’s case-law in *Carson and Others v. the United Kingdom* ([GC], no. 42184/05, § 88, ECHR 2010), and *Andrejeva*, cited above, the Constitutional Court noted the importance of international agreements in the area of social security. Latvia was not required to assume the obligations of another State and to insure persons with retirement pensions for periods of work accomplished in that State. Latvia could not oblige the taxpayers of the new pension scheme to resolve issues that fell to be determined by international agreements. Latvia had in fact concluded such agreements with several countries, envisaging mutual recognition of periods of employment for inclusion in calculating State pensions. The Constitutional Court referred to the agreements with the United States of America (in force since 5 November 1992), Lithuania (in force since 31 January 1995), Estonia (in force since 29 January 1997, replaced by a new agreement in force since 1 September 2008), Ukraine (in force since 11 June 1999), Finland (in force since 1 June 2000), Norway (in force since 18 November 2004), the Netherlands (in force since 1 June 2005), Canada (in force since 1 November 2006), Belarus (in force since 28 September 2010) and Russia (in force since 19 January 2011).

57. The Constitutional Court continued:

“14. ... The agreements concluded with the States which were formed after the collapse of the USSR show that these States have a similar understanding of the rights and obligations in the area of social law with respect to the period of occupation by the USSR. All these agreements are different; they reflect the outcome of negotiations between different States and regulate situations that have formed as a result of different historical, economic and political circumstances (see *Tarkoiev and Others v. Estonia*, nos. 14480/08 and 47916/08, § 53, 4 November 2010). When concluding these agreements, the States have taken into account the historical context in which Latvia created its pensions system following the restoration of its independence.”

58. The Constitutional Court then noted that, with respect to the fourth applicant, the Latvia-Belarus Social Security Agreement was to be taken into account in calculating her pension, whereas the employment period accrued in Germany would be included in any calculation based on European Union law. In addition, with respect to the first, third, fourth, and fifth applicants, the periods of employment and of compulsory military service were to be included in the calculation, on the basis of the Latvia-Russia Social Security Agreement which had taken effect on 19 January 2011.

59. The Constitutional Court then observed that the applicants, similarly to the applicants in the case of *Tarkoiev and Others v. Estonia* (nos. 14480/08 and 47916/08, 4 November 2010), wished to expand their rights with respect to the amount of pension granted, but this desire was not justified. The applicants had not been deprived of the pension or of any other social security payments and, in case of need, they were entitled to receive other social

services and benefits. Accordingly, the difference in treatment was justified and proportionate, and the contested provision was therefore compatible with Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1, as well as with Article 91 of the Constitution.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. DOMESTIC LAW

#### A. Constitutional provisions

60. On 4 May 1990, the Supreme Council of the “Latvian SSR” adopted the Declaration on the Restoration of Independence of the Republic of Latvia (*Deklarācija “Par Latvijas Republikas neatkarības atjaunošanu”*). It was noted in its Preamble that the establishment of the State of Latvia had been proclaimed on 18 November 1918, that in 1920 Latvia had been internationally recognised, and that in 1921 it had become a member of the League of Nations. It was further noted in the Preamble that:

“Hence, according to international law, the incorporation of Latvia into the Soviet Union is invalid. Accordingly, the Republic of Latvia continues to exist *de jure* as a subject of international law, and it is recognised as such by more than 50 nations of the world.”

61. The operative provisions of the Declaration of 4 May 1990 read as follows:

“The Supreme Council of the Latvian SSR *decides*:

(1) in recognition of the supremacy of international law over the provisions of national law, to consider illegal the Pact of 23 August 1939 between the USSR and Germany and the subsequent liquidation of the sovereignty of the Republic of Latvia through the USSR’s military aggression on 17 June 1940;

(2) to declare null and void the Declaration by the Parliament [*Saeima*] of Latvia, adopted on 21 July 1940, on Latvia’s integration into the Union of Soviet Socialist Republics;

(3) to restore the legal effect of the Constitution [*Satversme*] of the Republic of Latvia, adopted on 15 February 1922 by the Constituent Assembly [*Satversmes sapulce*], throughout the entire territory of Latvia. The official name of the Latvian State shall be the REPUBLIC of LATVIA, abbreviated to LATVIA;

(4) to suspend the Constitution of the Republic of Latvia pending the adoption of a new version of the Constitution, with the exception of those Articles which define the constitutional and legal foundation of the Latvian State and which, in accordance with Article 77 of the same Constitution, may only be amended by referendum, namely:

**Article 1** – Latvia is an independent and democratic republic.

**Article 2** – The sovereign power of the State of Latvia is vested in the Latvian people.

**Article 3** – The territory of the State of Latvia, as established by international agreements, consists of Vidzeme, Latgale, Kurzeme and Zemgale.

**Article 6** – Parliament [*Saeima*] shall be elected in general, equal, direct and secret elections, based on proportional representation.

Article 6 of the Constitution shall be applied after the restoration of the State and administrative structures of the independent Republic of Latvia, which will guarantee free elections;

(5) to introduce a transition period for the re-establishment of the Republic of Latvia's *de facto* sovereignty, which will end with the convening of the Parliament of the Republic of Latvia. During the transition period, supreme power shall be exercised by the Supreme Council of the Republic of Latvia;

(6) during the transition period, to accept the application of those constitutional and other legal provisions of the Latvian SSR which are in force in the territory of the Latvian SSR when the present Declaration is adopted, in so far as those provisions do not contradict Articles 1, 2, 3 and 6 of the Constitution of the Republic of Latvia.

Disputes on matters relating to the application of legislative texts will be referred to the Constitutional Court of the Republic of Latvia.

During the transition period, only the Supreme Council of the Republic of Latvia shall adopt new legislation or amend existing legislation;

(7) to set up a commission to draft a new version of the Constitution of the Republic of Latvia that will correspond to the current political, economic and social situation in Latvia;

(8) to guarantee social, economic and cultural rights, as well as universally recognised political freedoms compatible with international instruments of human rights, to citizens of the Republic of Latvia and citizens of other States permanently residing in Latvia. This shall apply to citizens of the USSR who wish to live in Latvia without acquiring Latvian nationality;

(9) to base relations between the Republic of Latvia and the USSR on the Peace Treaty of 11 August 1920 between Latvia and Russia, which is still in force and which recognises the independence of the Latvian State for all time. A governmental commission shall be set up to conduct the negotiations with the USSR.”

62. The operative provisions of the Constitutional Law of 21 August 1991 on the status of the Republic of Latvia as a State (*Konstitucionālais likums “Par Latvijas Republikas valstisko statusu”*) read as follows:

“The Supreme Council of the Republic of Latvia *decides*:

(1) to declare that Latvia is an independent and democratic republic in which the sovereign power of the State of Latvia belongs to the Latvian people, the status of which as a State is defined by the Constitution of 15 February 1922;

(2) to repeal Paragraph 5 of the Declaration of 4 May 1990 on the Restoration of the Independence of the Republic of Latvia, establishing a transition period for the *de facto* restoration of the Republic of Latvia's State sovereignty;

(3) until such time as the occupation and annexation is ended and Parliament is convened, supreme State power in the Republic of Latvia shall be fully exercised by the Supreme Council of the Republic of Latvia. Only those laws and decrees enacted by the supreme governing and administrative authorities of the Republic of Latvia shall be in force in its territory;

(4) this Constitutional Law shall enter into force on the date of its enactment.”

63. The relevant provisions of the Latvian Constitution (*Satversme*) are worded as follows:

**Preamble (third paragraph)**

*(Inserted by the Act of 19 June 2014)*

“The people of Latvia did not recognise the occupation regimes, resisted them and regained their freedom by restoring national independence on 4 May 1990 on the basis of continuity of the State. They honour their freedom fighters, commemorate victims of foreign powers, [and] condemn the Communist and Nazi totalitarian regimes and their crimes.”

**Article 91**

*(Inserted by the Act of 15 October 1998)*

“All persons in Latvia shall be equal before the law and the courts. Human rights shall be exercised without discrimination of any kind.”

**Article 109**

*(Inserted by the Act of 15 October 1998)*

“Everyone has the right to social assistance in the event of old age, incapacity to work, unemployment and in other cases provided for by law.”

**B. Provisions on the calculation of State pensions**

*1. Soviet law (before 1991)*

64. Before 1991, persons resident in Latvian territory were covered by the same social security scheme as the rest of the population of the USSR. In particular, the pension system at the time was based not on the contribution principle but on the solidarity principle. All pensions were paid from Treasury funds, a portion of the State’s revenue being set aside for pensions. More specifically, employees themselves were not subject to social tax, which was paid by their employers. The social-insurance contributions paid by the various employers were transferred via trade unions to the USSR Treasury, managed by the USSR State Bank. Those funds were then redistributed among the SSRs for a variety of purposes, including the payment of retirement pensions, and the amount of a pension did not depend directly on the amount of tax previously paid to the tax authorities. There was also a personal income tax, part of which was paid to the USSR central tax authorities and the rest to the local tax authorities of the relevant SSR. However, personal income-tax revenues were practically never used for pension payments (for more precise details on the legal provisions applicable during the Soviet period, see *Andrejeva*, cited above, §§ 26-32).

## 2. *The 1990 and 1995 State Pensions Acts*

65. The main instrument governing pensions is the State Pensions Act of 2 November 1995 (*Likums « Par valsts pensijām »*), which came into force on 1 January 1996, repealing the previous Act passed in 1990. Section 3(1) of the Act provides that persons who have been covered by the compulsory insurance scheme are entitled to a State social-insurance pension. As a rule, the amount of the pension in each particular case depends on the period during which the entitled person, the employer or both paid, or are presumed to have paid, insurance contributions in respect of State pensions (section 9(1) and (2)). Evidence of this period is provided by data at the disposal of the State Social-Insurance Agency (section 10).

66. Matters relating to the reckoning of years of employment under the Soviet regime (prior to 1991) are governed by the transitional provisions of the Act. Paragraph 1 of these transitional provisions, as in force from 1 July 2008 until 18 July 2012, provided:

“In the case of Latvian citizens, periods of employment and equivalent periods accrued in the territory of Latvia and of the former USSR up to 31 December 1990, as well as the aggregate period spent outside Latvia in the case specified in sub-paragraph (10) of this paragraph, shall be counted towards the insurance period. In the case of foreign nationals, stateless persons and non-citizens of Latvia, the insurance period shall be composed of periods of employment and equivalent periods that have been accrued in the territory of Latvia, as well as the equivalent periods that have been accrued in the former USSR in the cases specified in sub-paragraphs (4) and (5) of this paragraph, and the aggregate period spent outside Latvia in the case specified in sub-paragraph (10) of this paragraph. The following periods, which are treated as equivalent to employment, and which have been accrued up to 31 December 1990 – but in case of sub-paragraph (11) of this paragraph up to 31 December 1995 – shall be counting towards the insurance period:

- (1) mandatory active military service and alternative (work) service;
- (2) career service for soldiers and service for officers in the Army of the Republic of Latvia, for citizens of Latvia – also in the USSR Armed Forces, if as a result of their activities in the interests of Latvia they had been demoted or if they had been called up for active military service after serving their compulsory military service or after graduating a civil university ...;
- (3) rank and file service and position of unit commanding personnel in the institutions dealing with internal affairs, with the exception of the KGB [the State Security Committee];
- (4) periods of study at higher-education institutions, and at other training institutions at post-secondary level, subject to a limit of five years in the case of qualifications requiring up to five years of study at the relevant time, and a limit of six years in the case of qualifications requiring more than five years of study at the relevant time;
- (5) periods of full-time doctoral studies, up to a maximum of three years, postgraduate education or ongoing vocational training;
- (6) individual work;

(7) time spent caring for a disabled person with a category I disability status, a disabled child up to the age of 16, as well as a person who has reached 80 years of age;

(8) time spent by a mother raising a child up to the age of eight years;

(9) gainful employment in religious organisations;

(10) time spent in places of detention by victims of political persecution ... in exile, and time spent escaping from such places, those periods to be multiplied by three, or by five in the case of time spent in the [Soviet] Far North and regions treated as equivalent ...

(11) time when an insured person was given a disability status of category I, II or III and did not work (including due to an accident at work or occupational illness), but no longer than up to reaching the retirement age; ...

(12) employment in the status of a member of a collective farm (*kolkhoz*) from the age of 16.”

67. In other words, with respect to Latvian citizens, all of the defined employment and equivalent periods accrued prior to 1991 in the territory of the former USSR are taken into account in the calculation of their pension. In contrast, with respect to the “permanently resident non-citizens” the employment periods accrued outside the territory of Latvia are not counted towards their insurance period, and from the equivalent periods only those mentioned in subparagraphs 4, 5, and 10 are taken into account. If a “permanently resident non-citizen” obtains Latvian citizenship by way of naturalisation, he or she also starts receiving pension in respect of the employment periods accrued outside Latvia, but only *ex nunc*; the recalculation of the amount of the pension has no retroactive effect.

68. Under paragraph 7 of the above-mentioned transitional provisions:

“The following shall be deemed to constitute evidence of periods of employment accrued before 31 December 1995:

(1) an employment record [*darba grāmatiņa*];

(2) a record of employment contracts [*darba līgumu grāmatiņa*];

(3) a document certifying payment of social-insurance contributions;

(4) any other evidence of periods of employment (such as certificates, contracts of employment or documents certifying performance of work).”

69. In order to clarify the application of the provisions cited above, on 23 April 2002 the Cabinet adopted Regulation no. 165 on the procedure for certifying, calculating and monitoring insurance periods (*Apdrošināšanas periodu pierādīšanas, aprēķināšanas un uzskaites kārtība*). Rule 21 of this regulation states that any work carried out for entities situated in Latvian territory is to be treated as “employment in Latvia”.

## II. INTERNATIONAL LAW AND PRACTICE

### A. Nationality

#### 1. *The case-law of the International Court of Justice*

70. In the *Nottebohm Case (Liechtenstein v. Guatemala)*, judgment of 6 April 1955, *ICJ Reports* 1955), the International Court of Justice (ICJ) concluded as follows.

“It is for Liechtenstein, as it is for every sovereign State, to settle by its own legislation the rules relating to the acquisition of its nationality, and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. It is not necessary to determine whether international law imposes any limitations on its freedom of decision in this domain. Furthermore, nationality has its most immediate, its most far-reaching and, for most people, its only effects within the legal system of the State conferring it. Nationality serves above all to determine that the person upon whom it is conferred enjoys the rights and is bound by the obligations which the law of the State in question grants to or imposes on its nationals. This is implied in the wider concept that nationality is within the domestic jurisdiction of the State.

...

According to the practice of States, to arbitral and judicial decisions and to the opinions of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred, either directly by the law or as the result of an act of the authorities, is in fact more closely connected with the population of the State conferring nationality than with that of any other State. Conferred by a State, it only entitles that State to exercise protection *vis-à-vis* another State, if it constitutes a translation into juridical terms of the individual’s connection with the State which has made him its national.

...

Naturalisation is not a matter to be taken lightly. To seek and to obtain it is not something that happens frequently in the life of a human being. It involves his breaking of a bond of allegiance and his establishment of a new bond of allegiance. It may have far-reaching consequences and involve profound changes in the destiny of the individual who obtains it. It concerns him personally, and to consider it only from the point of view of its repercussions with regard to his property would be to misunderstand its profound significance. In order to appraise its international effect, it is impossible to disregard the circumstances in which it was conferred, the serious character which attached to it, the real and effective, and not merely the verbal preference of the individual seeking it for the country which grants it to him.”

#### 2. *The European Convention on Nationality*

71. The principal Council of Europe document concerning nationality is the European Convention on Nationality (ETS No. 166), which was adopted on 6 November 1997 and came into force on 1 March 2000. It has been



ratified by twenty member States of the Council of Europe. Latvia signed this Convention on 30 May 2001 but has not ratified it.

72. The relevant Articles of this Convention read as follows.

**Article 2 – Definitions**

“For the purpose of this Convention:

- a. ‘nationality’ means the legal bond between a person and a State and does not indicate the person’s ethnic origin; ...”

**Article 3 – Competence of the State**

“1. Each State shall determine under its own law who are its nationals.

2. This law shall be accepted by other States in so far as it is consistent with applicable international conventions, customary international law and the principles of law generally recognised with regard to nationality.”

**Article 4 – Principles**

“The rules on nationality of each State Party shall be based on the following principles:

- a. everyone has the right to a nationality;
- b. statelessness shall be avoided;
- c. no one shall be arbitrarily deprived of his or her nationality;
- d. neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.”

73. The Explanatory Report to this Convention states, *inter alia*, in relation to Article 2:

**Article 2 – Definitions**

“22. The concept of nationality was explored by the International Court of Justice in the *Nottebohm* case. This court defined nationality as ‘a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties’ (*Nottebohm* case, *ICJ Reports* 1955, p. 23).

23. Nationality’ is defined in Article 2 of the Convention as ‘the legal bond between a person and a State and does not indicate the person’s ethnic origin’. It thus refers to a specific legal relationship between an individual and a State which is recognised by that State. As already indicated in a footnote to paragraph 1 of this explanatory report, with regard to the effects of the Convention, the terms ‘nationality’ and ‘citizenship’ are synonymous.”

3. *The case-law of the Inter-American Court of Human Rights*

74. In *Proposed Amendments to the Naturalisation Provision of the Constitution of Costa Rica* (Advisory Opinion OC-4/84, 19 January 1984), the Inter-American Court of Human Rights ruled as follows:

“31. The questions posed by the Government involve two sets of general legal problems which the Court will examine separately. There is, first, an issue related to the right to nationality established by Article 20 of the Convention. A second set of questions involves issues of possible discrimination prohibited by the Convention.

32. It is generally accepted today that nationality is an inherent right of all human beings. Not only is nationality the basic requirement for the exercise of political rights, it also has an important bearing on the individual’s legal capacity.

Thus, despite the fact that it is traditionally accepted that the conferral and regulation of nationality are matters for each state to decide, contemporary developments indicate that international law does impose certain limits on the broad powers enjoyed by the states in that area, and that the manners in which states regulate matters bearing on nationality cannot today be deemed within their sole jurisdiction; those powers of the state are also circumscribed by their obligations to ensure the full protection of human rights.

33. The classic doctrinal position, which viewed nationality as an attribute granted by the state to its subjects, has gradually evolved to the point that nationality is today perceived as involving the jurisdiction of the state as well as human rights issues. This has been recognized in a regional instrument, the American Declaration of the Rights and Duties of Man of 2 May 1948 ... [text of Article 19]. Another instrument, the Universal Declaration of Human Rights ... provides the following [text of Article 15].

34. The right of every human being to a nationality has been recognized as such by international law. Two aspects of this right are reflected in Article 20 of the Convention: first, the right to a nationality established therein provides the individual with a minimal measure of legal protection in international relations through the link his nationality establishes between him and the state in question; and, second, the protection therein accorded the individual against the arbitrary deprivation of his nationality, without which he would be deprived for all practical purposes of all of his political rights as well as of those civil rights that are tied to the nationality of the individual.

35. Nationality can be deemed to be the political and legal bond that links a person to a given state and binds him to it with ties of loyalty and fidelity, entitling him to diplomatic protection from that state. In different ways, most states have offered individuals who did not originally possess their nationality the opportunity to acquire it at a later date, usually through a declaration of intention made after complying with certain conditions. In these cases, nationality no longer depends on the fortuity of birth in a given territory or on parents having that nationality; it is based rather on a voluntary act aimed at establishing a relationship with a given political society, its culture, its way of life and its values.

36. Since it is the state that offers the possibility of acquiring its nationality to persons who were originally aliens, it is natural that the conditions and procedures for its acquisition should be governed primarily by the domestic law of that state. As long as such rules do not conflict with superior norms, it is the state conferring nationality which is best able to judge what conditions to impose to ensure that an effective link exists between the applicant for naturalization and the systems of values and interests of the society with which he seeks to fully associate himself. That state is also best able

to decide whether these conditions have been complied with. Within these same limits, it is equally logical that the perceived needs of each state should determine the decision whether to facilitate naturalization to a greater or lesser degree; and since a state's perceived needs do not remain static, it is quite natural that the conditions for naturalization might be liberalized or restricted with the changed circumstances. It is therefore not surprising that at a given moment new conditions might be imposed to ensure that a change of nationality not be effected to solve some temporary problems encountered by the applicants when these have not established real and lasting ties with the country, which would justify an act as serious and far-reaching as the change of nationality.”

75. In *Case of the Girls Yean and Bosico v. Dominican Republic* (preliminary objections, merits, reparations and costs), judgment of 8 September 2005, Series C No. 130, the Inter-American Court of Human Rights ruled as follows (footnotes omitted):

“139. The American Convention recognizes both aspects of the right to nationality: the right to have a nationality from the perspective of granting the individual a ‘minimal measure of legal protection in international relations through the link his nationality establishes between him and the State in question; and second the protection accorded the individual against the arbitrary deprivation of his nationality, without that are tied to the nationality of the individual’.

140. The determination of who has a right to be a national continues to fall within a State's domestic jurisdiction. However, its discretionary authority in this regard is gradually being restricted with the evolution of international law, in order to ensure a better protection of the individual in the face of arbitrary acts of States. Thus, at the current stage of the development of international human rights law, this authority of the States is limited, on the one hand, by their obligation to provide individuals with the equal and effective protection of the law and, on the other hand, by their obligation to prevent, avoid and reduce statelessness.

141. The Court considers that the peremptory legal principle of the equal and effective protection of the law and non-discrimination determines that, when regulating mechanisms for granting nationality, States must abstain from producing regulations that are discriminatory or have discriminatory effects on certain groups of population when exercising their rights. Moreover, States must combat discriminatory practices at all levels, particularly in public bodies and, finally, must adopt the affirmative measures needed to ensure the effective right to equal protection for all individuals.

