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

GRAND CHAMBER

CASE OF ANDREJEVA v. LATVIA

(Application no. 55707/00)

JUDGMENT

STRASBOURG

18 February 2009

In the case of Andrejeva v. Latvia,

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

Jean-Paul Costa, *President*,
Christos Rozakis,
Nicolas Bratza,
Peer Lorenzen,
Françoise Tulkens,
Josep Casadevall,
Ireneu Cabral Barreto,
Corneliu Bîrsan,
Nina Vajić,
Alvina Gyulumyan,
Dean Spielmann,
Davíd Thór Björgvinsson,
Ján Šikuta,
Ineta Ziemele,
Mark Villiger,
Isabelle Berro-Lefèvre,
Zdravka Kalaydjieva, *judges*,

and Michael O'Boyle, *Deputy Registrar*,

Having deliberated in private on 25 June 2008 and on 14 January 2009,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 55707/00) 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 "permanently resident non-citizen" (*nepilsone*) of Latvia who was previously a national of the former Union of Soviet Socialist Republics (USSR), Ms Natālija Andrejeva ("the applicant"), on 27 February 2000.

2. The applicant was represented before the Court by Mr V. Buzajevs, Member of Parliament. The Latvian Government ("the Government") were represented by their Agent, Ms I. Reine.

3. The applicant alleged, in particular, that by refusing to grant her a State pension in respect of her employment in the former Soviet Union prior to 1991 on the ground that she did not have Latvian citizenship, the national authorities had discriminated against her in the exercise of her pecuniary rights. She relied on Article 14 of the Convention taken in conjunction with

Article 1 of Protocol No. 1. The applicant also claimed to be the victim of a violation of Article 6 § 1 of the Convention in that she had not been able to attend the hearing of her appeal on points of law.

4. The application was allocated to the Third Section of the Court (Rule 52 § 1 of the Rules of Court). On 11 July 2006 it was declared partly admissible by a Chamber of that Section, composed of Boštjan M. Zupančič, Corneliu Bîrsan, Vladimiro Zagrebelsky, Alvina Gyulumyan, Egbert Myjer, David Thór Björgvinsson and Ineta Ziemele, judges, and Vincent Berger, Section Registrar.

5. On 11 December 2007 the Chamber relinquished jurisdiction in favour of the Grand Chamber, neither of the parties having objected to relinquishment (Article 30 of the Convention and Rule 72).

6. The composition of the Grand Chamber was determined according to the provisions of Article 27 §§ 2 and 3 of the Convention and Rule 24. It was also decided to give notice of the application to the Government of Ukraine and the Government of the Russian Federation and to invite them to submit their observations (Article 36 § 2 of the Convention and Rule 44). However, neither government wished to exercise that right.

7. The applicant and the Government each filed observations on the merits.

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 25 June 2008 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Ms S. KAULIŅA, *Co-Agent*,
Mr E. PLAKSINS,
Ms D. TRUŠINSKA, *Advisers*;

(b) *for the applicant*
Mr V. BUZAJEVS, *Counsel*,
Mr A. DIMITROVS, *Adviser*.

The Court heard addresses by Mr Buzajevs and Ms Kauliņa.

9. On 8 and 10 July 2008 respectively the applicant and the Government submitted written replies to the additional questions put by the Court at the hearing. Furthermore, in a letter of 8 October 2008 the applicant informed the Court of new developments in the case.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

A. Background to the case

10. The applicant was born in Kazakhstan and came to Latvia in 1954, at the age of 12, when it was one of the fifteen Soviet Socialist Republics (SSRs) of the Soviet Union. She has been permanently resident there ever since. In 1966, after finishing her studies at Riga Polytechnic Institute, she obtained a job at the chemical complex in Olaine (Latvia), working in a laboratory at a recycling plant.

11. In 1973 the applicant was assigned to the regional division of the Environmental Protection Monitoring Department, which was part of the USSR Ministry of Chemical Industry. Until 1981 she worked for a State enterprise attached to the Ministry, with its head office in Kyiv (Ukraine). She was subsequently placed under the authority of a subdivision of the same enterprise, which was based in Belorussia (present-day Belarus) and was itself subordinate to a division with its head office in Dolgoprudnyy (in the Moscow Region, Russia). The enterprise in question was an all-Union enterprise (*предприятие всесоюзного значения*) and was thus governed by federal law and under the authority of the USSR central government. The applicant's salary was paid by monthly post-office giro transfer, from Kyiv and Moscow. Notwithstanding her successive reassignments, the applicant continued to work at the recycling plant in Olaine. Furthermore, throughout this period she remained affiliated to the same local unit of the centralised Soviet trade union for workers in the chemical industry.