142. States have the obligation not to adopt practices or laws concerning the granting of nationality, the application of which fosters an increase in the number of stateless persons. This condition arises from the lack of a nationality, when an individual does not qualify to receive this under the State's laws, owing to arbitrary deprivation or the granting of a nationality that, in actual fact, is not effective. Statelessness deprives an individual of the possibility of enjoying civil and political rights and places him in a condition of extreme vulnerability.”

76. The principles emerging from the case-law of the Inter-American Court of Human Rights concerning the right to nationality were confirmed in *Expelled Dominicans and Haitians v. Dominican Republic* (preliminary objections, merits, reparations and costs, judgment of 28 August 2014, Series C No. 282, §§ 253-64).

## B. State responsibility

77. The International Law Commission adopted the Articles on Responsibility of States for Internationally Wrongful Acts (the ILC Articles) at its 53<sup>rd</sup> session, in 2001 (*Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 10 and corrigendum (A/56/10 and Corr.1)*). They were submitted to the General Assembly which, in its resolution of 12 December 2001 (A/56/83 (2001)), took note of these articles and commended them to the attention of Governments. Article 2, entitled “Elements of an internationally wrongful act of a State”, provides:

“There is an internationally wrongful act of a State when conduct consisting of an action or omission:

- (a) is attributable to the State under international law; and
- (b) constitutes a breach of an international obligation of the State.”

78. The Commentary, adopted together with the ILC Articles, further explains in relation to Article 2 (footnotes omitted):

“(5) For particular conduct to be characterized as an internationally wrongful act, it must first be attributable to the State. The State is a real organized entity, a legal person with full authority to act under international law. But to recognize this is not to deny the elementary fact that the State cannot act of itself. An “act of the State” must involve some action or omission by a human being or group: “States can act only by and through their agents and representatives.” The question is which persons should be considered as acting on behalf of the State, i.e. what constitutes an “act of the State” for the purposes of State responsibility.

(6) In speaking of attribution to the State what is meant is the State as a subject of international law. Under many legal systems, the State organs consist of different legal persons (ministries or other legal entities), which are regarded as having distinct rights and obligations for which they alone can be sued and are responsible. For the purposes of the international law of State responsibility the position is different. The State is treated as a unity, consistent with its recognition as a single legal person in international law. In this as in other respects the attribution of conduct to the State is necessarily a normative operation. What is crucial is that a given event is sufficiently connected to conduct (whether an act or omission) which is attributable to the State under one or other of the rules set out in chapter II.

(7) The second condition for the existence of an internationally wrongful act of the State is that the conduct attributable to the State should constitute a breach of an international obligation of that State ...

(12) In subparagraph (a), the term “attribution” is used to denote the operation of attaching a given action or omission to a State. In international practice and judicial decisions, the term “imputation” is also used. But the term “attribution” avoids any suggestion that the legal process of connecting conduct to the State is a fiction, or that the conduct in question is “really” that of someone else.

(13) In subparagraph (b), reference is made to the breach of an international obligation rather than a rule or a norm of international law. What matters for these purposes is not simply the existence of a rule but its application in the specific case to the responsible State. The term “obligation” is commonly used in international judicial

decisions and practice and in the literature to cover all the possibilities. The reference to an “obligation” is limited to an obligation under international law, a matter further clarified in article 3.”

### **C. International agreements on social security concluded by Latvia**

79. Mutual recognition of periods of employment to be taken into account in calculating State pensions is provided for in the cooperation agreements on social security which Latvia has concluded with Lithuania (in force since 31 January 1996), Estonia (in force since 29 January 1997), Ukraine (in force since 11 June 1999), Finland (in force since 1 June 2000) and Canada (in force since 1 November 2006). A similar agreement with the Netherlands (in force since 1 June 2005) prohibits any discrimination on the ground of place of residence. Since the delivery of the Court’s judgment in *Andrejeva*, cited above, further bilateral agreements have been concluded, most importantly with Belarus (in force since 28 September 2010) and with Russia (in force since 19 January 2011).

80. In particular, Article 3(1) of the cooperation agreement on social security between Latvia and the Russian Federation expressly extends its scope to “permanently resident non-citizens” of Latvia. Article 10(1) provides that, in calculating a retirement pension, each of the parties is to take into account the aggregate period of employment of the person concerned in both countries. Article 4(2) provides for an exception to the effect that the principle of equality between nationals and residents of both States does not apply to the specific arrangements for the calculation of Latvian citizens’ periods of employment prior to 1991.

81. Article 25 of the agreement shares the financial burden of retirement pensions between the two States where the person concerned has become entitled to such a pension after the agreement’s entry into force. The pension in respect of employment prior to 1 January 1991 is paid by the State in which the beneficiary is resident at the time of claiming the pension. However, in respect of the period after that date, each Contracting Party has undertaken to cover the periods of employment in its own territory. Article 26 states that a pension that had already been granted before the entry into force of the agreement may also be recalculated on that basis at the express request of the beneficiary; however, any such review can only take effect from the entry into force of the agreement.

82. The agreement with Belarus contains similar provisions.

### III. LAW AND PRACTICE OF THE INSTITUTIONS OF THE EUROPEAN COMMUNITIES AND THE EUROPEAN UNION

#### A. The Court of Justice of the European Union

83. In case C-135/08 *Janko Rottmann v. Freistaat Bayern* (judgment of 2 March 2010), the Court of Justice of the European Union ruled as follows (references omitted):

“45. Thus, the Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law ...

...

48. The proviso that due regard must be had to European Union law does not compromise the principle of international law previously recognised by the Court, ..., that the Member States have the power to lay down the conditions for the acquisition and loss of nationality, but rather enshrines the principle that, in respect of citizens of the Union, the exercise of that power, in so far as it affects the rights conferred and protected by the legal order of the Union, as is in particular the case of a decision withdrawing naturalisation such as that at issue in the main proceedings, is amenable to judicial review carried out in the light of European Union law.

...

55. In such a case, it is, however, for the national court to ascertain whether the withdrawal decision at issue in the main proceedings observes the principle of proportionality so far as concerns the consequences it entails for the situation of the person concerned in the light of European Union law, in addition, where appropriate, to examination of the proportionality of the decision in the light of national law.”

#### B. The European Parliament

84. The relevant parts of the Resolution of the European Parliament regarding the Baltic States, adopted on 13 January 1983 (1982-1983 EUR.PARL.DOC (no.7.908) 432-33 (9183)), read as follows:

“The European Parliament,

...

Having regard to the bilateral peace treaties between the Soviet Union and the Baltic states in Dorpat (February 2, 1920), Moscow (July 12, 1920) and Riga (August 11, 1920), in which the Soviet Union guaranteed the three Baltic states the inviolability of their territory and eternal peace,

Having regard to Article VIII of the Final Act of the Helsinki Conference on Security and Cooperation, which secures the right of self-determination of peoples and their right, in full freedom, to determine, when and as they wish, their internal and external political status,

Condemning the fact that the occupation of these formerly independent and neutral states by the Soviet Union occurred in 1940 pursuant to the Molotov-Ribbentrop Pact, and continues,

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Whereas the Soviet annexation of the three Baltic states has still not been formally recognised by most European states and the USA, Canada, the United Kingdom, Australia and the Vatican still adhere to the concept of Baltic states,

...

Calls on the Conference of Foreign Minister meeting in political cooperation to attempt to form a common favourable approach to the declaration addressed to the United Nations in 1979,

Suggests that they submit the issue of the Baltic states to the Decolonisation Subcommittee on the U.N.,

...

Expresses the hope that the Conference of Foreign Ministers will use their best endeavours to see that the aspirations of the peoples of these states as to their form of government is realised,

Instructs its President to forward this resolution to the Foreign Ministers of the Member States of the European Community meeting in political cooperation, and to the governments of the Member States.”

## IV. REPORTS AND RESOLUTIONS OF COUNCIL OF EUROPE BODIES

### A. The Parliamentary Assembly of the Council of Europe

85. Resolution 189 (1960) of the Parliamentary Assembly of the Council of Europe, entitled “Situation in the Baltic States on the twentieth anniversary of their forcible incorporation into the Soviet Union”, adopted on 29 September 1960, reads as follows:

- “1. The Assembly,
2. On the twentieth anniversary of the occupation and forcible incorporation into the Soviet Union of the three European States of Estonia, Latvia and Lithuania,
3. Notes that this illegal annexation took place without any genuine reference to the wishes of the people;
4. Expresses sympathy with the sufferings of the Baltic peoples and assures them that they are not forgotten by their fellow Europeans;
5. Is confident that Communist oppression will not succeed in crushing their spirit and faith in freedom and democracy;
6. Notes that the independent existence of the Baltic States is still recognised *de jure* by a great majority of the Governments of the nations of the free world;
7. Urges member Governments to support appropriate efforts of Baltic refugees to maintain their natural culture, traditions and languages, in anticipation of the time when Estonia, Latvia and Lithuania will be able to play their part as free nations in our democratic international institutions.”

86. The relevant parts of Resolution 872(1987) of the Parliamentary Assembly of the Council of Europe, entitled “Situation of the Baltic peoples”, adopted on 28 January 1987, read as follows:

“The Assembly,

...

3. Recalling that the incorporation of the three Baltic states into the Soviet Union was and still is a flagrant violation of the right to self-determination of peoples, and that it remains unrecognised by the great majority of European states and many members of the international community;

4. Considering that the elimination of the international problems created by this incorporation demands solutions on the basis of the international obligations entered into by the Soviet Union and other members of the international community;

...

6. Deploring the fact that, as a result of forced immigration into their area, the Baltic peoples are brought under pressure to assimilate, and that the lack of possibilities for education and cultural expression of their own is leading towards the loss of national identity;

...

12. Appeals to the Government of the Soviet Union to respect the right to self-determination and the human rights in the Baltic states;

13. Invites the governments of member states of the Council of Europe at the CSCE Conference in Vienna and, if need be, at further CSCE meetings to draw the attention of participating states to the serious violations of human rights and the right to self-determination in the three Baltic states.”

## **B. The European Commission against Racism and Intolerance (ECRI)**

87. On 9 December 2011 the European Commission against Racism and Intolerance (ECRI) during the fourth monitoring cycle adopted a report on Latvia, which includes an assessment of the situation following the adoption of the *Andrejeva* judgment (emphasis as in the original):

“129. ECRI would also like to express its concern in connection with certain measures taken by the Latvian authorities further to the [Court’s] judgment in *Andrejeva v. Latvia* ... ECRI was informed that further to this judgment, the authorities submitted amendments to the State Pensions Act which “levelled down” the pension entitlements for both citizens and “non-citizens”, thus treating citizens less favourably than before. These amendments are still pending. ECRI once again stresses the negative impact that the amendments, should they be adopted, may have on interethnic relations.

130. ECRI notes that in February 2011, the Constitutional Court declared that the provision of the State Pensions Act that was of issue in *Andrejeva v. Latvia* was not in breach of the Latvian Constitution. The court rejected the claims of the applicants (similar to those of *Andrejeva*) on grounds that Ms *Andrejeva*’s case was exceptional for she was physically working in the territory of Latvia. ECRI observes that the



Constitutional Court's decision, at best, gives a very narrow interpretation of the [Court's] judgment.

131. Furthermore, ECRI has been informed that bilateral agreements have been signed with Russia, Ukraine and Belarus in order to cover “non-citizens” pensions for employment periods spent in former USSR republics. ECRI notes that this approach, while positive for those who have worked in the above republics and who would otherwise have received a curtailed pension, fails to address the “non-citizens” who have worked in the remaining 9 former USSR republics, in respect of which a bilateral agreement has not been signed. This, according to the [Court's] *Andrejeva* judgment, amounts to discrimination.

132. *ECRI recommends that the Latvian authorities implement the judgment of the [Court] in a manner that will not have a negative impact on interethnic relations, namely by using it to reduce existing pension entitlements of citizens.”*

88. Following the fifth monitoring cycle, the ECRI report on Latvia, adopted on 4 December 2018, includes the following assessment of the status of “permanently resident non-citizen” of Latvia (footnotes omitted; emphasis as in the original):

**“Non-citizens”**

55. According to the CSB January 2017 data, there were 222 847 so-called “non-citizens” residing in Latvia, accounting for 11.4% of the country's population. The majority of them are ethnic Russians. They are a special category of persons, citizens of the former USSR who were residents in Latvia on 1 July 1991 and who do not possess citizenship of any other country. The term “non-citizens” does not cover foreign nationals. Although they do not have the same rights as citizens, the United Nations High Commissioner for Refugees (UNHCR) points out that the “non-citizens” enjoy the right to reside in Latvia *ex lege* and a set of rights and obligations generally beyond the rights prescribed by the 1954 Convention Relating to the Status of Stateless Persons, including protection from removal, and as such the “non-citizens” may currently be considered persons to whom the Convention does not apply in accordance with its Article 1.2(ii).

56. Since ECRI's last report, the number of “non-citizens” has further declined (326 735 persons in 2011, who then made up 14.6% of the population). This is partially due to demographic factors and mortality, as around 40% of “non-citizens” are 60 years or older. At the same time, the number of naturalisations has also declined but now stabilised at approximately 1 000 per year. According to the authorities, 98% of “non-citizen” applicants pass the necessary naturalisation exams, although not all of them on their first attempt. According to a 2016 survey carried out by the Office for Citizenship and Migration Affairs, among “non-citizens”, the personal reasons why respondents did not want to apply for naturalisation have changed. In previous years, the Latvian language requirement and the fees had been mentioned as obstacles. These no longer feature strongly among the reasons given. Instead, the advantages of visa-free travel to the Russian Federation and eligibility for a then more advantageous Russian pension are highlighted by many respondents. In addition, many “non-citizens” refuse to apply for naturalisation out of principle, as they believe they should be granted Latvian citizenship automatically. These reasons and sentiments were also confirmed to ECRI by various representatives of “non-citizen” organisations.

57. The Latvian authorities underlined that instead of making the “non-citizen” status more equal to that of citizens, it is their stated aim to eventually abolish this category by promoting and facilitating naturalisations ...

...

59. Further steps taken by the authorities to promote the naturalisations of “non-citizens” include information-days organised in municipalities with a high proportion of “non-citizens” among the residents, during which details of the naturalisation process are explained. The authorities, through the Society Integration Fund, also provide free Latvian language classes for “non-citizens” in preparation for their naturalisation exams, as recommended by ECRI in its last report. While ECRI commends the authorities for this measure, it also received information that these language classes, at times, fill up very quickly, resulting in insufficient capacity for all “non-citizens” who wish to enrol. This problem might grow, if the authorities’ efforts to promote naturalisation are successful.

60. *ECRI recommends that the authorities ensure that sufficient places are available for “non-citizens” wishing to enrol in Latvian language courses free of charge in preparation for their naturalisation exams.”*

### **C. The Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM)**

89. The Advisory Committee on the Framework Convention for the Protection of National Minorities (FCNM), second opinion on Latvia, adopted on 18 June 2013, includes the following assessment (footnotes omitted):

“139. The Advisory Committee further notes research pointing to differences among ethnic groups also with regard to access to social services, mainly due to the fact that Latvians are better informed of their rights and have the relevant networks to insist on obtaining the social assistance that is available. It refers in this context in particular to the large elderly population among national minorities that still faces considerable language barriers. Regarding access to pensions, the Advisory Committee regrets that the 2009 *Andrejeva* judgment of the [Court] has not led to a comprehensive solution regarding the calculation of pensions of citizens and “non-citizens”. It notes the Government’s view that the judgment has been implemented by signing bilateral agreements with the Russian Federation and a number of other countries in which “non-citizens” spent periods of employment under the Soviet Union, but remains concerned by the fact that these agreements do not cover all former republics of the Soviet Union and are therefore not suitable to address the situation vis-à-vis all “non-citizens”.”

## THE LAW

### I. PRELIMINARY REMARKS

#### A. The first applicant's death

90. The Court notes at the outset that the first applicant, Mr Jurijs Savickis, died while the application was pending before the Court, and that no heir or close relative has expressed the wish to pursue the application on his behalf (see paragraph 20 above). It is the Court's usual practice to strike applications out of the list of cases in the absence of any heir or close relative who has expressed the wish to pursue an application (see, among many other examples, *Mraović v. Croatia* (striking out) [GC], no. 30373/13, § 24, 9 April 2021). The Court finds no special circumstances regarding respect for human rights as defined in the Convention and its Protocols that would require the Court to continue the examination of that part of the application pursuant to Article 37 § 1 *in fine* of the Convention. It is therefore appropriate to strike this particular application out of the list of cases in so far as the first applicant is concerned (Article 37 § 1 (c) of the Convention).

91. Nevertheless, for practical reasons, Mr Savickis will continue to be called "the first applicant" in the present judgment, and the name of the case will not be changed (see, *mutatis mutandis*, *Ahmet Sadık v. Greece*, 15 November 1996, § 3, *Reports* 1996-V; *Dalban v. Romania* [GC], no. 28114/95, § 1, ECHR 1999-VI; *Vasiljević and Drobnjaković v. Serbia* (dec.), nos. 43987/11 and 51910/15, § 42, 28 January 2020; and *Ghavalayan v. Armenia*, no. 50423/08, § 60, 22 October 2020). Any mention of "the applicants" in the remainder of this judgment must be understood as referring to the four remaining applicants.

#### B. Scope of the case

##### 1. *The parties' arguments*

92. The respondent Government argued, first of all, that the scope of the case should be limited to those complaints which the applicants had brought before the District Administrative Court and the Constitutional Court. Accordingly, the case should be limited to the employment periods and the years of compulsory military service which had accrued outside the territory of Latvia prior to 1 January 1991 and were not included in the calculation of the relevant retirement pensions.

93. Regarding the scope of the present case, the respondent Government emphasised that its subject matter was neither an entitlement to an old-age pension – as each of the applicants was insured and received an old-age pension – nor any difference between the applicants and Latvian nationals in respect of the period since the restoration of Latvia's independence in

1990-91. Instead, the dispute is whether, in calculating supplements to the applicants' pensions paid by Latvia, the Latvian authorities were obliged, under the relevant rules and principles of international law, to take account of employment and military service carried out outside Latvia during Latvia's illegal occupation and annexation by the Soviet Union.

94. The applicants submitted that their requests before the Court were the same as those raised before the domestic authorities. They also noted that the conclusions made by the Court in the case of *Andrejeva v. Latvia* [GC], (no. 55707/00, ECHR 2009) were applicable to every "permanently resident non-citizen" of Latvia. Furthermore, the same discriminatory distinction was made in calculating the disability pension and the widow's pension, as well as in calculating unemployment benefits.

## 2. *The Court's assessment*

95. The Court reiterates that, for the purposes of Article 32 of the Convention, the scope of a case "referred to" it in the exercise of the right of individual application is determined by the applicant's complaint or "claim", which consists of two elements: factual allegations and legal arguments. By virtue of the *jura novit curia* principle the Court is not bound by the legal grounds adduced by the applicant under the Convention and the Protocols thereto. In contrast, the Court cannot rule beyond or outside what is alleged by the applicants. Thus, it cannot rule on the basis of facts not covered by the complaint, it being understood that while the Court has jurisdiction to review circumstances complained of in the light of the entirety of the Convention or to "view the facts in a different manner", it is nevertheless limited by the facts presented by the applicants (see *Denis and Irvine v. Belgium* [GC], nos. 62819/17 and 63921/17, §§ 99-101, 1 June 2021).

96. The Court notes that both the applicants' constitutional complaints and the scope of review by the Constitutional Court encompassed all the employment periods and equivalent periods, as provided for in Paragraph 1 of the transitional provisions of the State Pensions Act. While only employment periods, compulsory military service, and parental leave periods were relevant in respect of the applicants, this distinction was not made by the Constitutional Court in its judgment. Additionally, the refusal to award an early retirement pension was the subject matter of the third applicant's constitutional complaint and thus this matter also falls within the scope of the review before the Court.

97. Moreover, the Court has consistently held in its case-law that the Convention does not provide for the institution of an *actio popularis* and that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to or affected the applicants gave rise to a violation of the Convention (see *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015, with further references). While the present case only deals with the calculation of the applicants'

retirement pensions and the entitlement to early retirement pension, the Court notes that the impugned legal provision – Paragraph 1 of the transitional provisions of the State Pensions Act – serves to determine the “insurance period”, which might then be used for a variety of calculations for the purposes of attributing welfare benefits. Therefore, the Court observes that at the domestic level, the problem might indeed be broader than the issues put before it in the present case. Of course, as it has just emphasised, the Court must act within the confines of the present case. However, as with most complaints of alleged discrimination in a welfare or pensions system, the issue before the Court for consideration goes to the compatibility of the system with Article 14, not to the individual facts or circumstances of the particular applicants or of others who are or might be affected by the legislation. It is therefore appropriate to look at the system as a whole (see *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, § 63, 15 September 2016, and *J.D. and A. v. the United Kingdom*, nos. 32949/17 and 34614/17, § 100, 24 October 2019).

### **C. Latvia’s State continuity doctrine**

#### *1. The parties’ arguments*

##### **(a) The respondent Government**

98. The respondent Government considered that the State continuity doctrine, as expounded in the judgment of the Constitutional Court of 17 February 2011, is of utmost importance and must be taken into account by the Court in order to reach an equitable solution of the present case. In this regard, the respondent Government recalled the historical events as summarised in paragraphs 12-14 above. They noted that for fifty years (from 1940 until 1990-91), the entire territory of Latvia was under unlawful occupation and effective physical control by the USSR, in clear violation of international law. Nevertheless, according to the doctrine of State continuity, the Republic of Latvia continued to exist *de jure* throughout this period of occupation and annexation.

99. For the same reason, Latvia is not and cannot be a successor to the rights and liabilities of the former Soviet Union. In the light of the customary rules of State responsibility under international law, any legal obligations directly emanating from the above violation of international law, including those related to payments of social security benefits, fall to the occupying State which exercised effective control and jurisdiction over the territories and persons during the years in question, namely, the USSR and its successor, the Russian Federation. In this regard, the respondent Government referred to the advisory opinion of the International Court of Justice in the *Namibia* case (*Advisory Opinion on Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding*

*Security Council Resolution 276 (1970)*, [1971], *ICJ Reports* 16, p. 56), as well as to the Court’s own judgments in the cases of *Cyprus v. Turkey* [GC] (no. 25781/94, ECHR 2001-IV); *Catan and Others v. the Republic of Moldova and Russia* [GC] (nos. 43370/04 and 2 others, ECHR 2012 (extracts)); and *Ukraine v. Russia (re Crimea)* [GC] (dec.) (nos. 20958/14 and 38334/18, 16 December 2020). Since Latvia did not exercise such effective control or jurisdiction, no obligation in the field of social security for the disputed years could fall on this State. To conclude otherwise would lead to a manifestly unreasonable interpretation of the Convention, that is, directly deriving a legal benefit from an illegal act, in violation of the legal maxim “*ex injuria ius non oritur*”.

**(b) The applicants**

100. The applicants considered that the State continuity doctrine was not relevant for the purposes of the present case. Although the Republic of Latvia was indeed not directly responsible for the actions of the former Soviet Union, it could not simply ignore the *de facto* interruption of its statehood for fifty years. Moreover, Latvia was required to fulfil obligations in the field of fundamental rights that it had undertaken both at the domestic level and by ratifying the Convention. Even if Latvia was not a successor State to the USSR, it had expressly assumed responsibility for former Soviet citizens who settled in that country during the Soviet period. In this regard, the applicants referred to the Declaration of 4 May 1990 on the Restoration of Independence of the Republic of Latvia, in which Latvia expressly took the commitment “to guarantee social, economic and cultural rights ... to citizens of the USSR who wish to live in Latvia without acquiring Latvian nationality” (see paragraph 61 above). The applicants therefore invited the Court to reaffirm its finding in the *Andrejeva* judgment according to which the respondent Government’s reference to the State continuity doctrine is “misconceived” (*ibid.*, § 78).

*2. Submissions of the third-party intervener*

101. The Russian Government stated that, during the period in question, Latvia had been a full-fledged part of the Soviet Union. They submitted that the terms “Soviet occupation”, “Sovietisation” and “Russification” were controversial and extra-legal categories which could not justify the application of discriminatory provisions thirty years after Latvia had become independent.

*3. The Court’s assessment*

102. The Court points out that its jurisdiction is delineated by Article 19 of the Convention, according to which its sole duty is “[t]o ensure the observance of the engagements undertaken by the High Contracting Parties in the Convention and the Protocols thereto”. Accordingly, the Court is not

empowered to pass formal judgment on the legality or legitimacy of any transfer of sovereignty under international law (see *Ukraine v. Russia (re Crimea)* [GC] (dec.), nos. 20958/14 and 38334/18, § 339, 16 December 2020), be it current or historical. Moreover, in principle, given the subsidiary nature of the Convention system, it is not the Court's task to substitute itself for the domestic courts, particularly in cases where they assess facts of some historical sensitivity (see, among many other authorities, *Vasiliauskas v. Lithuania* [GC] (no. 35343/05, § 160, ECHR 2015).

103. On the other hand, the Court has always held that the provisions of the Convention cannot be interpreted and applied in a vacuum. Despite its specific character as a human rights instrument, the Convention is an international treaty to be interpreted in accordance with the relevant norms and principles of public international law. Thus, the Court has never considered the provisions of the Convention to be the sole frame of reference for the interpretation of the rights and freedoms enshrined therein. On the contrary, it must also take into account any relevant rules and principles of international law applicable in relations between the Contracting Parties (see, among many other authorities, *Al-Dulimi and Montana Management Inc. v. Switzerland* [GC], no. 5809/08, § 134, 21 June 2016, and *Nait-Liman v. Switzerland* [GC], no. 51357/07, § 174, 15 March 2018). The Court has also repeatedly held that, while it is not its function to deal with errors of fact or law allegedly committed by national courts – unless and in so far as they may have infringed rights and freedoms protected by the Convention and unless that domestic assessment is arbitrary or manifestly unreasonable – it can accept certain well-known historical truths and base its reasoning on them. This principle also applies where domestic law refers to rules of general international law or international agreements, and where domestic courts apply principles of international law (see *Vasiliauskas*, cited above, *ibid.*, with further references). However, the Court is empowered to do so in so far as and only to the extent necessary for the exercise of its competence under Article 19 of the Convention as defined above (see *Ukraine v. Russia (re Crimea)*, decision cited above, § 341).

104. As far as Latvia is concerned, the Court notes that its official position as expounded in the judgment of the Constitutional Court of 17 February 2011 and in the written observations of the respondent Government in the present case (see paragraphs 55 and 98-99 above) may be summarised as follows. Latvia (as well as the neighbouring Baltic States of Lithuania and Estonia) was a victim of aggression, unlawful occupation and annexation on the part of the former Soviet Union, starting from 1940. Therefore, Latvia is not a successor state to the USSR; it retains the statehood that existed when its independence was lost *de facto* in 1940 but which nevertheless remained in place *de jure* throughout the entire Cold War period. In other words, Latvia never disappeared *de jure*, although its independence was forcibly interrupted *de facto* for a half-century as a result of a blatant breach of international law.

105. The Court notes that it has itself repeatedly referred to the version of historical events as described above in the “Facts” part of its judgments and decisions in cases against the three Baltic States (see *Kolk and Kislyiy v. Estonia* (dec.), nos. 23052/04 and 24018/04, ECHR 2006-I; *Penart v. Estonia* (dec.), nos. 14685/04, 24 January 2006; *Ždanoka v. Latvia* [GC] (no. 58278/00, §§ 12-13, ECHR 2006-IV); *Kuolelis and Others v. Lithuania* (nos. 74357/01 and 2 others, § 8, 19 February 2008); *Vasiliauskas*, cited above, §§ 11-14; and *Sõro v. Estonia* (no. 22588/08, § 6, 3 September 2015). Moreover, in one case, the Court itself defined the situation of Latvia (and therefore of all three Baltic States) as “unlawful occupation” (see *Likvidējamā p/s Selga and Vasiļevska v. Latvia* (dec.), nos. 17126/02 and 24991/02, § 5, 1 October 2013). Finally, the European Commission of Human Rights clearly stated that “Lithuania [could not] be seen as a successor of the Soviet Union in respect of ... debts [arising from fixed term internal state bonds] and ha[d] not made any legal undertaking to compensate those of its citizens who [were] holders of the bonds” (see the Commission decision in *Jasinskij v. Lithuania* ((dec.), no. 38985/97, 9 September 1998).

106. The Court perceives no reason to depart from this assessment of the relevant historical facts as consistently described in its earlier judgments and decisions, especially since, so far as the Court can see, it corresponds to the general stance of the majority of the free democratic States of the world during the Cold War, as defined and summarised by the Parliamentary Assembly of the Council of Europe and the European Parliament (see paragraphs 84-86 above). It agrees with the respondent Government that this doctrine is *prima facie* relevant in the circumstances of the present case; accordingly, it will be duly taken into account when deciding on the merits of the application.

## II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION, READ IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

107. The applicants complained that, due to their status as “permanently resident non-citizens”, the employment and equivalent periods which they had accrued prior to 1991 outside the territory of Latvia in other parts of the former USSR had not been included in the calculation of the “insurance period” used as a reference in determining the amount of their retirement pensions and eligibility for an early retirement pension. Accordingly, they had been treated less favourably than citizens of Latvia, in breach of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1. In so far as relevant, those provisions read as follows:



**Article 14**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as ... national or social origin, association with a national minority ... birth or other status.”

**Article 1 of Protocol No. 1**

“1. 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.”

108. The respondent Government contested that argument, while the Russian Government as the third-party intervener supported it.

**A. Admissibility**

*1. Compatibility ratione personae*

**(a) The parties' arguments**

109. The respondent Government submitted that under Article 1 of the Convention Latvia could not be held responsible for the employment periods during which the applicants had resided and worked in various republics of the former USSR, but not in Latvia. The applicants' claims concerned matters that could not be attributed to the Government of Latvia and manifestly fell outside its jurisdiction. In this regard, the Government emphasised the fact that the periods of employment contested by the applicants had been accrued while working for enterprises located in different parts of the former USSR, where, contrary to the circumstances in the *Andrejeva* case, they had worked for most of their lives, thereby investing in the economy and development of the respective foreign countries. The applicants invoked Latvia's responsibility and jurisdiction for the entirety of their periods of employment only because they had spent the last years of their employment in Latvia. The claims adduced against Latvia manifestly contradicted the “generally accepted praxis” of States concerning retirement pension entitlements.

110. The respondent Government recognised that in the *Andrejeva* case, the objection *ratione personae* had been dismissed. However, in the present case, the applicants had not *de facto* resided in Latvia during the periods which they had asked to be included in the calculation. The respondent Government considered that the Court should follow the same approach it had taken in the case of *Likvidējamā p/s Selga and Vasiļevska v. Latvia* (dec.), cited above, where it had held that in the circumstances of the case Latvia could not incur responsibility under the Convention in relation to actions

undertaken by an entity operating in another country. The Convention imposed no specific obligation on the States to right injustices or harm caused before they had ratified the Convention, and the undertaking by the Latvian authorities to provide some compensation could not be interpreted as implying that there was an obligation incumbent on Latvia under international law to make any payments at all.

111. The applicants pointed out that this exact argument had already been raised by the Government in the case of *Andrejeva*, and had been rejected by the Court. They submitted that the applicants' residence over the contested time periods was of no relevance for the issue of jurisdiction.

**(b) The Court's assessment**

112. The Court notes that this argument is identical in substance to the objection already raised by the respondent Government in the *Andrejeva* case and rejected by the Court in the following terms (*ibid.*, § 57):

“57. In the present case, the Court notes that the applicant complained about a measure taken in respect of her by a Latvian public authority – the State Social-Insurance Agency – refusing her part of the pecuniary benefit she had intended to draw from a Law passed by the Latvian Parliament. The dispute raised by the applicant in respect of that measure was examined by the three levels of Latvian courts, which delivered binding decisions on the subject. In the Court's view, that is easily sufficient to warrant the conclusion that in the context of the present case, the applicant fell within the “jurisdiction” of the respondent State and that the Government's objection should be dismissed (see, *mutatis mutandis*, *Markovic and Others v. Italy* [GC], no. 1398/03, §§ 54-56, ECHR 2006-XIV) ...”

113. It is true that the applicants in the present case were not physically present in Latvia during the time periods in question, in contrast to Ms *Andrejeva*. However, this does not alter the fact that they, as permanent residents of Latvia, are still claiming a financial benefit under Latvian law and contesting decisions taken in their regard by the Latvian authorities, including courts. In these circumstances, the Court does not see any difference between *Andrejeva* and the present case for the purposes of “jurisdiction” within the meaning of Article 1 of the Convention. As to the decision in the case of *Likvidējamā p/s Selga and Vasiļevska*, cited above and referred to by the respondent Government, the Court points out that the applicants in that case were owners of currency deposited with a foreign bank in another country; the key questions put before the Court were whether the respondent State could be held responsible for the freezing of those assets by that foreign bank, and whether it had any positive obligation under the Convention to take any particular measures in that respect (*ibid.*, §§ 102 and 113). This being so, the Court fails to see the relevance of this reference for the issue at hand, these two cases being fundamentally different.

114. The Court therefore dismisses the respondent Government's objection. Nevertheless, it considers that the arguments raised to support this objection are closely linked to the merits of the complaint under Article 14 of

the Convention. Accordingly, just as it did in the *Andrejeva* case, the Court will have regard to them in determining whether there has been a violation of that Article (*ibid.*, § 57 *in fine*).

## 2. *Compatibility ratione materiae*

### (a) The parties' arguments

#### (i) *The respondent Government*

115. The respondent Government submitted that the application was incompatible *ratione materiae* with the provisions of the Convention, as an alleged violation of Article 1 of Protocol No. 1 had to relate to “possessions”, as defined by the case-law of the Court. There was no right under Article 1 of Protocol No. 1 to receive a social security benefit or pension payment of any kind or amount, unless national law provided for such an entitlement.

116. The respondent Government recognised that the Court had dismissed this argument in the *Andrejeva* case. However, they emphasised the nature of the alleged property right and the lack of legitimate expectations. Firstly, the additional undertaking by Latvia to provide financial compensation for the years of employment under the jurisdiction of the former Soviet Union in order to redress, at least in some way, the consequences of the years of unlawful occupation, could not be regarded as creating a property right for the applicants falling within the ambit of Article 1 of Protocol No. 1. The geopolitical and historical context ought not to be disregarded by the Court. The Court's competence in the field of social security was not broad enough to make a State responsible for pecuniary interests originating under the jurisdiction of another State, particularly in view of the margin of appreciation afforded to States with regard to general measures of economic and social strategy. The applicants' claims fell within the ambit of Article 1 of Protocol No. 1 to the Convention only to the extent that the transitional provisions of the State Pensions Act granted them the right to receive retirement pension concerning the periods of employment in the territory of Latvia.

117. Moreover, the applicants could not have expected, and in fact did not expect, that Latvia would accept any responsibility for the employment periods in the territory of the former USSR. Ms Andrejeva had actually worked and resided in the territory of Latvia during the impugned time periods and had truly believed that these employment periods would be regarded as having been carried out in the territory of Latvia. She had immediately challenged before the administrative court the refusal to include those periods in the calculation of her pension. In contrast, the applicants in the present case had not challenged the accuracy of the calculations and interpretation of the domestic law in their regard. This demonstrated that the applicants had been fully aware that the domestic law had not entitled them to a retirement pension for their employment in the territory of the former

USSR and they had had no expectation that Latvia would assume responsibility for those periods. Therefore, the applicants could not claim that the Latvian domestic law or practice had ever created any legitimate expectation that Latvia would assume responsibility for the payment of retirement pensions for work carried out under the jurisdiction of other States. Nor had such an expectation been created by the Court's judgment in *Andrejeva*, given that the Court's ruling had been based on the individual circumstances of that specific case.

(ii) *The applicants*

118. The applicants noted that this objection had already been dismissed by the Grand Chamber in the case of *Andrejeva*, cited above. They pointed out that Paragraph 1 of the transitional provisions of the State Pensions Act had created an entitlement to a retirement pension in respect of the employment and equivalent periods accrued prior to 1991 in the territory of the former USSR, but had reserved this right to the citizens of Latvia. By virtue of this provision the applicants had been refused a pension for those periods solely because they did not have Latvian citizenship. Had the applicants been Latvian citizens, the respective employment and equivalent periods accrued in the territory of the former USSR would be taken into account in calculating their "insurance period", which was subsequently used to determine the entitlement to state pensions and the amount thereof. Hence, the applicants' pecuniary interests fell within the scope of Article 1 of Protocol No.1, which rendered Article 14 applicable.

**(b) The Court's assessment**

119. As a preliminary point, the Court reiterates that, as the question of applicability of a particular provision of the Convention or its Protocols is an issue of the Court's jurisdiction *ratione materiae*, the general rule of dealing with applications should be respected and the relevant analysis should be carried out at the admissibility stage unless there is a particular reason to join this question to the merits. No such particular reason exists in the present case and the issue of the applicability of Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1, falls therefore to be decided at the admissibility stage (see *Popović and Others v. Serbia*, nos. 26944/13 and 3 others, § 46, 30 June 2020, and, *mutatis mutandis*, *Denisov v. Ukraine* [GC], no. 76639/11, § 93, 25 September 2018).

120. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the

facts in issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among many other authorities, *Andrejeva*, cited above, § 74; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010; *Fábián v. Hungary* [GC], no. 78117/13, § 112, 5 September 2017; and *Molla Sali v. Greece* [GC], no. 20452/14, § 123, 19 December 2018).

121. The Court notes that the respondent Government's objection, like the previous one, is identical in substance to that already raised by the respondent Government in the *Andrejeva* case, cited above, and rejected by the Court in the following terms:

“77. The Court has ... held that all 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 guarantee as such any right to become the owner of property ... Nor does it guarantee, as such, any right to a pension of a particular amount ... Similarly, the right to receive a pension in respect of activities carried out in a State other than the respondent State is not guaranteed either ... Furthermore, Article 1 of Protocol No. 1 places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation 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 ...

78. The Government submitted that, from the standpoint of public international law, Latvia had not inherited the rights and obligations of the former Soviet Union as regards welfare benefits. Having regard to its findings in *Stec and Others v. the United Kingdom* ((dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X), the Court considers that that argument is misconceived in the instant case. Even assuming that the Government were correct on this point, the conclusion that has to be drawn in this case would be unaffected: where a State decides of its own accord to pay pensions to individuals in respect of periods of employment outside its territory, thereby creating a sufficiently clear legal basis in its domestic law, the presumed entitlement to such benefits falls within the scope of Article 1 of Protocol No. 1. In this connection, the Court notes that the first paragraph of the transitional provisions of the Latvian State Pensions Act creates an entitlement to a retirement pension in respect of aggregate periods of employment prior to 1991 in the territory of the former USSR (“outside Latvia” in the version in force before 1 January 2006), regardless of the payment of any kind of contributions, but that it reserves this right to Latvian citizens. By virtue of this provision, the applicant was refused the pension in question solely because she did not have Latvian citizenship.

79. In the *Stec and Others* decision (cited above, § 55) the Court held as follows:

‘In cases, such as the present, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a

particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the condition of entitlement about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question ... Although [Article 1 of] Protocol No. 1 does not include the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14.’

80. It follows that the applicant’s pecuniary interests fall within the scope of Article 1 of Protocol No. 1 and the right to the peaceful enjoyment of possessions which it safeguards. This is sufficient to render Article 14 of the Convention applicable.”

122. The Court does not see any difference between the case of *Andrejeva* and the present case regarding the applicability *ratione materiae* of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1. According to the Court’s well-established case-law, the prohibition of discrimination enshrined in Article 14 generally applies where a Contracting State has in force legislation providing for the payment as of right of a pension or another welfare benefit; that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements. If, but for the condition of entitlement under domestic law about which the applicant complains, he or she would have had a right enforceable under domestic law to receive the benefit in question, his or her complaint falls within the scope of Article 1 of Protocol No. 1 and that is sufficient to render Article 14 of the Convention applicable *ratione materiae* (see *J.D. and A.v. the United Kingdom*, cited above, § 63). This being so, the Court cannot but dismiss the respondent Government’s objection for the same reasons as stated in §§ 77-80 of the *Andrejeva* judgment (see also, *mutatis mutandis*, *Gaygusuz v. Austria* (16 September 1996, § 40, *Reports* 1996-IV); *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011; *Fábián*, cited above, § 117; and *Ribač v. Slovenia*, no. 57101/10, §§ 43-45, 15 December 2017).

123. As to the particular questions raised by the respondent Government, namely, to what extent the Court’s overall reasoning in *Andrejeva* was conditioned by the particular factual circumstances of that case, whether it is transposable to the present case, and whether the applicants might have had any “legitimate expectations” for the purposes of Article 1 of Protocol No. 1 given their physical absence from the Latvian territory during the contested periods, these relate to the merits of the application and will be examined by the Court under the respective head.

### 3. *Six-month time-limit*

#### (a) **The parties’ arguments**

124. The respondent Government referred to the decisions whereby the second, the fourth and the fifth applicants had initially been granted their retirement pensions. As these applicants had not appealed against the relevant decisions, they had entered into force and should be regarded as the “final

decisions” for the purposes of the six-month time-limit. The respondent Government also submitted that the applicants should have been well aware that their retirement pensions could only be recalculated on the basis of either the State Pensions Act or bilateral international agreements. Accordingly, their reopening requests before the administrative courts had had no legal basis and it had been inevitable that they would be dismissed.

125. With regard to the allegation that the Constitutional Court’s ruling of 17 February 2011 should be regarded as the final decision, the respondent Government noted that nothing had prevented the applicants from lodging a constitutional complaint immediately after their retirement pensions had been granted. The applicants had not adduced any arguments to justify their inactivity of up to ten years.

126. In the respondent Government’s view, both the reopening proceedings before the administrative courts and the constitutional proceedings were to be regarded as attempts by the applicants to comply belatedly with the procedural requirements and to restore the running of the six-month time-limit for the purposes of lodging the present application before the Court.

127. The applicants submitted that the remedies used by them had been the only available effective legal avenues and that they had exhausted them in compliance with the requirements of domestic law. The applicants pointed out that Paragraph 1 of the transitional provisions of the State Pensions Act had already been declared constitutional by the Constitutional Court in 2001 in proceedings instituted by twenty members of Parliament (see paragraph 39 above). Accordingly, this claim had already been adjudicated and all the State authorities, including the courts, were bound by the Constitutional Court’s findings. Additionally, a claim having already been adjudicated was an inadmissibility ground under the Constitutional Court Act. The applicants pointed out that, unlike Ms Andrejeva, they disagreed with the contents of the domestic law rather than with its interpretation in their particular cases.

128. Only after the Court delivered its judgment in *Andrejeva*, cited above, did the legal circumstances change, permitting the applicants to request the reopening of their administrative proceedings. After their reopening requests had been refused the applicants brought constitutional proceedings, save for the third applicant who applied to the Constitutional Court directly. The Constitutional Court instituted the proceedings and delivered a judgment assessing the merits of the applicants’ complaint. The present application was filed within six months of that judgment.