12. On 4 May 1990 the Supreme Council (the legislative assembly at the time) adopted the Declaration on the Restoration of the Independence of the Republic of Latvia. On 21 November 1990 the Environmental Protection Monitoring Department was abolished. As the enterprise had become autonomous, the applicant came under the direct authority of the plant's management.

13. In August 1991 Latvia's independence was fully restored. Subsequently, in December 1991 the Soviet Union, the State of which the applicant had hitherto been a national, ceased to exist. The applicant therefore became stateless. Following the enactment on 12 April 1995 of the Act on the status of former USSR citizens without Latvian or other citizenship, the applicant was granted the status of "permanently resident non-citizen" (*nepilsone*).

14. In September 1993 the applicant was made redundant as a result of staff cutbacks. She immediately signed a contract with another employer, based in Riga, for which she worked until her retirement in 1997.

B. Facts relating to the calculation of the applicant's pension

15. In August 1997, after reaching the age of 55, the applicant retired and asked the Social-Insurance Board for the Kurzeme District of Riga (*Rīgas Kurzemes rajona Sociālās apdrošināšanas pārvalde*) to calculate the amount of her retirement pension (*vecuma pensija*). In a letter of 21 August 1997, the Board notified her that, in accordance with paragraph 1 of the transitional provisions of the State Pensions Act, only periods of work in Latvia could be taken into account in calculating the pensions of foreign nationals or stateless persons who had been resident in Latvia on 1 January 1991. It appeared from the applicant's employment record (*darba grāmatiņa*) that from 1 January 1973 to 21 November 1990 she had been employed by entities based in Kyiv and Moscow. The Board therefore calculated the applicant's pension solely in respect of her years of service before and after that period. As a result, the applicant was awarded a monthly pension of only 20 Latvian lati (LVL – approximately 35 euros (EUR)).

16. The applicant lodged an administrative appeal against that decision with the State Social-Insurance Fund (*Valsts sociālās apdrošināšanas fonds*), which dismissed the appeal in a letter of 4 September 1997. The Fund noted firstly that there was no evidence in the recycling plant's archives that the applicant had been employed there. Furthermore, according to the Fund's administration:

> "Since you had an employment relationship with an employer based outside Latvian territory – although you carried out your work in Latvian territory – this period cannot be taken into account [in the calculation of your pension] as the employer did not pay our Republic's taxes."

17. In May 1998 the State Social-Insurance Agency (*Valsts sociālās apdrošināšanas aģentūra*), which had replaced the State Social-Insurance Fund, asked the Social-Insurance Department of the Ministry of Welfare (*Labklājības ministrijas Sociālās apdrošināšanas departaments*) for an explanation as to the application of paragraph 1 of the transitional provisions of the State Pensions Act in the applicant's case. In a letter of 5 June 1998, the Department explained that, since the applicant belonged to the category of persons concerned by the provision, only the periods in which she had been employed by entities based in Latvia could be taken into account in calculating her pension. The Department added that the only effective means of resolving the issue would be through agreements between Latvia, Ukraine and Russia on mutual recognition of periods of employment.

18. The applicant subsequently brought an action against the Social-Insurance Agency in the Riga City Latgale District Court. In a judgment of 1 December 1998, the court dismissed her application. The applicant appealed to the Riga Regional Court, which in a judgment of 4 May 1999 likewise found against her. It held that, since the applicant's salary had been paid to her by an employer based outside Latvia, her employment within Latvian territory was to be treated as an extended business trip and could not give rise to any entitlement to a State pension for the period in question. On an application by the applicant's lawyer, the public prosecutor attached to the Riga Regional Court appealed on points of law to the Senate of the Supreme Court.