**(b) The Court’s assessment**

129. The Court notes at the outset that the respondent Government’s objection does not apply to the third applicant, who lodged his complaint directly to the Constitutional Court on 22 March 2010, that is, several months before the calculation of his retirement pension (see paragraphs 27 and 48

above). The Court will accordingly examine that objection as only concerning the second, the fourth and the fifth applicants.

(i) *General principles*

130. The object of the time-limit under Article 35 § 1 of the Convention – six months at the time when the present applications were lodged – is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see *Sabri Güneş v. Turkey* [GC], no. 27396/06, §§ 39-40, 29 June 2012).

131. The requirements contained in Article 35 § 1 as to the exhaustion of domestic remedies and the six-month period are closely interrelated, as they are not only combined in the same Article, but also expressed in a single sentence whose grammatical construction implies such a correlation. Thus, as a rule, the six-month period runs from the date of the final decision in the process of exhaustion of domestic remedies. Article 35 § 1 cannot be interpreted in a manner which would require an applicant to inform the Court of his complaint before his position in connection with the matter has been finally settled at the domestic level, otherwise the principle of subsidiarity would be breached. However, this provision allows only remedies which are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions which have no power or competence to offer effective redress for the complaint in issue under the Convention (see, among many other authorities, *Lekić v. Slovenia* [GC], no. 36480/07, § 65, 11 December 2018). Thus, the pursuit of remedies which do not satisfy the requirements of Article 35 § 1 will not be considered by the Court for the purposes of establishing the date of the “final decision” or calculating the starting point for the running of the six-month rule (see *Jeronovičs v. Latvia* [GC], no. 44898/10, § 75, 5 July 2016).

132. As a general rule, an application for the reopening of proceedings is not an effective remedy (see *Berdzenishvili v. Russia* (dec.), no. 31697/03, ECHR 2004-II; *Tucka v. the United Kingdom* (no. 1) (dec.), no. 34586/10, 18 January 2011; and *Haász and Szabó v. Hungary*, nos. 11327/14 and 11613/14, §§ 36-37, 13 October 2015), and, as such, does not interrupt the running of the six-month time-limit, except when it is the only judicial avenue available to the applicant in the circumstances of the case (see *Ahtinen v. Finland* (dec.), no. 48907/99, 31 May 2005, and *Tomaszewscy v. Poland*, no. 8933/05, §§ 117-19, 15 April 2014).



133. If the request for reopening of the proceedings is dismissed, the respective decision is not the “final decision” for the purposes of Article 35 § 1 and cannot be taken as the starting point of the six-month time-limit (see *Sapeyan v. Armenia*, no. 35738/03, § 23, 13 January 2009). If, however, proceedings are reopened or a final decision is eventually reviewed, the running of the six-month period in respect of the initial set of proceedings or the final decision will be interrupted, but only in relation to those Convention issues which served as a ground for such a review or reopening and were the subject of examination before the extraordinary appeal body (*ibid.*, § 24). Finally, if an application for extraordinary review has not led to the reopening of the initial proceedings, but the domestic courts have nevertheless been provided with the opportunity of addressing the core of the human rights issues that the applicant subsequently brought before the Court and did address them, then the running of the six-month time-limit has to be considered to have restarted (see *Schmidt v. Latvia*, no. 22493/05, §§ 66-67 and 70-71, 27 April 2017).

134. Regarding the Constitutional Court of Latvia – and as the European Court of Human Rights has already established on several occasions – its jurisdiction is limited to reviewing the constitutionality of legal provisions and their compatibility with provisions of superior legal force. Accordingly, for the purposes of Article 35 § 1 of the Convention, applicants are required to avail themselves of this remedy only if they are challenging a provision of a statute or a regulation as being as such contrary to the national Constitution or the Convention; in other words, if the alleged violation stems from a legal norm itself. On the other hand, the procedure of an individual constitutional complaint is not an effective remedy where the applicant is complaining of an allegedly erroneous application or interpretation of a legal provision which, in its content, is not unconstitutional (see *Elberte v. Latvia*, no. 61243/08, §§ 79-80, 13 January 2015, with further references). In such cases a constitutional complaint does not interrupt the running of the six-month time-limit.

(ii) *Application of these principles in the present case*

135. In the present case, the Court notes that the initial calculation of each of the applicants’ pensions (except for the third applicant, as stated above) took place between 1999 and 2008, and that none of them appealed against the respective domestic decisions. On 18 February 2009 the Court delivered its judgment in the case of *Andrejeva*, cited above. On 14 August 2009 the applicants requested that their pensions be recalculated in the light of the *Andrejeva* judgment. These requests were refused. The applicants brought proceedings before the District Administrative Court, seeking the reopening of their proceedings on the basis of the *Andrejeva* judgment in accordance with domestic law. By final decisions of 20 November 2009, 27 November 2009, and 16 December 2009, the District Administrative Court dismissed

the applicants' complaints, declaring that the *Andrejeva* judgment did not warrant a reopening of their cases. On 5 March 2010 the applicants applied to the Constitutional Court, petitioning it to overrule and overturn its previous approach in relation to Paragraph 1 of the transitional provisions of the State Pensions Act (defined in 2001), and to make a new judgment on the basis of the Grand Chamber judgment in *Andrejeva*. The Constitutional Court delivered a judgment on the merits of the applicants' arguments (including the circumstances of each individual case) on 17 February 2011.

136. In the Court's view, the applicants' requests for reopening of the administrative proceedings before the District Administrative Court and the subsequent individual complaint before the Constitutional Court must be regarded as a single set of proceedings, ultimately aimed at obtaining the recalculation of their pensions following the Court's judgment in the *Andrejeva* case. It is true that the applicants remained passive for a long time after the initial calculation of their pensions. However, the Court accepts that they could have believed, realistically and in good faith, that their legal situation had changed after the delivery of the *Andrejeva* judgment, which they considered as giving them a fresh opportunity to obtain a recalculation of their pensions – either immediately, or, if need be, after a formal invalidation of the impugned legal provision by the Constitutional Court. This was especially so because, unlike the Constitutional Court in its judgment of 17 February 2011, the *Andrejeva* judgment expressly refused to attribute a decisive role to the distinction between working in the territory of Latvia or outside it (*ibid.*, § 85). What this Court considers decisive is the fact that the Constitutional Court did indeed consider the applicants' constitutional complaints to be procedurally admissible under domestic law, agreed to examine them on the merits, and gave a meticulously reasoned judgment addressing the same human-rights issues that the applicants are now bringing before this Court (see, *mutatis mutandis*, *Schmidt*, cited above, §§ 68-71).

137. In consequence, in the particular circumstances of the present case, the Court considers that the judgment of the Constitutional Court of 17 February 2011 was indeed the "final decision" for the purposes of Article 35 § 1, and that the six-month time-limit has to be counted from the date of its delivery. The present application, lodged with the Court on 4 August 2011, has therefore been submitted within the six months following the latter date. For this reason, the respondent Government's objection must be dismissed.

#### 4. *Objections with respect to specific applicants*

##### (a) **The second applicant**

##### (i) *The parties' arguments*

138. The respondent Government argued that the second applicant's reopening request, brought before the administrative courts, had only

concerned the inclusion of the employment periods accrued in the territory of the former USSR but had not mentioned the periods of compulsory military service. Furthermore, the applicant had not submitted to the domestic authorities any documents allowing them to establish the country where that service had been carried out. Accordingly, in so far as it concerned the exclusion of the compulsory military service, the second applicant's complaint should be rejected for non-exhaustion of domestic remedies or as manifestly ill-founded.

139. The applicants responded that there were no effective domestic remedies with respect to the periods of compulsory military service. As Latvian citizens had only to prove the fact of service, they could obtain the inclusion of those periods by showing their employment record and their military identity card. Those documents indicated the territory from where the person had been conscripted but not the location where the compulsory military service had been served. In contrast, a "permanently resident non-citizen" was required to prove the exact location of the military service. For that purpose, he was required to contact the archives of the respective foreign armed forces, for a fee, without necessarily having the corresponding linguistic abilities and with no certainty that such data were available.

*(ii) The Court's assessment*

140. The Court notes at the outset that the respondent Government themselves have asserted the ineffectiveness of the reopening requests brought by the applicants before the administrative courts for the purposes of Article 35 § 1 of the Convention (see paragraph 124 above). That being so, the Government's assertion that the applicants should have raised a particular point of fact by way of that same procedure seems unsustainable. In any event, the Court reiterates that non-exhaustion of domestic remedies cannot be held against an applicant if, in spite of the latter's alleged failure to observe the forms prescribed by law, the competent authority has nevertheless examined the substance of the exact claim that he or she is bringing before the Court (see *Vladimir Romanov v. Russia*, no. 41461/02, § 52, 24 July 2008, and *Ulemek v. Croatia*, no. 21613/16, § 77, 31 October 2019). In the present case, it appears that the Constitutional Court had declared the second applicant's constitutional complaint procedurally admissible in its entirety and examined it with regard to all the disputed periods, without distinguishing between them (see paragraph 51 above). In these circumstances, the applicant cannot be blamed for not exhausting the domestic remedies, and the respondent Government's objection must be dismissed.

**(b) The third applicant***(i) The parties' arguments*

141. The respondent Government pointed out that the administrative proceedings which the third applicant had brought against the refusal to grant his early retirement claim, had been left without examination on procedural grounds. Additionally, when he had later been granted the retirement pension, which excluded the compulsory military service period, he had not appealed against that decision. He had also failed to institute constitutional proceedings in that regard, as his constitutional complaint had only addressed the refusal to grant him an early retirement pension. Furthermore, as pointed out by the Constitutional Court, following the entry in force of the Latvia-Russia Social Security Agreement the applicant could have requested a recalculation of his pension and the inclusion of the compulsory military service period carried out in Russia. However, unlike the other applicants, the third applicant failed to do so, thus failing to exhaust the domestic remedies.

142. The applicants reiterated their arguments concerning the procedural difficulties in identifying the country where compulsory military service had been carried out (see paragraph 139 above). They argued that the entry in force of the bilateral agreement had not fully eradicated the difference in treatment between citizens and “permanently resident non-citizens”; instead it had shifted this difference from the substantive law to the procedural law. While Latvian citizens were only required to submit a limited number of easily available documents, the “permanently resident non-citizens” were required to turn to the archives of foreign armed forces. The applicants submitted that there were several such archives in Russia, where the relevant information would need to be sought against a fee. Additionally, irreparable damage had been suffered prior to the entry into force of the relevant bilateral agreements, when the refusal to include those periods had been in accordance with domestic law and no domestic remedies had been available.

*(ii) The Court's assessment*

143. The Court points out that the third applicant's complaint concerns both the refusal to grant him an early retirement pension and also the subsequent failure to include the period of compulsory military service in the calculation of his retirement pension. When this applicant lodged his constitutional complaint, he had not yet reached retirement age (see paragraphs 27 and 48 above). Thus, before the Constitutional Court, his complaint indeed concerned only the refusal to grant him the early retirement pension. However, the Court can only reiterate its well-established case-law according to which an applicant cannot be blamed for not exhausting a domestic remedy if, despite his or her alleged failure to observe the requirement set out by law, the competent authority has nevertheless examined the substance of the claim that he or she is raising before the Court

(see paragraph 133 above). In the present case, the Constitutional Court did not regard the third applicant's failure to pursue the administrative proceedings as an obstacle for the institution of proceedings, as the applicant had "substantiated that he could not protect his rights via the general remedies" (see paragraph 48 above). Therefore, with respect to this aspect of his complaint, the Court considers that the third applicant has to be deemed to have exhausted the domestic remedies.

144. The Court further notes that a retirement pension which excluded the compulsory military service period was granted to the third applicant during the constitutional proceedings. The case file contains no information as to whether any supplementary observations were put before the Constitutional Court to that effect. However, it is obvious that the Constitutional Court made no distinction between the question of granting the early retirement pension to the third applicant and the refusal to include certain periods in the calculations in respect of the retirement pension of the other applicants. Instead, it analysed the constitutionality of the legal provision, which provides that with respect to "permanently resident non-citizens" certain employment and equivalent periods are not included in the calculation of their "insurance period" as defined by Latvian law. Thus, on its substance, the judgment of the Constitutional Court covered both aspects of the third applicant's complaint. Furthermore, after the delivery of the Constitutional Court's judgment, this remedy was no longer available to the applicant, as this claim had already been adjudicated.

145. In these circumstances, the Court concludes that the third applicant cannot be blamed for not exhausting the domestic remedies, as required by Article 35 § 1 of the Convention. It therefore dismisses the respondent Government's objection on this point.

**(c) The fourth applicant**

*(i) The parties' arguments*

146. The respondent Government argued that with respect to the fourth applicant's employment period in Belarus, a retirement pension had been granted by Belarus prior to the lodging of the present application. Additionally, also prior to the lodging of the present application, the fourth applicant's pension had been recalculated on the basis of the Latvia-Russia Social Security Agreement, in order to include the employment periods accrued in the territory of Russia. As the fourth applicant had withheld this information from the Court, she had manifestly abused the right of individual application within the meaning of Article 35 § 3 (a) of the Convention. She could also no longer claim to be a victim with respect to those periods.

147. Concerning the alleged employment periods in Germany and the period spent on maternity leave, the respondent Government argued that the

fourth applicant had not raised these complaints at domestic level and that they should be rejected for non-exhaustion of domestic remedies.

148. The applicants responded that the information referred to by the Government had been included in the application form. They also argued that the fourth applicant should be considered a victim with respect to the periods included in the calculation on the same grounds as with respect to the first applicant. Furthermore, the fourth applicant's claim did not cover the employment period in Germany since, at the time of her retirement and as was true also in respect of citizens of Latvia, only the periods accrued in the territory of the former USSR had been taken into account. For the same reasons, no complaint had been brought concerning the period of the voluntary military service. With regard to the periods spent on parental leave, the applicants argued that these periods formed part of the employment periods and were not the subject matter of a separate dispute.

*(ii) The Court's assessment*

149. The Court reiterates that under Article 35 § 3 (a) an application may be rejected as an abuse of the right of individual application if, among other reasons, it is knowingly based on untrue facts. The submission of incomplete and thus misleading information may also amount to an abuse of the right of application, especially if the information concerns the very core of the case and no sufficient explanation has been provided for the failure to disclose that information. The same applies if important new developments have occurred during the proceedings before the Court and where, despite being expressly required to do so by Rule 47 § 7 of the Rules of Court, the applicant has failed to disclose that information to the Court, thereby preventing it from ruling on the case in full knowledge of the facts. However, even in such cases, the applicant's intention to mislead the Court must always be established with sufficient certainty (see *Gross v. Switzerland* [GC], no. 67810/10, § 28, ECHR 2014, with further references).

150. The Court notes at the outset that, contrary to the respondent Government's allegation, the information about the recalculation of the fourth applicant's pension on the basis of the Latvia-Russia Social Security Agreement was indeed included in the initial application form. The applicants also stated in the form that the fourth of their number had requested a Belarussian pension but had not yet received a reply, and the respondent Government have provided no documentary evidence establishing that this claim was inaccurate.

151. The Court also rejects the Government's argument that the fourth applicant has lost her "victim" status. A decision or measure favourable to the applicant is not, in principle, sufficient to deprive him or her of his or her status as a "victim" for the purposes of Article 34 of the Convention unless the national authorities have acknowledged, either expressly or in substance, and then afforded redress for the breach of the Convention (see *J.D.*

*and A. v. the United Kingdom*, cited above, § 64, with further references). This has clearly not been done in the present case. The Court considers that the respondent Government's argument concerning the alleged absence of victim status rather pertains to the merits of the case and falls to be examined under that head. The allegations of "abuse" and "loss of victim status" must therefore be dismissed.

152. As to the question of the inclusion of parental leave in the calculation of the "insurance period", the Court once again reiterates the principle that an applicant cannot be blamed for non-exhaustion of domestic remedies if the substance of the claims raised in Strasbourg has been previously examined, in spite of any alleged procedural shortcomings (see paragraph 133 above). In the present case, the entire length of the disputed period was covered by the reasoning of the Constitutional Court's judgment (see paragraph 51 above); it follows that this objection should also be dismissed.

**(d) The fifth applicant**

*(i) The parties' arguments*

153. The respondent Government submitted that the fifth applicant's pension had been recalculated on the basis of the Latvia-Russia Social Security Agreement prior to the lodging the present application, a fact of which she had not informed the Court. Hence, her claim ought to be dismissed for abuse of the right of individual application and loss of victim status.

154. The applicants reiterated that the information concerning the recalculation had been included in the application form and that the fifth applicant should still be regarded as having victim status on the grounds set out above.

*(ii) The Court's assessment*

155. On the basis of the case file before it, the Court comes to the same conclusions as for the fourth applicant: there is no indication of "abuse", given that the information about the recalculation of the pension was indeed included in the fifth applicant's initial application form, and the argument regarding victim status is to be considered as related to the merits of the case (see paragraphs 149-151 above). These objections must consequently also be dismissed.

*5. Conclusion on the admissibility of the application*

156. The Court notes that the applicants' complaint under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. The application must therefore be declared admissible.

## **B. Merits**

### *1. The parties' arguments*

#### **(a) The applicants**

157. 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 failure to include the impugned employment and equivalent periods in the calculation had led to a reduction of the applicants' overall insurance period and had directly affected the amount of their retirement pensions. It had also barred four of the five applicants from retiring early and had prevented them from benefitting from favourable conditions in determining the initial capital sum that was used to calculate their pensions. As a result, the first, fourth and fifth applicants had received the minimum pension.

158. 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.

159. With respect to the legitimate aim of the difference in question, the applicants conceded that it pursued the aim of protecting the country's economic system. However, they doubted whether this aim still retained its full importance today. Regarding the proportionality of the difference in treatment, the applicants pointed out that the special status of "permanently resident non-citizens" was in substance similar to Latvian citizenship, as it established a special legal bond between the State and the individual. Furthermore, Latvia was the only State with which the applicants had stable legal ties and thus the only State which, objectively, could assume responsibility for them in terms of social security. All of them had lived most of their lives in Latvia; the third applicant had lived there since the age of three. Accordingly, the applicants considered that, irrespective of any circumstantial differences, the facts of the present case could not reasonably be distinguished from those of the above-cited *Andrejeva* case. In particular, they did not agree that Ms Andrejeva had had a closer legal tie with Latvia than they or any other "permanently resident non-citizens" did. In any event, the status of "permanently resident non-citizen" had been the only aspect invoked by the Court in its finding of a violation in the *Andrejeva* case.

160. The applicants admitted that, unlike Ms Andrejeva, they had actually lived outside the territory of Latvia during the periods not included in the calculation. However, they referred to paragraph 85 of the *Andrejeva* judgment, where the aspect of residence had been considered irrelevant.



Furthermore, while before the Court the Government tried to distinguish the two cases on the basis of residence, such a distinction had not been made under domestic law. Even now only work carried out for local Latvian enterprises was regarded as “employment in Latvia”.

161. The applicants also submitted that their situation with respect to bilateral agreements was very similar to that of Ms Andrejeva. The Agreement between the Republic of Latvia and Ukraine regarding Cooperation within the Field of Social Security had taken effect prior to Ms Andrejeva bringing her case before the Court, and her pension had been recalculated *ex nunc*; on the other hand, the agreement with Russia had not entered into force before her death. In *Andrejeva*, the Government’s objection concerning victim status had been raised belatedly; however, the Court had expressed its position concerning the bilateral agreements by stating that a Contracting State could not be absolved of its responsibility under the Convention on the ground that it was not bound by some type of inter-State treaties (*ibid.*, § 90).

162. In particular, two bilateral agreements (with Belarus and Russia) had entered into force over the course of the domestic proceedings and prior to the present case being brought. Recalculations had been made for certain of the applicants; however, they had only been made *ex nunc*, as none of the agreements allowed for retrospective payments. Furthermore, employment periods and equivalent periods accrued in other territories of the former Soviet Union remained excluded from the calculation. According to the applicants, the partial inclusion of certain periods in the calculation of their retirement pensions could only have relevance for the calculation of the just satisfaction award under Article 41 of the Convention.

163. The applicants also dismissed the respondent Government’s claim that finding a violation would render the bilateral agreements on social security devoid of purpose. That would only be the case if the aim of those agreements had been to improve the situation of “permanently resident non-citizens” only; however, their scope was much broader. In practice, those agreements did improve the situation of some “permanently resident non-citizens”, to a certain extent; however, such improvements were merely collateral and could not be considered an effective means of eradicating the violation of the Convention caused by the domestic legislation.

164. While the judgment in the above-cited *Andrejeva* case had concerned only the employment periods accrued outside the territory of Latvia, the applicants argued that the same principles also applied with regard to equivalent periods. This was especially true in respect of compulsory military service, as conscripts had been unable to choose the location of the compulsory military service and were compelled to go where they were sent. There had been no local or ethnic units in the Soviet army at the relevant time. The applicants emphasised that the third applicant had been conscripted from the territory of Latvia where he had lived since the age of three.

165. Finally, the applicants also referred to the findings of the ECRI and the Advisory Committee on the FCNM (see paragraphs 87-89 above) regarding the implementation of the *Andrejeva* judgment by the Latvian authorities.

166. In summary, the applicants argued that any purported factual differences between their case and that of the applicant in the *Andrejeva* case was not a reason for the Court to reach a different conclusion. Accordingly, there had been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

**(b) The respondent Government**

167. The respondent Government declared at the outset that the present case did not concern a refusal to grant the applicants a retirement pension or any other social benefit. Just like Latvian citizens, the applicants were receiving the retirement pension provided by law and were entitled to apply for other social services and assistance. Rather, the applicants claimed that the employment periods accrued outside the territory of Latvia during their residence in other parts of the former USSR prior to the restoration of Latvia's independence should be taken into account in calculating their pension. In this regard, the respondent Government emphasised that benefits paid on account of employment or military service performed outside Latvia were to be considered as supplements for additional pension payments, and not the core of the old-age pension itself. They reiterated that, when old-age pensions were calculated for employment periods after 1 January 1991, those pensions were calculated in the same manner for both citizens and non-citizens; however, the same approach could not be applied to periods when Latvia was unlawfully occupied by the Soviet Union.

168. The respondent Government once again referred to the doctrine of State continuity, according to which the forcible incorporation of Latvia into the Soviet Union had been contrary to international law and therefore null and void; consequently, Latvia had continued to exist *de jure* throughout the entire Cold War period; Latvia was not a successor State to the former USSR and could not assume any of its obligations (see paragraphs 98-99 above).

169. According to the respondent Government, upon the restoration of its independence, Latvia had an obligation under international law to assume responsibility only for its own citizens and its own territory. In the light of the *erga omnes* obligation not to recognise or justify violations of international law, Latvia, as a State that had been illegally occupied as a result of aggression, could not assume responsibility for individuals who entered its territory as a result of the immigration policies imposed by the occupying power. In other words, had Latvia accepted that it had such an obligation under international law, it would have been acting against the prohibition on recognising and justifying the violations of international law committed by the USSR. The respondent Government admitted that the impugned decision

by the Latvian legislature had also been guided by the necessity to protect the economic system of the country by avoiding a substantive financial burden. However, considerations of State identity and State continuity as described above had been more important than economic considerations.

170. The respondent Government explained that, after the restoration of its independence, Latvia had created a pension system based on the principle of individual contributions. However, since no pension funds existed at that moment, Latvia voluntarily decided to guarantee a minimum pension to all residents of Latvia, irrespective of their citizenship. Generally speaking, it could hardly be suggested that Latvia ought to have taken responsibility for the full pension entitlements of any person resident on its territory before 1991; instead the obligation to pay pensions for work periods accrued during the occupation fell to the State which had exercised jurisdiction and effective control during the disputed years. Nevertheless, Latvia decided to grant full pension advantages, based on two criteria: first, the beneficiaries' citizenship, and second, the principle of territoriality. Thus, full pension benefits were awarded, firstly, to all citizens of Latvia, regardless of where in the former USSR they had been employed and had resided, and secondly, to all other persons ("permanently resident non-citizens", stateless persons, and foreign nationals) to the extent that they had worked in the Latvian territory. This solution was entirely reasonable. On the one hand, Latvia could legitimately assume additional responsibilities with regard to its own citizens, given their special relationship with the State. On the other hand, those non-citizens who had worked in the Latvian territory during the Soviet regime did contribute to the development of Latvia's economy.

171. The respondent Government considered that the applicants were not in a similar or relevantly comparable situation to that of Latvian citizens. They explained the historical context of the creation of the status of "permanently resident non-citizen" of Latvia. During the Soviet occupation, an extensive influx of civilian workforce and military personnel was artificially organised into the territory of Latvia as a part of a general Sovietisation and Russification policy, resulting in a large-scale transfer of population from the Soviet Union to Latvia. This policy had dramatically altered the ethnic and linguistic composition of society. Referring to the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (advisory opinion of 7 July 2004, *ICJ Reports* 2004), the respondent Government emphasised that such population transfers were prohibited under international law.

172. After 1991, according to the doctrine of State continuity, Latvian citizenship was not granted anew, but only restored to those individuals who had held it prior to the occupation, and to their descendants. As a result, a large number of persons present in Latvia were not automatically granted citizenship. For humanitarian reasons, in order to protect them from

becoming stateless persons, Latvia created the status of “permanently resident non-citizens”. The respondent Government emphasised that the status of “permanently resident non-citizen” had been intended as a temporary status, and that its holders were expected to eventually obtain either Latvian citizenship or that of another State. In that respect, the respondent Government further explained that after 1994, when the Citizenship Act was adopted, “permanently resident non-citizens” became eligible to acquire Latvian citizenship by way of naturalisation. The requirements for naturalisation included knowledge of the Latvian language, of the basic principles of the Latvian Constitution and of the national anthem, and the basic facts of Latvia’s history and culture, and swearing an oath of loyalty to the Republic of Latvia. The applicants could have applied to acquire Latvian citizenship, but had never attempted to do so, and had provided no explanation for their decision. The respondent Government explained that if the applicants were to become Latvian citizens, their pensions would be recalculated to include the periods of employment and mandatory military service in the former USSR outside Latvia. However, they had freely decided not to avail themselves of this opportunity, and the fifth applicant had opted for the nationality of the Russian Federation.

173. The respondent Government recognised that in the *Andrejeva* case the Court had found a violation of Article 14 of the Convention taken together with Article 1 of Protocol No. 1. However, in the light of the foregoing, they considered that this finding had to be understood as based on the decisive fact that, during all the disputed periods, the applicant in that case had resided and worked in the territory of Latvia, forming legal and factual ties with Latvia only. In the present case, however, during the disputed years the applicants had worked or performed their mandatory military service in Russia, Ukraine, Belarus, Turkmenistan, Tajikistan, or Azerbaijan, creating no ties with Latvia in respect of these periods. Thus, while the applicant in the *Andrejeva* case had worked in the territory of Latvia, the applicants in the present case had not. 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. Moreover, the central issue in the *Andrejeva* case was the definition of the concept of “employment in Latvia”, which was not at stake here. In the present case, there was no dispute concerning the fact that the applicants had not lived and resided in Latvia during the years in question. Therefore, unlike in *Andrejeva*, they could not have had any legitimate expectations that they would receive a pension for the contested periods of employment. The respondent Government concluded that the applicants were in a substantially different situation from that of the applicant in the *Andrejeva* case.

174. The respondent Government also recognised that, according to the Court’s case-law, the relevant test for the application of Article 14 of the Convention was whether, but for the condition of entitlement about which

they complained, the applicants would have had a right to receive the benefit in question. However, while in most cases this test would be sufficient, it could not be automatically applied in the present case without taking into account the specific historical background as set out above. To assert otherwise would mean completely disregarding the violations of international law that were committed during and following the occupation of Latvia.

175. Furthermore, contrary to the circumstances in *Andrejeva*, when the present application was lodged the bilateral social-security agreements with Belarus and Russia had already entered in force and the applicants' retirement pensions had been recalculated accordingly. According to the respondent Government, the circumstances in the present case were rather similar to those of *Carson and Others* and *Tarkoiev and Others* (both cited above). The international bilateral agreements on social security entered into by Latvia were based on a mutual understanding of fundamental principles and were the result of continued negotiations between the parties involved, in the course of which the States had sought to identify comparable groups to which the agreements should apply equally. To concur with the applicants' position, challenging the role of the social-security agreements, would not only disregard the freedom of States to conclude bilateral agreements on social issues, but would also render all such agreements meaningless. The respondent Government asked whether two States ought ever to conclude bilateral agreements on social security if their nationals could enjoy all the available social benefits on the basis of Article 14 of the Convention without having to reciprocate.

176. To sum up, the respondent Government concluded that the impugned difference in treatment was directly based on the doctrine of State continuity and, by extension, had its roots in general public international law. It had therefore 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; their pensions were periodically indexed, 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 was indeed no other less restrictive measures to achieve the same legitimate aim. Accordingly, when adopting the domestic-law provision relevant in the present case, Latvia had acted within its margin of appreciation which, in the circumstances of the present case, was wide. The respondent Government therefore concluded that there had been no violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

## 2. *Submissions of the third-party intervener*

177. The Russian Government considered that the very existence of the status of “permanently resident non-citizen” fell foul of the basic standards of the Convention, the bearers of this status being systematically discriminated against in many areas, including that of social and economic rights.

178. The Russian Government further explained that the USSR had been a unified formation. Soviet citizens had been entitled to travel all over the territory of the USSR, often not by their own choice but as a result of compulsory job placement by the State authorities. 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 labour records would be valid throughout the entire territory of their country, that is, the Soviet Union. In these circumstances, the difference in the amount of pension paid to citizens and to non-citizens was obviously unfair and discriminatory.

179. According to the Russian Government, the present case was substantially similar to *Andrejeva*, cited above, and ought to be determined in the same manner. As to the bilateral agreements on social matters concluded by Latvia with some former republics of the USSR, the Russian Government considered that these were not an adequate solution to the problem in issue, since none of these agreements allowed for a retrospective payment of pensions. Moreover, such agreements had been concluded by Latvia with only five out of the fourteen other former Soviet republics, and “permanently resident non-citizens” who had worked in other parts of the former Soviet Union could not have the amounts of their pensions recalculated accordingly. In this connection, the Russian Government specifically referred to the opinions of the ECRI and the Advisory Committee on the FCNM (see paragraphs 87-89 above).

## 3. *The Court’s assessment*

### (a) **General principles**

180. The Court reiterates 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. If, however, a State does decide to create a pension scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 53, ECHR 2006-VI, and *Andrejeva*, cited above, § 77).

181. 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 (see, among many other authorities, *Burden v. the United Kingdom*

[GC], no. 13378/05, § 60, ECHR 2008). However, only differences in treatment based on an identifiable characteristic, or “status”, are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others*, cited above, § 61; *Fábián*, cited above, § 113, and *Molla Sali*, cited above, § 134). Furthermore, not every difference in treatment will amount to a violation of Article 14. A difference of treatment based on a prohibited ground is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Andrejeva*, cited above, § 81; *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013; *Fábián*, cited above, § 113; and *Molla Sali*, cited above, § 135).

182. The Court also reiterates that the provisions of the Convention do not prevent Contracting States from introducing general policy schemes by way of legislative measures whereby a certain category or group of individuals is treated differently from others, provided that the interference with the rights of the statutory category or group as a whole can be justified under the Convention (see *Andrejeva*, cited above, § 83, and *Ždanoka*, cited above, § 112). Indeed, measures of economic and social policy often involve the introduction and application of criteria which are based on making distinctions between categories or groups of individuals (see *J.D. and A. v. the United Kingdom*, cited above, § 81). Moreover, Article 14 does not prohibit Contracting Parties from treating groups differently in order to correct “factual inequalities” between them (see *Guberina v. Croatia*, no. 23682/13, § 70, ECHR 2016, with further references).

183. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment. The scope of the margin of appreciation will vary according to the circumstances, the subject matter and the background (see *Stummer*, cited above, § 88). First and foremost, the nature of the status upon which differential treatment is based weighs heavily in determining the scope of that margin (see *Bah v. the United Kingdom*, no. 56328/07, § 47, ECHR 2011). The margin is very narrow if the distinction is based on an inherent or immutable personal characteristic such as race or sex (see, for example, *D.H. and Others v. the Czech Republic* [GC], no. 57325/00 § 196, ECHR 2007-IV, and *J.D. and A. v. the United Kingdom*, cited above, § 89). The Court has applied the same standard to the criterion of nationality, holding that very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the grounds of nationality as compatible with the Convention (see *Gaygusuz*, § 42; *Andrejeva*, § 87; and *Ribać*, § 53, all cited above). Conversely, the margin of appreciation will be considerably wider, and the justification required will not be as weighty, if the status in question is subject to an element of personal choice, such as immigration status (see *Bah*, cited

above, *ibid.*, and, *mutatis mutandis*, *Makarčeva v. Lithuania* (dec.), no. 31838/19, § 68, 28 September 2021).

184. Secondly, in the context of Article 1 of Protocol No. 1, the Court has held that in matters concerning general measures of economic or social strategy the States usually enjoy a wide margin of appreciation under the Convention (see *Andrejeva*, § 83; *Fábián*, § 115; *Guberina*, § 73; and *British Gurkha Welfare Society and Others*, § 62, all cited above). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Andrejeva*, § 83; *Carson and Others*, § 61; and *Fábián*, § 115, all cited above).

185. On the other hand, as the Court has stressed in the context of Article 14 in conjunction with Article 1 of Protocol No. 1, although the margin of appreciation in the context of general measures of economic or social policy is, in principle, wide, such measures must nevertheless be implemented in a manner that does not violate the prohibition of discrimination as set out in the Convention and complies with the requirement of proportionality (see *Fábián*, cited above, § 115, with further references). Among other areas, this general rule applies in pension matters (see *Stec and Others*, cited above, § 55, and *Jurčić v. Croatia*, no. 54711/15, § 64, 4 February 2021). Hence, in that context the Court has usually limited its acceptance to respect the legislature's policy choice as not "manifestly without reasonable foundation" to circumstances where an alleged difference in treatment resulted from a transitional measure forming part of a scheme carried out in order to correct an inequality (see *Stec and Others*, §§ 61-66; *British Gurkha Welfare Society and Others*, § 81; and *J.D. and A. v. the United Kingdom*, § 88, all cited above).

186. Irrespective of the scope of the State's margin of appreciation, the final decision as to the observance of the Convention's requirements rests with the Court (see, among many other authorities, *Konstantin Markin v. Russia* [GC], no. 30078/06, § 126, ECHR 2012).

187. Lastly, as regards the burden of proof in relation to Article 14 of the Convention, the Court has held that once the applicant has shown a difference in treatment between persons in relevantly similar situations, it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], cited above, § 177; *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 389, ECHR 2012 (extracts); and *Guberina*, cited above, § 74).

188. In the context of complaints of alleged discrimination in a welfare or pensions system, the Court has held that its main task is to assess the compatibility of the impugned features of the system with Article 14, not the individual facts or circumstances of the particular applicants or of others who



are or might be affected by the legislation (see, for example, *Carson and Others*, § 62; *Stec and Others*, §§ 50-67; *Burden*, §§ 58-66; and *Andrejeva*, §§ 74-92, all cited above). Rather, the Court's role is to determine the question of principle, namely whether the legislation as such unlawfully discriminates between persons who are in an analogous situation (*Carson and Others*, § 62, and *British Gurkha Welfare Society and Others*, § 63, both cited above).

**(b) Application to the present case**

189. The Court has already found that the facts of the case fall within the ambit of the substantive article – here, Article 1 of Protocol No. 1 – and that Article 14 of the Convention is therefore applicable to the applicants' complaint (see paragraphs 121-122 above). It remains for the Court to determine, firstly, whether the impugned difference in treatment is based on at least one of the protected grounds set out in Article 14 of the Convention; secondly, whether the applicants are in a relevantly similar situation to that of the respective comparator group, i.e., Latvian citizens; thirdly, whether that difference pursued a legitimate aim; and, fourthly, whether it was proportionate to that aim, satisfying the requirement of a “reasonable and objective justification” for that difference in treatment (see, *mutatis mutandis*, *Vrontou v. Cyprus*, no. 33631/06, § 61, 13 October 2015).

190. As regards the applicants' factual situation, their circumstances can be summarised as follows. All the applicants, with the exception of the third applicant who moved to Latvia when he was three, moved to Latvia and settled there in the course of their adult lives. In the absence of a relevant bilateral agreement, the impact on the second applicant of excluding the entire period of his employment in Azerbaijan, where he worked before settling in Latvia, has not been mitigated by any subsequent measure. The same is true for the period of his military service prior to his settlement in Latvia (see paragraphs 21-24 above). The fourth applicant, who retired in 2008, subsequently benefitted from the recalculation of her retirement pension following the conclusion of the bilateral agreement with Russia, whereby her periods of employment in Russia were taken into account with effect from June 2011. As a result, the remaining impact of the difference concerns the amount of the retirement pension she received during the period of about 3 years and 3 months between the start of her retirement in 2008 and the recalculation in 2011, and the amount relating to the employment period in her native Uzbekistan (about eight years), which remains excluded (see paragraphs 29-33 above). The fifth applicant, who started receiving her retirement pension in 2005, also benefitted from the recalculation in 2011 as far as her employment periods in Russia were concerned. As a result, the remaining impact of the difference concerns the amount of the retirement pension she received during the period of about seven years between the start of her retirement in 2005 and the recalculation in 2011, and the amount

relating to the employment periods in Uzbekistan, Turkmenistan and Tajikistan (about eight years), which remain excluded (see paragraphs 34-37 above). Finally, the third applicant has spent practically all his life in Latvia, interrupting his residence there for the duration of his compulsory military service (about two years) outside Latvia (see paragraphs 25-28 above).

(i) *The alleged ground of discrimination*

191. In the *Andrejeva* judgment, cited above, the Court held:

“87. ... The Court notes ... that as a ‘permanently resident non-citizen’, the applicant is lawfully resident in Latvia on a permanent basis and that she receives a retirement pension in respect of her employment ‘in Latvia’, that is, for entities based in Latvian territory. The national authorities’ refusal to take into account her years of employment ‘outside Latvia’ is based exclusively on the consideration that she does not have Latvian citizenship. It was not disputed in the instant case that a Latvian citizen in the same position as the applicant, having worked in the same enterprise during the same period, would be granted the disputed portion of the retirement pension. Moreover, the parties agreed that if the applicant became a naturalised Latvian citizen she would automatically receive the pension in respect of her entire working life. Nationality is therefore the sole criterion for the distinction complained of ...”

192. In the present case, the Court sees no reason to depart from this conclusion. It appears that in the Latvian legal system the terms “nationality” and “citizenship” have the same meaning (for an example of interchangeable use of both terms, see *Kurić and Others*, cited above). It was clearly stated in Paragraph 1 of the transitional provisions of the State Pensions Act that the impugned difference in treatment is between Latvian citizens and other categories of people – that is, foreign nationals, stateless persons and “permanently resident non-citizens” of Latvia (see paragraph 66 above). Both the Constitutional Court in its judgment of 17 February 2011 and the Latvian Government in its observations before the Court have, in substance, recognised this, justifying the difference in question by the idea that the State has to assume particular responsibility for its own citizens. Moreover, as the respondent Government have pointed out, if the applicants had become Latvian citizens by way of naturalisation, their pensions would be recalculated to include the periods of employment and mandatory military service outside Latvia, and the amount of their pensions would become – albeit only *ex nunc* – identical to the amount that Latvian citizens with the same employment history would receive (see paragraph 172 above).

193. This being so, the Court cannot but reaffirm its earlier conclusion, reached in the *Andrejeva* case, namely that “nationality”, or rather the absence of Latvian citizenship on the applicants’ part, is the sole criterion for the distinction complained of (see *Gaygusuz*, cited above, §§ 40 and 47; *Koua Poirrez v. France* (no. 40892/98, §§ 41 and 47, ECHR 2003-X); and, *mutatis mutandis*, *Rangelov v. Germany*, no. 5123/07, § 99, 22 March 2012). Accordingly, very weighty reasons must be adduced to justify a difference in treatment in such cases. Nonetheless, the specific circumstances of the case

are to be taken into account in determining the scope of the respondent State's margin of appreciation.

*(ii) Whether the applicants are in a relevantly similar situation to that of Latvian citizens*

194. According to the respondent Government, for the purposes of the present case, the applicants are not in a relevantly similar or comparable situation to that of Latvian citizens: the latter are in a special relationship of loyalty, allegiance and mutual obligations with the Latvian State, which, accordingly, has a special responsibility with regard to them, whereas the former group, transferred to Latvia as a result of demographic policies imposed by an occupying power in violation of international law, do not possess such special ties. From this perspective, if the Latvian legislature has decided to grant them pensions on the account of their employment during the Soviet regime in the Latvian territory, this was a reasonable bonus based on the fact that, to the extent that they had worked in Latvia, they had also contributed to that country's economic development (see paragraphs 170-171 above). On the other hand, the applicants' position can be understood as emphasising the identical factual nature of their position and that of a Latvian citizen with a similar employment history; in other words, having or not having Latvian nationality is the only objective difference between them (see paragraph 159 above). Like the applicants, the third-party intervener emphasised the equal status of all former Soviet citizens with regard to labour and pension benefits during the Soviet period (see paragraph 178 above).

195. The Court finds it sufficient at this stage of its examination to note that, with regard to the calculation of their retirement pensions within the Latvian system of occupational pensions, the applicants can be considered to be in a relevantly similar situation to persons with the same employment history but possessing Latvian citizenship. Accordingly, the Court will proceed with an assessment of whether the difference in treatment pursued one or more legitimate aims and whether it was proportional in the light of those aims.

*(iii) The legitimacy of the aims pursued*

196. Drawing on the Constitutional Court's judgment of 17 February 2011, the respondent Government stated that the difference in treatment established by Paragraph 1 of the transitional provisions of the State Pensions Act, instituting the impugned difference in treatment between Latvian citizens and other categories of persons, pursued not one but two aims: namely, protecting the economic system of the country, and safeguarding the constitutional identity of the State by implementing the doctrine of State continuity, the latter aim being more important than the former.

197. In the *Andrejeva* case, cited above, the Court held:

“86. The Court accepts that the difference in treatment complained of pursues at least one legitimate aim that is broadly compatible with the general objectives of the Convention, namely the protection of the country’s economic system. It is undisputed that after the restoration of Latvia’s independence and the subsequent break-up of the USSR, the Latvian authorities were confronted with an abundance of problems linked to both the need to set up a viable social security system and the reduced capacity of the national budget. Furthermore, the fact that the provision in issue was not introduced until 1995, four years after Latvia’s independence had been fully restored, is not decisive in the instant case. It is not surprising that a newly established democratic legislature should need time for reflection in a period of political turmoil to enable it to consider what measures were required to ensure the country’s economic well-being. It cannot therefore be concluded that the fact that Latvia did not introduce the difference in treatment until 1995 showed that the State itself did not deem such a measure necessary to protect the national economy (see, *mutatis mutandis*, *Ždanoka*, cited above, § 131).”

198. The Court notes that the Constitutional Court gave its second judgment regarding pension rights in 2011, that is, after the delivery of the Court’s judgment in *Andrejeva*, which was taken into account and analysed by the Constitutional Court. According to the Constitutional Court’s reasoning, the impugned difference in treatment has at least two legitimate aims. The first, and most important according to the domestic authorities, was the need to protect the constitutional identity of the Republic of Latvia, which is based on the principle of State continuity as set out in the Declaration on the Restoration of Independence and subsequent constitutional provisions and doctrine. The Court observes that the essential point in this regard is not the doctrine of State continuity *per se* but rather the constitutional foundation of the Republic of Latvia following the restoration of its independence. The underlying arguments for Latvia’s doctrine of State continuity stem from the overall historical and demographic background which, as argued by the Government, accordingly also informed the setting up of the impugned system of retirement pensions following the restoration of Latvia’s independence. More specifically, the Court acknowledges that the aim in that context was to avoid retrospective approbation of the consequences of the immigration policy practised in the period of unlawful occupation and annexation of the country. In this specific historical context, such an aim, as pursued by the Latvian legislature when establishing the system of retirement pensions, was consistent with the efforts to rebuild the nation’s life following the restoration of independence, and the Court accepts this aim as legitimate. The second legitimate aim, as the Court established in the *Andrejeva* case, was the protection of the country’s economic system (*ibid.*, § 86).

199. It therefore remains to be determined whether there was a reasonable relationship of proportionality between these aims and the means employed by the Latvian authorities.

*(iv) The proportionality of the difference in treatment**(α) Preliminary considerations*

200. The Court reiterates at the outset that it has in the past examined several cases concerning the obligations of the successor States to the former Yugoslavia as regards individual patrimonial rights and interests after the disintegration of that State (see, for example, *Kurić and Others*, cited above, and *Kovačić and Others v. Slovenia* ([GC], nos. 44574/98 and 2 others, 3 October 2008). However, it considers that the rules and principles of international law concerning State succession in pension matters are of little or no use for the purposes of the present case, as the official and consistent legal position of Latvia is based on the doctrine of State continuity, in the sense of a firm and coherent denial of any link of State succession between the former Soviet Union and the Latvian State.

201. The Court also reiterates that there is no right under Article 1 of Protocol No. 1 taken alone to receive a social security benefit or pension payment of any kind or amount, unless national law provides for such an entitlement (see, for example, *Damjanac v. Croatia*, no. 52943/10, § 87, 24 October 2013). Furthermore, given that the Latvian legislature has decided to grant occupational retirement pensions for the work performed during the historical period in question, the Court perceives no reasonable objection, from the point of view of Convention law, to a policy generally excluding periods of employment accrued while individuals were residing and working outside the Latvian territory. The core issue in the present case, however, is not whether the legitimate aims pursued by Latvia can justify not granting pensions at all, or granting them for the periods of work done in Latvia only, but whether they can justify the difference made in this regard between those holding Latvian citizenship and those holding the status of “permanently resident non-citizens”, and whether there is sufficient justification for this difference in treatment in the light of all the circumstances of the case.

202. The Court further notes that in the case of *Andrejeva*, cited above, it found a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. While mindful of the broad margin of appreciation enjoyed by the respondent State in the field of social security, the Court was not convinced that there had been a reasonable relationship of proportionality with respect to the legitimate aim of protecting the country’s economic system (*ibid*, § 89). In this regard, the Court reiterates that, while it is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases (see *Martinie v. France* [GC], no. 58675/00, § 54, ECHR 2006-VI, and *Magyar Helsinki Bizottság v. Hungary* [GC], no. 18030/11, § 150, 8 November 2016). The Court must therefore determine whether there are any such

reasons in the instant case, especially in the light of the expanded reasoning adduced by the Constitutional Court in its judgment of 17 February 2011.

203. The Court agrees with the Constitutional Court that upon the restoration of its independence Latvia was not obliged to assume the responsibilities of the USSR. Having undergone unlawful occupation and subsequent annexation, a State is not required to assume the public-law obligations accrued by the illegally established public authorities of the occupying or annexing power. Latvia was neither automatically bound by such obligations based on the Soviet period nor obliged to undertake obligations emanating from obligations of the occupying or annexing State. The Court observes, however, that once Latvia had put in place a system of occupational retirement pensions in 1996 which allowed for periods of employment accrued outside its territory to be counted towards the pension for Latvian nationals, it was bound, as from the date on which the Convention entered into force in respect of Latvia (that is, 27 June 1997), to comply with Article 14 taken in conjunction with Article 1 of Protocol No. 1.

(β) Considerations relating to the scope of the margin of appreciation

204. Although an overview of the relevant general principles deriving from the Court's case-law is presented above (see paragraphs 183-185), and given that the margin of appreciation to be accorded to the competent national authorities will vary in the light of the nature of the issues and the seriousness of the interests at stake, the Court finds it important at the outset to proceed with a closer analysis of the various relevant considerations to be taken into account when determining the appropriate scope of the margin of appreciation in the specific circumstances of the present case. In this regard, the Court observes the following.

205. The Court has repeatedly held, on the one hand, that in the field of social security and fiscal matters the margin of appreciation enjoyed by States must be wide (see paragraph 184 above). On the other hand, it has also repeatedly held that only "very weighty reasons" could justify a difference in treatment based exclusively on the grounds of nationality for the purposes of Article 14 of the Convention, thus indicating a narrow margin and strict scrutiny by the Court (see *Gaygusuz*, cited above, § 42; *Andrejeva*, cited above, § 87; and *Ribač*, cited above, § 53). In *Stec* (cited above, § 52) the Court set out the requirement of "very weighty reasons", followed by the principle of "wide margin" in general measures of economic or social strategy, including a reference to the test of "manifestly without reasonable foundation" (see also, albeit in the context of "other status", *Stummer*, cited above, §§ 101 and 109).

206. That being stated, the Court notes, firstly, that while the scope of the margin of appreciation clearly cannot be the same as regards the adoption of general measures of economic and social policy and as regards the introduction, in that context, of differences in treatment based solely on

criteria such as nationality, the Court finds it reasonable to consider that in a field where a wide margin is, and must be, granted to the State in formulating general measures, even the assessment of what may constitute “very weighty reasons” for the purposes of the application of Article 14 may have to vary in degree depending on the context and circumstances.

207. In its case-law, the Court has previously acknowledged that there may be valid reasons for giving special treatment to those whose link with a country stems from birth within it or who otherwise have a special link with a country (see *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 88, Series A no. 94, and *Ponomaryovi v. Bulgaria*, no. 5335/05, §§ 54-56, ECHR 2011). Thus, in *Abdulaziz, Cabales and Balkandali*, the Court accepted a measure whereby the United Kingdom (where, for historical reasons, several categories of “nationality” exist, with differences in the legal position notably regarding rights of entry and residence) restricted family reunification rights between spouses in respect of certain “nationals”, depending on where the spouse already resident in the country had been born.

208. In the present case, the Court notes in particular that the special status of “permanently resident non-citizens” was created by the Latvian legislature following the restoration of Latvia’s independence with a view to addressing the consequences of a situation which had arisen from an occupation and subsequent annexation in breach of international law (see paragraphs 105-106 above).

209. Another factor to be taken into account with regard to the scope of the margin of appreciation is the specific temporal scope and context of the impugned measure. In this regard, it is important to underline that the sole issue in the present case concerns a difference in treatment which was introduced when the Latvian system of employment pensions was set up and which concerns only periods of employment completed outside the territory of Latvia in the period prior to the restoration of Latvia’s independence.

210. The Court therefore notes that the present case must be distinguished from that of *Luczak v. Poland* (no. 77782/01, ECHR 2007-XIII). In that case, the applicant was refused admission to the farmers’ social-security scheme on account of his nationality. Thus, he was prevented from obtaining and contributing to social cover for future periods of occupational activity as a farmer in the respondent State. By contrast, the issue in the present case concerns past periods of employment, completed outside the respondent State before the introduction of the occupational pension scheme. In this regard, it can be noted that the Court has previously accepted a difference in treatment based on nationality for reasons relating to the date from which the applicants developed ties with the respondent State (see *British Gurkha Welfare Society and Others*, cited above, §§ 84-85). The Court notes that in that case the applicants were Nepalese Gurkha soldiers whose pension entitlements were significantly lower than those of British soldiers with whom the Gurkhas had

served, in the same units, in various parts of the world. The contested periods of service in respect of which there was a difference in the calculation and amount of the pensions between the Nepalese and the British nationals had been accrued outside the United Kingdom, at a time before the Gurkhas had any links to Britain. Although the contested periods consisted of service in the British Army abroad, in the units to which they were integrated, the Court found no violation of Article 14 in conjunction with Article 1 of Protocol No. 1, accepting that the respondent State had acted within its margin of appreciation when adopting the impugned domestic provisions, under which the equalisation of pension rights between the Nepalese and the British nationals was foreseen only for the period following the removal of the Gurkhas' home base to the United Kingdom.

211. As highlighted by the Constitutional Court and the respondent Government, the choices made by the Latvian legislature when setting up the employment-based retirement pension system and determining the criteria for entitlement therein were directly linked to the particular historical and demographic circumstances of Latvia's situation at the relevant time, together with the constraints imposed by the severe economic difficulties prevailing at the time. Thus, the present case, which concerns only past periods of employment dating back to the years prior to the restoration of Latvia's independence, is characterised by the specific background to the impugned transitory measure concerning this pension system. The Court points out that it has already acknowledged the need for a wide margin of appreciation in the context of such fundamental changes to a country's system as the transition from a totalitarian regime to a democratic form of government and the reform of the State's political, legal and economic structure, phenomena which inevitably involve the enactment of large-scale economic and social legislation (see *Broniowski v. Poland* [GC], no. 31443/96, §§ 149 and 162-63, ECHR 2004-V). Furthermore, the Court reiterates that it may have regard to facts prior to the ratification of the Convention by the respondent State where such circumstances could be considered to have created a situation extending beyond that date or may be relevant for the understanding of facts occurring after that date (see, *mutatis mutandis*, *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 74, ECHR 2002-X, and *Hoti v. Croatia*, no. 63311/14, § 85, 26 April 2018).

212. Moreover, the Court notes that while the nature of a social benefit, in particular the question whether or to what extent it depends on prior individual contributions payable by the beneficiaries, is not in itself decisive for the determination of whether it constitutes an entitlement falling within the scope or the ambit of Article 1 of Protocol No. 1 (see *Andrejeva*, cited above, § 76), the margin of appreciation may nonetheless depend on whether the impugned measure entails a loss of individual contributions paid by or on behalf of the individual affected by the measure (compare and contrast *Pichkur v. Ukraine*, no. 10441/06, § 51, 7 November 2013). Another factor



which the Court has also taken into account is whether the lack of entitlement left the individual in question without social cover (see *Stummer*, cited above, § 108, and *Janković*, cited above).

213. In view of the above considerations, 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 case.

(γ) The assessment of proportionality

214. The Court observes, firstly, that the ground for the impugned difference in treatment which was introduced in the transitional provisions of the occupational pension system set up by the Latvian legislature is directly linked with the primary aim relied on by the Latvian Constitutional Court (see paragraph 196 above). The preferential treatment accorded to those possessing Latvian citizenship in respect of past periods of employment performed outside Latvia is therefore in line with that legitimate aim.

215. Secondly, the Court notes that the difference in treatment depended on the possession or, rather the lack, of Latvian citizenship, a legal status distinct from the national origin of the persons concerned and available to the applicants as “permanently resident non-citizens”. In this regard the Court notes, with reference to the Constitutional Court’s judgment, that 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 (see paragraph 55 above). In this respect, the Court can accept 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 (see, *mutatis mutandis*, *Bah*, cited above, § 47). 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. It is clear that naturalisation depends on the fulfilment of certain conditions and may require certain efforts. This does not, however, alter the fact that the question of legal status, namely the choice between remaining a “permanently resident non-citizen” and acceding to citizenship, is largely a matter of personal aspiration rather than an immutable situation, especially in the light of the considerable time-frame available to the applicants to exercise that option (see paragraph 190 above).

216. Thirdly, the difference in treatment only concerned past periods of employment, completed prior to the introduction of the pension scheme in question. The choices made by the Latvian legislature when determining the

criteria for entitlements in the employment-based retirement pension system were directly linked to the particular historical, economic and demographic circumstances, that is, the five decades of unlawful occupation and annexation, and the subsequent, particularly difficult situation prevailing in the wake of the restoration of Latvia's independence. In contrast to the case of *Andrejeva*, the difference in treatment was limited to periods of employment completed by the applicants outside Latvia, before they settled in Latvia or had any other links with that country (see *British Gurkha Welfare Society and Others*, cited above, and paragraph 210 above). Only one of the applicants (the third) had been resident in Latvia prior to the period of military service at issue.

217. Fourthly, the impugned difference in treatment neither concerns the applicants' entitlement to basic pension benefits, accorded under Latvian law irrespective of the individual's employment history, nor does it entail any deprivation, or other loss, of benefits based on financial contributions made by the applicants in respect of the employment periods in question.

218. Furthermore, with particular regard to the second legitimate aim pursued (see paragraph 196 above), the Court notes that the Latvian system of employment pensions at issue was based on social insurance contributions and functioned according to the principle of solidarity, in the sense that the total amount of contributions collected was used to fund the current disbursement of pensions, payable to all the beneficiaries at a given time. Thus, determining the scope of eligible periods of employment inevitably had an impact on the level of the benefits and the contributions required to fund them. The Court considers that these types of trade-offs in social welfare systems generally call for a wide margin of appreciation. Given the particular difficulties and the complex policy choices facing the Latvian authorities after the restoration of independence, the Court cannot but recognise, in its overall assessment, a substantial degree of deference to be afforded to the Government (see, *mutatis mutandis*, *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 113, 25 October 2012).

219. In sum, the Court accepts, in the light of all the above circumstances and the respective margin of appreciation, that the impugned difference in treatment was consistent with the legitimate aims pursued and that the grounds relied upon by the Latvian authorities to justify it can be deemed to amount to very weighty reasons.

(v) *Conclusion*

220. In view of all the above considerations, the Court considers that in the specific circumstances of the present case the respondent State has not overstepped its margin of appreciation with regard to the applicants. The Court thus finds that it must reach a different conclusion from that of the *Andrejeva* case (see, *a contrario*, *Martinie*, cited above § 54).

221. There has accordingly been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Decides*, unanimously, to strike the application out of its list of cases insofar as the first applicant is concerned;
2. *Declares*, unanimously, the remainder of the application admissible;
3. *Holds*, by ten votes to seven, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 9 June 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos  
Deputy Registrar

Robert Spano  
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

- (a) concurring opinion of Judge Wojtyczek;
- (b) joint dissenting opinion of Judges O’Leary, Grozev and Lemmens;
- (c) dissenting opinion of Judge Seibert-Fohr, joined by Judges Turković, Lubarda and Chanturia.

R.S.  
A.C.

## CONCURRING OPINION OF JUDGE WOJTYCZEK

I fully agree with both the outcome and the main line of the reasoning in the instant case.

I should merely like to note that the reasoning of the Court becomes even more persuasive if it is viewed from the broader perspective of international law. The relevant international-law context has been explained in detail in the brilliant and powerful dissenting opinion of Judge Ziemele in the case of *Andrejeva v. Latvia* ([GC], no. 55707/00, ECHR 2009). I note, in particular, the following conclusion formulated by her (in point 25 of her opinion):

“In sum, there was no obligation under international law to take any responsibility for the years of employment accrued under the Soviet Union unless and until this was agreed through inter-State negotiations. However, in the special context of illegal annexation (see point 26 below), citizens of the injured State had a strong expectation that they would not have to suffer any more than they already had and that this might as well translate into their right to pension advantages. In other words, there is nothing unreasonable in the fact that after long years spent under an unlawful totalitarian regime the independent legislature decided to reward the citizens.”

I agree with this, and with the other views expressed by Judge Ziemele in her dissenting opinion. It is not necessary to add anything here, as everything has been said there, and has been said so well.

JOINT DISSENTING OPINION OF JUDGES O’LEARY,  
GROZEV AND LEMMENS

I. INTRODUCTION

1. To our regret, we cannot agree with the majority that there has been no violation of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1. In our opinion, after engaging fully with the 2011 judgment of the Latvian Constitutional Court in accordance with good judicial dialogue, the Court should nevertheless have confirmed its ruling in *Andrejeva v. Latvia* ([GC], no. 55707/00, ECHR 2009) and found that in this case too there has been a violation of Article 14.

We had the advantage of reading the dissenting opinion of our colleague Judge Seibert-Fohr, joined by Judges Turković, Lubarda and Chanturia, and agree with much of their analysis. We have preferred, however, to focus on the application of the general principles on equality and non-discrimination to the specific facts of the present case, taking into account the specific position of Latvian non-citizens. The two opinions are complementary.

II. THE FACTS AND THE CONTEXT OF THE CASE

2. In the late 1980s, a feeling of discontent with the Soviet regime among the population living at that time in Latvia led to a movement in favour of State independence and democratisation of the political system, which was confirmed by the results of a national plebiscite in which all inhabitants of Latvia, then citizens of the former Soviet Union, participated. In March 1990, the newly elected parliament adopted a declaration re-establishing Latvia’s independence. The Citizenship Act subsequently adopted defined who among these former Soviet citizens were to be considered Latvian citizens, reserving citizenship to those who had been Latvian citizens up to 17 June 1940 as well as their descendants. By contrast, former Soviet citizens who were resident in Latvia but who did not fulfil the conditions for automatically obtaining Latvian citizenship and who had not subsequently obtained any other nationality were granted the status of “permanently resident non-citizen” under the Act of 12 April 1995 on the status of former USSR citizens without Latvian or other citizenship (see the applicable rules as in force at the time, in *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, § 47, ECHR 2007-I; see also the judgment of the Constitutional Court of 17 February 2011, § 13, quoted in paragraph 55 of the present judgment).

The number of non-citizens residing in Latvia has declined considerably since the restoration of independence. By 2020, non-citizens constituted roughly 10 % of the total population, down from roughly 30% in 1990. The majority of non-citizens are ethnic Russians (see the ECRI report on Latvia

adopted on 4 December 2018, §§ 55-56, quoted in paragraph 88 of the present judgment).

The presence in Latvia of those who would become non-citizens was primarily a result of the vicissitudes of history. When they came to live in Latvia, the territory was part of the Soviet Union and it is uncontested that, following the Soviet annexation in 1940 and unlawful occupation since then, the authorities relentlessly pursued a semi-official policy of Russification (see the recent report of the Venice Commission on amendments to the legislation on education in minority languages in Latvia, 18 June 2020, CDL-AD(2020)012; see also paragraph 17 below). Representative of other non-citizens, “some of [the applicants] arrived at a young age, others shortly before the restoration of Latvia’s independence in 1990-91” (see paragraph 18 of the present judgment). They all continued to build their lives in Latvia after the restoration of Latvia’s independence. They were at all times, and still are, lawful residents of Latvia. Indeed, to borrow the words of another Court judgment regarding non-citizens, Latvia is the country “where they had developed ... the network of personal, social and economic relations that make up the private life of every human being” (see *Slivenko v. Latvia* [GC], no. 48321/99, § 96, ECHR 2003-X).

3. Like *Andrejeva v. Latvia*, the present case is about the treatment reserved to permanently resident non-citizens in relation to their retirement pensions under the State Pensions Act of 1995.

While, as a rule, the amount of the pension is based on the period during which the entitled person, the employer, or both have paid contributions to the pension system (see paragraph 65 of the judgment), years of employment under the Soviet regime, for which evidently no contributions were paid to the as yet unestablished Latvian pension system, are, under certain conditions, taken into account as well. These conditions are set out in paragraph 1 of the transitional provisions of the Act (see paragraphs 66-67 of the present judgment).

We agree with the majority that, “from the point of view of Convention law”, there would be no objection “to a policy generally excluding periods of employment accrued while individuals were residing and working outside the Latvian territory” (see paragraph 201 of the present judgment). However, when establishing its pension scheme in 1995, Latvia took the decision to take such periods of work into account. Although Article 1 of Protocol No. 1 does not include the right to receive a social-security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14 (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2005-X, quoted in *Andrejeva*, cited above, § 79, in turn quoted in paragraph 121 of the present judgment).

Paragraph 1 of the transitional provisions lists twelve periods equivalent to employment. For citizens, periods of employment and all twelve equivalent

periods accrued in the territory of Latvia and of the former Soviet Union are to be counted. For “foreign nationals, stateless persons and non-citizens of Latvia”, periods of employment and all twelve equivalent periods accrued in the territory of Latvia are to be counted, as they are for citizens. By contrast, for these three categories of persons, only three out of the twelve equivalent periods are to be counted where they were accrued in another territory of the former Soviet Union.

Compared to foreign nationals, stateless persons and permanently resident non-citizens, citizens of Latvia thus receive a “supplement” (see the term used by the Government, paragraph 167 of the present judgment) for periods of employment and certain equivalent periods accrued outside the territory of Latvia. The question raised by the application is whether the denial of this “supplement” to the applicant non-citizens can be justified or whether it constitutes discrimination based exclusively on grounds of nationality.

4. The situation of the applicants in the present case is similar to that of the applicant in the *Andrejeva* case. Ms Andrejeva was born in Kazakhstan and came to Latvia in 1954, at the age of 12. She was permanently resident there ever since (*Andrejeva*, cited above, § 10). In the present case, the second applicant was born in Azerbaijan and came to Latvia in 1968, at the age of 30; the third applicant was born in Russia and came to Latvia in 1951, at the age of 3; the fourth applicant was born in Uzbekistan and came to Latvia in 1987, at the age of 41; the fifth applicant was born in Russia and came to Latvia in 1987, at the age of 44 (see paragraphs 21, 25, 29 and 34 of the judgment). The applicants thus arrived in Latvia either as a child (third applicant) or in the middle of their professional lives (second, fourth and fifth applicant).

The Constitutional Court, in its judgment of 17 February 2011, tried to distinguish the situation of the applicants from that of Ms Andrejeva. While they had all worked for enterprises placed under the authority of the Soviet Union or another Soviet Republic, Ms Andrejeva had worked for a department located in the territory of Latvia, in contrast to the applicants who had worked outside that territory (judgment of the Constitutional Court of 17 February 2011, § 9, quoted in paragraph 51 of the present judgment). However, the fact that Ms Andrejeva was employed by a Soviet company which was also physically present in Latvian territory was explicitly considered not decisive (see *Andrejeva*, cited above, § 85, as well as §§ 15 and 53 of that judgment, demonstrating on what basis the pension had been refused and on what basis the respondent State had pleaded the case) (see also paragraph 1 of the dissenting opinion of Judge Seibert-Fohr et al.).

5. The reason why this case is brought again before the Grand Chamber is the reaction of the Constitutional Court to the *Andrejeva* judgment (judgment of the Constitutional Court of 17 February 2011, summarised and quoted in paragraphs 49-59 of the present judgment). Rather than recognising the need for the State to implement the *Andrejeva* judgment, the

Constitutional Court tried to distinguish the facts of both cases (see paragraph 4 above), gave the *Andrejeva* judgment a very narrow reading (as has been noted by ECRI in its report on Latvia of 9 December 2011, § 130, quoted in paragraph 87 of the judgment), and then reaffirmed its previous finding of 26 June 2001 (for a short summary of the 2001 judgment, see paragraph 39 of the present judgment). It thus reaffirmed the compatibility of the impugned pension legislation with the principle of non-discrimination, notwithstanding the fact that the Strasbourg Court had found a violation of Article 14 of the Convention.

The majority have decided to follow the Constitutional Court, thus disavowing the conclusion reached by this Court in *Andrejeva*. This is surprising since, as acknowledged by the majority, the Court “should not depart, without good reason, from precedents laid down in previous cases” (see paragraph 202 of the judgment). For the reasons explained below, we consider that the second legitimate aim now invoked by the Government to justify the difference in treatment between citizens and permanently resident non-citizens (the constitutional identity argument based on the State continuity doctrine, developed at length by the Constitutional Court in its 2011 judgment) does not provide a sufficient or good reason to overturn a judgment adopted in 2009 by a majority of 16 against 1.

6. The applicants filed their application in 2011. It would quite clearly have been preferable if this case had been decided much earlier. Unfortunately, the prioritisation policy of the Court as well as its lack of resources delayed the examination of the case. The hearing and first deliberations finally took place on 26 May 2021.

When the Grand Chamber deliberated for a second time on 2 March 2022, the geopolitical situation in the region and in Europe had changed dramatically. The current events obviously do not have an influence on the outcome of the case. They illustrate, however, how acutely sensitive the relations between different communities in a given State may be. We are fully aware both of the importance of this case and of its sensitivity, which transcend the national borders of Latvia.

### III. ARTICLE 14 OF THE CONVENTION: GENERAL PRINCIPLES

7. We are satisfied that the majority confirm *Andrejeva* and other well-established case-law with respect to the applicability of Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1, to the impugned legislation, which provides for the payment as of right of a pension (see paragraphs 119-22 of the present judgment).

On the merits, we are not in essence in disagreement with the majority so far as the applicable principles are concerned. In particular, we fully agree with the four-step analysis which the majority consider it necessary to undertake (grounds for the difference in treatment; relevantly similar



situations; legitimate aim; proportionality) (see paragraph 189 of the present judgment).

8. What we find unconvincing, however, is the majority’s application of some of those principles and the digression from well-established case-law relating to the State’s margin of appreciation and the intensity of the Court’s scrutiny (see paragraphs 183-85 of the present judgment).

It is true that this case is about a matter concerning general measures of economic or social strategy, for which the Court generally holds that States enjoy a wide margin of appreciation under the Convention (see paragraph 184 of the present judgment). However, this case is also, and more importantly, about a difference in treatment based exclusively on grounds of nationality. In such a case, even if the difference in treatment results from general measures of economic or social strategy, “very weighty reasons” have to be put forward by a respondent State before the Court could regard the difference in treatment as compatible with Article 14 of the Convention (see paragraph 183 of the judgment, referring to *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV; *Andrejeva*, cited above, § 87; and *Ribač v. Slovenia*, no. 57101/10, § 53, 5 December 2017). Like our other dissenting colleagues, we consider that it is this criterion of “very weighty reasons” that should have been applied in the present case. This seems to have been accepted also by the Constitutional Court (see the judgment of 17 February 2011, § 13, quoted in paragraph 55 of the present judgment).

The majority, however, while not entirely overriding that criterion, nevertheless stress that in assessing whether “very weighty reasons” have been put forward, the Court must take into account the circumstances of the case “in determining the scope of the respondent State’s margin of appreciation” (see paragraph 193 of the judgment; see also paragraph 206 of the judgment). After having referred to a number of these circumstances, they conclude 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 case” (see paragraph 213 of the present judgment).

It is difficult for us to understand what exactly the majority purport to say. At best, they blow hot and cold at the same time. At worst, they undermine the strict criterion of “very weighty reasons” by giving the notion of a wide margin of appreciation a prominent, perhaps even determinative, place in it.

We continue to adhere to the criterion of “very weighty reasons” required for the justification of a difference in treatment based exclusively on nationality. For the reasons explained below, we think the Court was right in this case to engage more fully with the Constitutional Court’s proposed justifications for the impugned discrimination, given the political and social sensitivity of this issue in Latvia and the importance of judicial dialogue in a

system based on shared responsibility. We agree also that the pension legislation adopted in 1995 cannot be dissociated from the wider context of the constitutional and international law arrangements made after Latvia regained its independence in 1991 (see also *Slivenko*, cited above, § 111, in relation to the expulsion of former Soviet citizens). However, we do not consider that the majority have justified why the Court should reduce the intensity of its scrutiny in the manner suggested. The circumstances of the case – as well as the subject matter and its background – may certainly be taken into account when determining the scope of the State’s margin of appreciation in assessing “whether and to what extent differences in otherwise similar situations justify a different treatment” (see paragraph 183 of the present judgment; see also, among many others, *Rasmussen v. Denmark*, 28 November 1984, § 40, Series A no. 87; *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011; and *Molla Sali v. Greece* [GC], no. 20452/14, § 136, 19 December 2018). However, according to the Court’s case-law, the fact that the difference in treatment is based exclusively on grounds of nationality is precisely the decisive circumstance for leaving to States a reduced margin and requiring “very weighty reasons”.

#### IV. APPLICATION OF THE GENERAL PRINCIPLES TO THE FACTS OF THE CASE

##### A. The ground of discrimination

9. The majority confirm the conclusion reached in *Andrejeva*, namely that nationality, or rather the absence of Latvian citizenship on the applicants’ part, is the sole criterion for the distinction complained of (see paragraph 193 of the present judgment). We agree.

We would like to stress that the difference in treatment between citizens and permanently resident non-citizens is directly based on the ground of nationality. This was a deliberate choice on the part of the legislature. We are not dealing with a case of indirect discrimination on grounds of nationality resulting, for instance, from the application of a criterion such as length of residence in Latvia. We note that such a criterion could have made it possible to differentiate between the various applicants (who have lived in Latvia for different periods of their life), whereas the criterion actually applied allows for no such differentiation. By focusing on the “impugned features of the system ... [and] not the individual facts or circumstances of the particular applicants” (see paragraph 188 of the present judgment), the majority glosses over the differences between the applicants but also the alternatives open to the respondent State to comply with the Court’s previous judgment in *Andrejeva*. Such alternatives could have accommodated the legitimate aims pursued while respecting the principle of proportionality.

## **B. Whether the applicants are in a relevantly similar situation to that of Latvian citizens**

10. Crucially, the majority confirm that “the applicants can be considered to be in a relevantly similar situation to persons *with the same employment history* but possessing Latvian citizenship” (see paragraph 195 of the present judgment, emphasis added). We agree.

We note that the applicants, as permanently resident non-citizens, are in fact not only treated differently to citizens, but that with respect to the reckoning of periods of employment and equivalent periods accrued outside the territory of Latvia, they are equated with foreign nationals and stateless persons (see paragraph 3 above), notwithstanding their recognised and longstanding links with Latvia.

By accepting, firstly, that non-citizens are similarly situated as regards their pension entitlement and, secondly, that the difference in treatment complained of is directly based on nationality, the majority confirm that this case is on all fours with *Andrejeva*, thus underlining the need for very solid reasons for overruling the latter.

## **C. The legitimacy of the aims pursued**

11. As indicated by the majority, the Government argue that the difference in treatment between citizens and permanently resident non-citizens pursued two aims: “safeguarding the constitutional identity of the State by implementing the doctrine of State continuity” and “protecting the economic system of the country” (see paragraph 196 of the present judgment). We will consider both aims in turn.

## **V. THE DOCTRINE OF STATE CONTINUITY AND THE PROTECTION OF LATVIA’S CONSTITUTIONAL IDENTITY**

12. The application of the doctrine of State continuity means that the Republic of Latvia, established in 1918, continued to exist *de jure* under the illegal occupation by the Soviet Union and that it was the same State whose independence was restored in 1990 (see the judgment of the Constitutional Court of 17 February 2011, § 11.1, quoted in paragraph 53 of the present judgment). The doctrine implies that “the acts of the illegally established public authorities of the [occupying] State in the field of public law are not binding on the State which has restored its independence” (same judgment, § 11.3), and that “the restored State is not required to undertake any obligations emanating from the obligations of the occupying State” (*ibid.*).

At this point, we would like to note that the issue raised by the present application does not concern the undertaking by Latvia of any of the obligations of the Soviet Union. As in *Andrejeva*, this case concerns a

commitment by Latvia “to pay pensions to individuals in respect of periods of employment outside its territory”, undertaken “of its own accord” (*Andrejeva*, cited above, § 78; see also paragraph 203 of the present judgment). The applicants, like Ms Andrejeva, are not alleging a violation of a pecuniary right guaranteed by Article 1 of Protocol No. 1 taken alone. Their complaint concerns a difference in treatment prohibited by Article 14 of the Convention; if the State concerned decided, *despite everything*, to pay retirement pensions in respect of periods of employment outside national territory, it should do so without any discrimination (*ibid.*, § 54; see paragraph 3 above).

13. The majority consider that the essential point in relation to this first legitimate aim relied on is the need to protect the constitutional foundation of Latvia following the restoration of independence. The impugned difference in treatment, seen in this context and in relation to the doctrine of State continuity, was “to avoid retrospective approbation of the consequences of the immigration policy practiced in the period of unlawful occupation and annexation of the country” (see paragraph 198 of the present judgment).

We can agree with the majority’s assessment that this could be regarded as a legitimate aim (*ibid.*). Still, the allocation of pension supplements seems to us far from being a natural instrument for regulating issues relating to a State’s constitutional foundation (see paragraph 24 below). The question thus is whether the pursuit of this aim can go as far as to deny advantages to any and all individuals who took up residence in Latvia as a consequence of the immigration policy practiced by the Soviet Union. This question is something we will consider below under the proportionality requirement (see paragraphs 17 and 24 below).

## VI. PROTECTION OF THE ECONOMIC SYSTEM OF THE COUNTRY

14. The majority also accept that the protection of the country’s economic system is a legitimate aim (see paragraph 198 of the judgment).

We agree with that assessment, which is in line with *Andrejeva* (cited above, § 86). It should be noted, however, that this aim was linked to the challenges faced by Latvia after the restoration of its independence, when it had to set up a viable social-security system and had only a limited national budget (*ibid.*). It remains to be seen whether these challenges were still sufficiently serious almost twenty years later when the Constitutional Court declined to apply *Andrejeva* and thereafter. This is again a question which we will consider under the proportionality requirement (see paragraph 25 below).

### **The proportionality of the difference in treatment**

15. When assessing the proportionality of the denial of the same pension advantages to the permanently resident non-citizens, the majority take into

account five specific factors. Four of them relate specifically to the primary aim of protecting Latvia’s constitutional identity and avoiding retrospective approbation of the consequences of the Soviet Union’s immigration policy (see paragraphs 214-17 of the present judgment), the fifth one relates to the secondary aim of the protection of the economic system of the country (see paragraph 218 of the present judgment). We will comment on these factors in turn.

We note that, although the Government invoke the argument of the bilateral social-security agreements with Belarus and Russia (see paragraph 175 of the present judgment), the majority do not seem to consider it useful to rely on the existence of these agreements. Indeed, in *Andrejeva* the Court held that such agreements could not absolve Latvia of its responsibility under Article 14 of the Convention (*Andrejeva*, cited above, § 90; see also *Ribać*, cited above, § 65). Moreover, bilateral agreements have not been signed with all of the former Soviet republics (see paragraph 79 of the judgment), and they do not seem to allow for a retrospective recalculation of pension entitlement (see paragraphs 80-81 of the present judgment).

#### VII. FACTORS RELATING TO THE DOCTRINE OF STATE CONTINUITY AND THE PROTECTION OF LATVIA’S CONSTITUTIONAL IDENTITY

16. The majority, first of all, observe that the ground for the impugned difference in treatment “is directly linked with the primary aim which the Latvian Constitutional Court relied on”. They consider that the preferential treatment accorded to those possessing Latvian citizenship is “in line with” that legitimate aim (see paragraph 214 of the present judgment).

We understand that with this the majority argue in substance that the aim pursued by the legislature could be achieved by the difference in treatment created by paragraph 1 of the transitional provisions of the State Pensions Act.

While the appropriateness of a measure is indeed a necessary condition for its proportionality (see *Rasmussen*, cited above, § 41, and *J.D. and A v. the United Kingdom*, nos. 32949/17 and 34614/17, §§ 99 and 104, 24 October 2019), the question in this case is whether the impugned difference in treatment was an excessive means to achieve the stated aim.

17. It is uncontested that “during the Soviet occupation, an extensive influx of civilian workforce and military personnel was artificially organised into the territory of Latvia as a part of a general Sovietisation and Russification policy, resulting in a large-scale transfer of population from the Soviet Union to Latvia” (see the submissions of the Government in paragraph 171 of the judgment). The Government argued “that such population transfers were prohibited under international law” (*ibid.*). We do not question that characterisation. Nor do we underestimate the suffering caused during the

decades of occupation to the native Latvian population and the challenges which ensued following the restoration of independence. The tragic events unfolding in Europe at present highlight the existence of further possible challenges ahead.

However, the fact remains that it was the Soviet Union, a State acting through its organs, which was responsible for the immigration policy. In this respect, it has not been contested by the respondent Government that Soviet citizens at the time travelled all over the territory of the USSR, often not by their own choice but as a result of compulsory job placement by the State authorities. We see no reason why the applicants should be blamed for having acted in conformity with the Soviet immigration policy.

The problem with the impugned difference in treatment between citizens and permanently resident non-citizens is that it attributes the unlawful acts of the Soviet Union to all former citizens of the Soviet Union who moved to Latvia during its occupation, irrespective of the extent to which these individuals personally bore responsibility for the fact that they settled in Latvia.

In our opinion, it cannot therefore be assumed that all former Soviet citizens, simply because of their nationality, had participated in unlawful acts against Latvia (compare *Ribač*, cited above, §§ 63-64). The impugned legislation amounts to considering that everyone who happened to be born as a (non-Latvian) citizen of the former Soviet Union has certain “original sins”, which may call for the denial of certain advantages granted to citizens of Latvia. We find this assumption difficult to reconcile with the idea that everyone has individual rights and individual responsibilities (see also paragraph 6 of the dissenting opinion of Judge Seibert-Fohr et al.).

18. Secondly, the majority point to the fact that permanently resident non-citizens “could obtain Latvian citizenship or choose another State with which to establish legal ties” (see paragraph 215 of the present judgment). They consider this “element of personal choice” of significance, “especially in so far as privileges, entitlements and financial benefits are at stake” (ibid.). For the majority, “the choice between remaining a ‘permanently resident non-citizen’ and acceding to citizenship is largely a matter of personal aspiration rather than an immutable situation, especially in the light of the considerable time-frame available to the applicants to exercise that option” (ibid.).

Without explicitly acknowledging it, the majority thus depart from the simple but compelling logic of the *Andrejeva* judgment. There, the Court held that “[it could not] accept the Government’s argument that it would be sufficient for the applicant to become a naturalised Latvian citizen in order to receive the full amount of the pension claimed. The prohibition of discrimination enshrined in Article 14 of the Convention is meaningful only if, in each particular case, the applicant’s personal situation in relation to the criteria listed in that provision is taken into account exactly as it

stands. “*To proceed otherwise in dismissing the victim’s claims on the ground that he or she could have avoided the discrimination by altering one of the factors in question – for example, by acquiring a nationality – would render Article 14 devoid of substance*” (*Andrejeva*, cited above, § 91, emphasis added; see, for a similar reasoning, *Muñoz Díaz v. Spain*, no. 49151/07, § 70, ECHR 2009).

Following that logic, a failure to apply for citizenship cannot be a relevant factor for assessing the proportionality of the denial of a benefit reserved for citizens of the State concerned (compare *Kurić and Others v. Slovenia* [GC], no. 26828/06, § 393, ECHR 2012 (extracts)).

As regards discrimination cases generally, we find it very troublesome that the *Andrejeva* logic is abandoned in the present case. The majority’s reasoning risks undermining the very essence of the prohibition of discrimination. This case is about nationality. We wonder to what other non-immutable prohibited grounds the majority would be prepared to extend this reasoning. It appears to us to be a dangerous and slippery slope.

19. As regards the situation of permanently resident non-citizens, the logic of personal choice adopted by the majority would, in any event, only work if, since the restoration of independence, the access of that group to citizenship had been relatively smooth and easy. It is striking, however, that the naturalisation difficulties faced for many years by non-citizens, the extent to which Latvian naturalisation law and policy were criticised and the consistent engagement of the European and international community, including the Council of Europe, to bring about a change in this regard is passed over in silence in the judgment (see, for two recent overviews, Committee on Petitions of the European Parliament, *Democratic Transition and Linguistic Minorities in Estonia and Latvia*, April 2018, and K. Krūma, *Country Report on Citizenship Law: Latvia*, EUDO Citizenship Observatory, EUI, 2015, and the authorities cited therein).

Finally, even if the applicants were to obtain Latvian citizenship, they would be treated like other citizens only for the future. The difference in treatment in the years before their naturalisation would not be retrospectively abolished, as the amount of their pension would not be recalculated *ex tunc* (see paragraph 67 of the present judgment).

20. We would also like to observe that underlying the majority’s reference to the possibility of acquiring citizenship is an implicit assumption that it is primarily, or perhaps even exclusively, through citizenship that ties leading to the grant of socio-economic rights are established with a given State. This belies the Court’s long-standing case-law.

Lawful residence in a country, especially a long-standing residence, creates certain ties as well giving rise to certain obligations for the State concerned. Article 1 of the Convention provides that States shall secure to everyone “within their jurisdiction” the human rights guaranteed by the Convention, thus making clear that respect for human rights is not due to

citizens only (see also Article 8 of the European Convention on Social Security). Entitlement to non-contributory benefits may of course be made conditional on the beneficiary having resided for a certain minimum period of time in the territory of the State concerned or on the fulfilment of other statutory conditions (see also the reference to the preamble of the Social Security Convention in paragraph 9 of the dissenting opinion of Judge Seibert-Fohr et al.).

The permanently resident non-citizens are lawful residents in Latvia. They arrived in Latvia many decades ago now, before the restoration of Latvia's independence in 1991. During all their years of residence in Latvia, they inevitably built ties with the country they were living in (see paragraph 2 above). Indeed, the recognition in *Andrejeva*, confirmed in the present judgment, that they are similarly situated derives from the very fact of their extensive ties.

21. The third factor taken into account by the majority is the fact that the difference in treatment complained of “only” concerned periods of employment completed prior to the introduction of the pension scheme in question (that is: during “the five decades of unlawful occupation and annexation”) and outside Latvia, “before [the applicants] settled in Latvia or had any other links with that country” (see paragraph 216 of the present judgment).

It is only natural that the pension benefits are based on periods of employment completed prior to the moment when the applicants became eligible for them. That is in the nature of an old-age pension. What counts is that the pension scheme has been set up by the Latvian legislature, after the restoration of Latvia's independence, and that the applicants are undergoing the effects of the impugned difference in treatment ever since they became eligible for their pension benefits, that is, after the restoration of Latvia's independence and after having resided for respectively 31, 59, 21 and 18 years in Latvia and having worked there (see paragraphs 21-22, 25-27, 29-30 and 34-35 of the judgment). Whatever difference there was between the applicants before their arrival in Latvia and the residents of Latvia during that period, it is the applicants' situation under the State Pensions Act, after the restoration of Latvia's independence and after their settlement in Latvia, that is the object of their complaint (compare *Kurić and Others*, cited above, § 391).

22. In this context, we note that the majority purport to compare the situation of the applicants to that of the Gurkha soldiers in the case of *British Gurkha Welfare Society and Others v. the United Kingdom* (no. 44818/11, 15 September 2016), in which the Court found no violation of Article 14 of the Convention. We do not see any similarity, to the contrary.

It is true that the Gurkha soldiers had served in the British Army and were treated differently than other serving soldiers. More specifically, for the calculation of their military pension, the years served before 1 July 1997 were



only partially considered, whereas for the calculation of the military pension of other soldiers these years were fully taken into account. However, the Gurkha soldiers possessed Nepalese nationality. Moreover, 1 July 1997 was the date when their home base, until then located in Hong Kong, was moved to the United Kingdom. Only from that date onwards were the Gurkha soldiers able to apply for settlement in the United Kingdom. As the Court noted, before 1 July 1997, these soldiers had “no ties to the United Kingdom and no expectation of settling there following their discharge from the Army” (*British Gurkha Welfare Society and Others*, cited above, § 85).

The situation of the Gurkha soldiers is patently different from that of complainants such as the applicants in the present case for the reasons outlined above and highlighted thirteen years ago in the *Andrejeva* judgment.

23. Finally, the majority note that the impugned difference in treatment “neither concerns the applicants’ entitlement to basic pension benefits, accorded under Latvian law regardless of the individual’s employment history, nor does it entail any deprivation, or other loss, of benefits based on financial contributions made by the applicants in respect of the employment periods in question” (see paragraph 217 of the present judgment).

We do not deny this. Indeed, the difference in treatment concerns only a supplement to the basic pension.

But the question before the Court is not whether the respondent State has allocated a scarce resource fairly between different categories of claimants (compare *Bah v. the United Kingdom*, no. 56328/07, §§ 48-50, ECHR 2011), thereby ensuring a decent standard for everyone. The issue is, more generally, whether it can reserve a pension supplement to those inhabitants whom it considers “citizens” and treat differently a category of permanent residents who, with regard to the calculation of their retirement pensions, are recognised as being in a similar situation, except for their nationality.

24. As regards the proportionality assessment, there is another issue that we would like to briefly comment upon. Before the Court, the Government relied on Latvia’s “constitutional identity” (see paragraphs 176, 196 and 198 of the present judgment).

In this respect, we fear another potentially dangerous and slippery slope. We do not contest the importance of a State’s constitutional identity nor the need for reliance on such considerations in certain circumstances. However, a State’s constitutional identity is usually associated with its fundamental structures, political and constitutional. We find it difficult to accept that in 2009, when the Court handed down the *Andrejeva* judgment, nineteen years after the restoration of independence, and even more so in 2022, Latvia can continue to justify differential treatment in relation to the calculation of a pension supplement affecting a now very reduced category of permanent residents with reference to its constitutional identity. In its judgments in relation to Latvia the Court has approached with care questions relating to the fallout of its history and challenges following the restoration of independence

which touch on its constitutional identity (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, ECHR 2006-IV, on disqualification for standing for election to the national parliament, or *Petropavlovskis v. Latvia*, no. 44230/06, ECHR 2015, on the refusal of Latvian citizenship to a non-citizen who was a political activist). It is difficult to justify the same deference and the consequent widening of the margin and lowering of judicial scrutiny with reference to the impugned pension supplement. The majority, it seems to us, also proceed on the basis that the Grand Chamber in 2009 was unaware of the State continuity arguments which the Constitutional Court emphasised in its 2011 judgment, when it is clear from the (sole) dissenting opinion in *Andrejeva* that the latter had been discussed extensively. It seems likely to us that our predecessors in 2009 were much more mindful of the challenges facing a transitional democracy following the restoration of independence than they are being given credit. Furthermore, Europe knows only too well by now how some States may misuse or instrumentalise arguments relating to their constitutional identity for a variety of purposes.

#### VIII. FACTOR RELATING TO THE PROTECTION OF THE ECONOMIC SYSTEM

25. With respect to the second aim pursued, the majority refer to the “particular difficulties and the complex policy choices facing the Latvian authorities after the restoration of independence”. The legislature had to determine the scope of eligible periods of employment, which inevitably would have an impact on the level of the benefits and the contributions required to fund them. The majority refer to a “wide” margin of appreciation that the domestic authorities must generally enjoy when deciding on trade-offs in social welfare systems (see paragraph 218 of the present judgment).

We are fully aware of the difficulties faced at the time by the Latvian State (see also *Andrejeva*, cited above, § 86). However, we would like to reiterate that the difference in treatment between citizens and permanently resident non-citizens concerns not the basic pension benefits but a supplement to them. While the trade-offs referred to by the majority might have been highly relevant at the time for the regulation of the basic pension benefits, the decision to award the supplement was based on considerations that had little or nothing to do with a financial calculation.

In any event, by 2011, when the Constitutional Court handed down its judgment in the applicants’ case and refused to apply *Andrejeva*, Latvia had become a fully integrated and economically successful Member State of the European Union and an important member of the broader community of European States committed to democracy, respect for fundamental rights and the rule of law. It seems obvious to us that the argument relating to the problems faced during the period of transition, already rejected once, could

not carry the same weight anymore (see also paragraph 3 of the dissenting opinion by Judge Seibert-Fohr et al.). We regret that the majority have disregarded the effects of the passage of time and that, in any event, they have failed to require of the Government concrete details in relation to the economic difficulties on which they continue to rely.

## IX. CONCLUSION

26. For the reasons stated above, we are not convinced that there has been no violation of Article 14 of the Convention. We see no reason why the Court should depart from its holding in *Andrejeva*.

27. We would like to add that we are conscious of the seriousness of the problems related to dealing with the past. The past may constitute an enormous challenge for any society, as it surely is for Latvian society.

However, we are afraid that the present judgment will not advance matters, or facilitate the manner in which those challenges are faced.

DISSENTING OPINION OF JUDGE SEIBERT-FOHR,  
JOINED BY JUDGES TURKOVIĆ, LUBARDA  
AND CHANTURIA

I. NO GROUNDS FOR DEPARTING FROM *ANDREJEVA V. LATVIA*

1. To my regret, I am unable to agree with the majority's finding of no violation. The present judgment reverses the Court's judgment in *Andrejeva v. Latvia* ([GC], no. 55707/00, ECHR 2009), which was based on similar facts. In that case, the Grand Chamber found the distinction made between "permanently resident non-citizens" of Latvia and Latvian citizens in respect of work periods accrued outside of Latvia to be in violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. In the present case, the Latvian Constitutional Court argued in its judgment of 17 February 2011 that the factual circumstances differed considerably from the *Andrejeva* case, in that Ms Andrejeva was employed in an enterprise that was placed under the authority of the central government of the USSR, or an all-Union enterprise, whereas the regional department in which she worked was located in the territory of Latvia (see paragraph 51 of the present judgment). This aspect, however, was not relevant for the Court's reasoning in *Andrejeva v. Latvia*, which dealt with the general question "whether the applicant's interest in receiving a retirement pension from the Latvian State in respect of her years of service for enterprises based in the territory of the former USSR but outside Latvia falls within the 'ambit' or 'scope' of Article 1 of Protocol No. 1" (see *Andrejeva*, cited above, § 75). Nor did the Court rely on this specific aspect in its proportionality analysis (*ibid.*, §§ 87-92), where it exclusively dealt with the fact that the national authorities had refused to take into account her years of employment *outside* Latvia (see *Andrejeva*, cited above, § 87). I am therefore unable to accept the narrow interpretation of the *Andrejeva* judgment given by the Latvian Constitutional Court (for the same conclusion, see the dissenting opinion by Judges O'Leary, Grozev and Lemmens, paragraph 4).

2. In *Martinie v. France* [GC] (no. 58675/00, ECHR 2006-VI), where the Court also had to deal with an allegedly narrow interpretation, by the respondent Government, of a previous judgment (namely, *Kress v. France* [GC], no. 39594/98, ECHR 2001-VI), the Grand Chamber stated as follows:

"That being so, the Court reiterates that, while it is not formally bound to follow its previous judgments, it is in the interests of legal certainty, foreseeability and equality before the law that it should not depart, without good reason, from precedents laid down in previous cases – even if, the Convention being first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions in Contracting States and respond, for example, to any emerging consensus as to the standards to be achieved (see, for example, *Chapman v. the United Kingdom* [GC], no. 27238/95, § 70, ECHR 2001-I, and *Christine Goodwin v. the United Kingdom* [GC], no. 28957/95, § 74, ECHR 2002-VI)."

3. In the present case, there are no good reasons to depart from the findings in *Andrejeva v. Latvia*, which has served as a precedent for the Court’s interpretation of Article 14 of the Convention, taken in conjunction with Article 1 of Protocol No. 1, for more than a decade. None of the reasons indicated by the majority, which are similar to those submitted by the Government in *Andrejeva*, render the impugned difference of treatment compatible with the requirements of Article 14 of the Convention. This is even more so since thirteen years have passed since the judgment in *Andrejeva* was adopted, during which the economic and transitional reasons advanced by the Government have become even less cogent to justify a difference in treatment based solely on nationality (for the same conclusion, see the other dissenting opinion, paragraph 12).

## II. ARTICLE 14 OF THE CONVENTION: VERY WEIGHTY REASONS FOR *DE JURE* DISTINCTIONS BASED ON NATIONALITY

### A. Socio-economic context

4. According to the Court’s established case-law, very weighty reasons have to be put forward before the Court can regard a difference in treatment based exclusively on the ground of nationality as compatible with the Convention (see *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV; *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X; *Andrejeva*, cited above, § 87; and *Luczak v. Poland*, no. 77782/01, § 52, 27 November 2007). This also applies in the context of Article 1 of Protocol No. 1 (*ibid.*). Although the margin of appreciation accorded to States in the context of general measures of economic or social policy is, in principle, wide, given their ability to appreciate what is in the public interest on social or economic grounds and their direct knowledge of their society and its needs, such measures must nevertheless be implemented in a manner that does not violate the prohibition of discrimination as set out in the Convention and complies with the requirement of proportionality (see *J.D. and A v. the United Kingdom*, nos. 32949/17 and 34614/17, § 88, 24 October 2019; *Luczak*, cited above, § 52; *Fábián v. Hungary* [GC], no. 78117/13, § 115, 5 September 2017, with further references). Among other areas, this general rule applies also in pension matters (see *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2006-VI, and *Jurčić v. Croatia*, no. 54711/15, § 64, 4 February 2021).

5. The Court explained in *J.D. and A v. the United Kingdom* that in the context of economic or social policy it had limited its acceptance to respect the legislature’s policy choice as not “manifestly without reasonable foundation” to circumstances where an alleged difference in treatment resulted from a transitional measure forming part of a scheme carried out in order to correct an inequality (see *J.D. and A v. the United Kingdom*, cited

above, § 88; see also *Stec and Others*, cited above, §§ 61-66; *Runkee and White v. the United Kingdom*, nos. 42949/98 and 53134/99, §§ 40-41, 10 May 2007; *Ponomaryovi v. Bulgaria*, no. 5335/05, § 52, ECHR 2011, with further references; and *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, § 81, 15 September 2016). In all other cases, very weighty reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the grounds of nationality as compatible with the Convention (see *Gaygusuz*, § 42; *Andrejeva*, § 87; and *Ribač*, § 53, all cited above).

### **B. The rationale of the “very weighty reason” requirement**

6. The requirement for very weighty reasons in order to justify differences in treatment directly based on nationality is grounded in the idea that nationality should not be determinative for the enjoyment of the rights protected under the Convention. The Convention is based on a system of individual rights, which are not dependent on the fact that the individual belongs to a certain group or holds the nationality of a given State (for the same conclusion, see the other dissenting opinion, § 17). Under Article 14, where it is shown that there are reasonable and objective grounds for excluding an individual from a given scheme, the principle of proportionality comes into play (see *Luczak*, cited above, § 52). If the means employed to achieve the aim do not bear a reasonable relationship of proportionality to it, then the distinction will be considered unjustified (see *Ponomaryovi*, cited above, § 51). For this reason, not every aim – however important in itself – can justify a distinction based exclusively on nationality. Instead, even in the socio-economic context such a distinction requires a substantial connection between the objective pursued and the classification. In other words, where a difference in treatment based directly on nationality exists with regard to benefits falling within the scope of Article 1 of Protocol No. 1, States are not permitted to differentiate on the grounds of nationality if there is no valid link with the benefit sought and without having regard to whether the difference in treatment actually serves a very weighty reason and is necessary. Rather, the nationality requirement must correspond to the legitimate aim pursued in such cases. This requires a close link to the subject matter in question, and the difference in treatment must be tailored to the aim pursued.

### **C. Criteria for assessing very weighty reasons in the social-economic context**

7. Accordingly, the Convention does not prohibit States which fund or subsidise certain welfare benefits from requiring, in respect of non-nationals, a sufficiently close link between the recipients and the benefits sought. It may be legitimate to take into account the extent to which non-nationals have

formed ties with a country when they seek such benefits (see *British Gurkha Welfare Society and Others*, cited above, § 84). In particular, the Court has held that a State may have legitimate reasons for curtailing the use of resource-intensive public services such as welfare programmes, benefits and health care by illegal or short-term immigrants who, as a rule, do not contribute to their funding (see *Ponomaryovi*, cited above, § 54). While it may be legitimate to make social benefits dependent on the legality and duration of residence in a country (see *Koua Poirrez*, cited above, § 47), it is difficult to justify a requirement that work-related benefits be tied exclusively to nationality, without regard to the contributions made to the scheme by those applying for the benefit and without regard to their contribution to the country's economy more generally (see *Gaygusuz*, cited above, where the applicant's request for emergency assistance in the form of advance payment of his pension entitlements was refused on the grounds of his nationality, §§ 46-47; see also *Luczak*, cited above, §§ 49 and 55, where the applicant was refused admission to the farmers' social-security scheme on the grounds of his nationality, and where the Court attached importance to the fact that the applicant had previously contributed as a taxpayer to that scheme). The cases decided to date by the Court thus demonstrate that, in order to determine whether very weighty reasons have been put forward, the Court considers, *inter alia*, the subject of the benefit sought, whether the claimants have contributed to the relevant scheme, whether they have legally resided in the country and the duration of this residence.

#### **D. Valid distinctions in a contribution-based pension scheme**

8. In the present case, the pension scheme was funded by contributions payable by all those working in Latvia, as the future beneficiaries of the scheme, and by their employers. By means of their contributions, the applicants established a link to the pension scheme. As legal long-term residents of Latvia, they have spent substantial parts of their lives in that country, where they worked and contributed to its economy. The links that they had established with Latvia as permanent residents by the time of applying for their pensions were therefore substantial. The third applicant, who arrived in Latvia at the age of three, has spent practically his entire life in Latvia, being obliged to interrupt his residence there only for the duration of his compulsory military service.

9. Like our colleagues, I believe that there would be no objection to a policy excluding periods of employment accrued outside the country (see paragraph 201 of the present judgment and the other dissenting opinion, paragraph 3). I recognise that, if a State chooses to credit periods spent outside a given country (a pension scheme can reasonably take into account whether a person who moves to the country has been employed for the major part of his or her working life in that country, and thus contributed to its economy

and development more generally. Such contributions would establish a sufficient tie justifying distinctions. However, a distinction based exclusively on nationality is not tailored to this aim. Taking into account that the pension scheme is contribution-based, I cannot therefore accept the respondent State's argument that the difference in treatment, which was based exclusively on nationality, can be explained by a State's particular responsibility for its own citizens. According to the Preamble to the European Convention on Social Security (1972), the principle of equal treatment for nationals of the Contracting States applies also to stateless persons (and refugees) under their social-security legislation.

### III. THE TRANSITIONAL CONTEXT AND ITS RELEVANCE UNDER ARTICLE 14

10. I understand that the majority focus their finding on the particular circumstances of the case, in which the respondent State, faced with specific difficulties after a long period of occupation, established a pension system with limited resources. They explain the respondent State's purportedly wide margin of appreciation as arising from the specific background to the impugned transitory measure, adopted in the context of fundamental changes and while the respondent State was in transition from a totalitarian regime after the restoration of independence (see paragraph 211 of the present judgment). The judgment refers to *British Gurkha Welfare Society and Others*, cited above). What is overlooked, however, is that in the latter case of *indirect* discrimination, the remedial nature of the impugned measures, which were intended to correct past inequalities in the British scheme, led the Court to accept a wide margin of appreciation (*ibid.*, § 81). The only point which distinguished the applicants from other soldiers serving in the British army is that, as Gurkha, they accrued the right in respect of years of service prior to 1 July 1997 at *actuarial value* (*ibid.*, § 77) rather than on a *year-for-year basis*. Nevertheless, the applicants accrued pension rights in respect of all years of service (like their British counterparts). Furthermore, the calculation on an actuarial basis was decided not because of their nationality, but because of the lower living expenses in their home countries.

11. The present case, which involves direct discrimination on the ground of nationality, is different. Not only is the beneficial treatment pursuant to the relevant statutory provision dependent on the applicant's nationality, but the applicants – who worked in Latvia and have contributed to its pension scheme – incur the same living expenses as their co-workers who hold Latvian citizenship. In contrast to *British Gurkha Welfare Society and Others*, the difference in treatment does not result from a transitional measure forming part of a scheme carried out in order to correct an inequality. None of those seeking recognition for the work periods accrued outside Latvia has suffered from any injustice by the respondent State which the pension scheme



seeks to remedy, as was the situation for the British Gurkha. On the contrary, at the end of the occupation period they were all in a similar situation regarding their pension claims, irrespective of their nationality.

12. I can agree with the Government that the historical context should be adequately taken into account. As emphasised by the Latvian Constitutional Court, upon the restoration of its independence Latvia was not obliged to assume the USSR's responsibilities (see paragraph 203 of the present judgment). When Latvia set up its pension scheme in 1996, it was confronted with considerable difficulties (*Andrejeva*, cited above, § 86), given that the resources of the USSR State Bank were not shared (see paragraph 55 of the present judgment). However, once Latvia introduced a system of occupational retirement pensions in 1996, which allowed for periods of employment accrued outside its territory to be counted towards the pension for Latvian nationals, it was under an obligation to comply with Article 14 taken in conjunction with Article 1 of Protocol No. 1. The Government have failed to explain how the injustice suffered by the Latvian population during the period of illegal occupation and annexation by the Soviet Union justifies the impugned difference in treatment on the basis of nationality, without regard to the circumstances of those former citizens of the Soviet Union who were not, and are not, Latvian citizens. Given that the Convention is based on a system of individual rights, the fact that the Soviet Union unlawfully annexed Latvia and, as an occupying State, committed illegal acts and maintained the unlawful occupation for five decades, does not in itself justify reserving unfavourable treatment on the sole basis of their nationality for all former subjects of the Soviet Union who have settled in Latvia, even if this occurred as a result of the immigration policies imposed by the Soviet Union. What is at issue is not a matter of *ex injuria ius non oritur*, according to which States must not benefit from prior illegal conduct, but rather the issue of protecting individuals from discrimination, as prohibited under the Convention. The possibility of concluding bilateral agreements on social issues does not detract from this obligation under the Convention (see *Andrejeva*, § 90, and, *mutatis mutandis*, *Koua Poirrez*, § 49, both cited above).

13. The difference in treatment between nationals and non-nationals laid down in the transitional provisions with regard to periods of employment accrued outside Latvia in the period prior to the restoration of independence in 1991 resulted in a situation where even those non-nationals who subsequently, by the time of their retirement, had resided and worked in Latvia for the major part of their lives were unable to have the periods before 1991 counted toward their occupational retirement pensions on the same basis as Latvian citizens. The fact that the employees' share of these contributions is levied on both nationals and non-nationals, on an equal basis, militates against a difference in treatment based on nationality (compare *Luczak*, cited above, § 55). Although the pre-1992 periods of employment accrued outside

Latvia were both chronologically and geographically incapable of creating a link between those persons and the respondent State, this applies equally to Latvian citizens. During these periods, Latvians working outside Latvia did not contribute any more or less to the Latvian economy than non-nationals. Thus, pre-existing ties linking citizens to Latvia throughout the period of occupation and annexation are not capable of justifying the difference in treatment arising from the exclusion of the impugned periods for the purpose of calculating the retirement pensions of permanently resident non-citizens. Taking into account that the applicants contributed to the pension scheme as permanent residents, the relevant period for establishing the above-mentioned link between potential recipients and the benefits sought is not the period of occupation, but the periods during which the applicants worked in Latvia and paid contributions to the system.

14. This point is even more relevant in that naturalised citizens benefit from the impugned periods, irrespective of their previous ties to Latvia. The Government argue that it was possible for the applicants to avoid the impugned difference in treatment by obtaining Latvian citizenship. Taking this step prior to determination of their pensions would have eliminated the measure's impact altogether, and even if taken subsequently it would have entitled them to a recalculation of their pension *ex nunc*. However, if the respondent State agrees that from the moment of naturalisation onwards the applicants would be treated in pension matters like Latvian citizens, this casts serious doubts on the objective necessity of the impugned difference for the purpose of implementing the respondent State's continuity doctrine. It suggests instead that the difference in treatment is exclusively grounded in nationality, and not in the beneficiaries' contribution to the economy and development of Latvia, as alleged by the Government.

#### IV. CONCLUSION

15. In sum, the arguments put forward by the Latvian Constitutional Court to justify the impugned difference on the grounds of nationality do not amount to such "very weighty reasons" as required under Article 14 in conjunction with Article 1 of Protocol No. 1. Justification for a difference in treatment directly based on nationality requires a closely tailored relationship between the aim pursued and the distinction made. In the present case, the distinction in question, based exclusively on nationality, was not tailored to the legitimate aim pursued. In the absence of a "reasonable relationship of proportionality" between the legitimate aims pursued and the means introduced by the Latvian legislature in the transitional provisions concerning the system of retirement pensions established in 1996, the Court should have found a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

## APPENDIX

List of applicants:

Application no. 49270/11

No.	Applicant's Name	Year of birth	Nationality	Place of residence
1.	Jurijs SAVICKIS	1939	"Non-citizen"	Jūrmala
2.	Genādijs NESTEROVS	1938	"Non-citizen"	Olaine
3.	Vladimirs PODOLAKO	1948	"Non-citizen"	Riga
4.	Asija SIVICKA	1946	"Non-citizen"	Jūrmala
5.	Marzija VAGAPOVA	1942	Russian	Riga