19. In a letter of 9 September 1999, the Registry of the Senate informed the applicant that the case had been included on the agenda of a public hearing on 6 October 1999 and told her the precise time at which the examination of the appeal was due to start. However, as the hearing had opened before the time indicated, the Senate decided to consider the case before the parties had even arrived. After hearing the submissions of the representative of the Prosecutor General's Office in favour of allowing the appeal, and after deliberating, the Senate, sitting as an extended bench of seven judges, dismissed the appeal, holding as follows:

> "... On the basis of the documents at its disposal, the appellate court observed that from 2 January 1973 to 21 November 1990 Ms Natālija Andrejeva had been employed by enterprises based outside Latvia.
>
> The appellate court was therefore correct in finding that the period during which Ms Natālija Andrejeva had been employed by enterprises based in Ukraine and Russia could not be taken into account in calculating her pension.
>
> In accordance with paragraph 1 of the transitional provisions of the State Pensions Act, pensions of foreign nationals or stateless persons who were resident in Latvia on 1 January 1991 are calculated in respect of periods of employment ... in Latvia ...
>
> A period of employment within Ukrainian and Russian enterprises cannot be treated as a period of employment in Latvia within the meaning of the above-mentioned Act.
>
> Section 1 of the State Pensions Act defines socially insured persons as [persons] who have paid, or whose employer has paid on their behalf, social-insurance contributions towards a State pension, in accordance with the State Social-Insurance Act.
>
> By virtue of ... the State Social-Insurance Act, all employees of entities subject to tax in Latvia are covered by the compulsory social-insurance scheme.
>
> Ms Natālija Andrejeva's employers, being based in Ukraine and Russia, did not pay contributions in Latvia. Accordingly, there is no reason to conclude that, having worked for enterprises situated outside Latvia, Ms Natālija Andrejeva was covered by the Latvian social-insurance scheme.

> The Senate considers that the cooperation agreement on social security between the Republic of Latvia and Ukraine, which was signed in Kyiv on 26 February 1998 and came into force on 11 June 1999 – after the date of the judgment appealed against – is not a sufficient basis for a court to find that the public authorities acted unlawfully ...”

20. Since she had been unable to take part in the hearing, the applicant requested the Senate to re-examine the case. In a letter of 13 October 1999, the President of the Senate’s Department of Civil Cases informed her that the Civil Procedure Act did not provide for the possibility of reviewing a judgment after its delivery in such circumstances. However, he apologised to the applicant that the hearing had started early and assured her that all the arguments of the parties had been properly examined.

21. In a letter of 13 December 1999, the Ukrainian embassy in Latvia informed the applicant that, by virtue of the agreement between the two States which had entered into force on 11 June 1999, she was entitled to have her pension recalculated to take account of her work for the Ukrainian enterprise. The embassy therefore invited the applicant to apply to the relevant social-insurance department to recalculate her pension. However, the embassy informed her that the pension “in respect of the Ukrainian period of employment” would not be paid “until the conclusion of inter-State negotiations on the arrangements for payment of pensions”.

22. In a letter of 4 February 2000, the Social-Insurance Agency informed the applicant that with effect from 1 November 1999, on the basis of the above-mentioned agreement, her pension had been recalculated *ex nunc* to take account of her years of service for employers based in Ukraine. As a result, the monthly amount of her pension, adjusted in accordance with the applicable scales, was LVL 30.21 (approximately EUR 43).

23. In June 2008 the monthly pension received by the applicant amounted to LVL 98.35 (approximately EUR 140), consisting of the principal sum (approximately EUR 125) – corresponding to the minimum subsistence level guaranteed by the State – and a supplement (approximately EUR 15). These amounts are index-linked and adjusted every six months to take account of inflation and the increase in the guaranteed minimum wage.

24. On 2 and 3 October 2008 respectively the Latvian Parliament and the lower house of the Russian Parliament approved the cooperation agreement on social security, signed on 18 December 2007 (see paragraphs 44-45 below). According to the calculations supplied by the applicant, if the agreement were in force and her years of service “in Russia” were taken into account today, her basic pension would be increased by 15% and the supplement by 35%. The Government stated that the total monthly amount received by the applicant would be LVL 115.48 (approximately EUR 164) in that event.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Provisions on the calculation of State pensions

1. Soviet law (before 1991)

25. 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 very different 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.

26. The Government provided the following description of the Soviet social security system, taken from an encyclopaedic dictionary published in 1970:

> "Contributions by enterprises, institutions and organisations for the purposes of social insurance are calculated on the basis of a set percentage of the wage fund and distributed among the various trade unions according to the nature and importance of work in the sector concerned. These contributions form the social-insurance budget, which is part of the USSR State budget. The State social-insurance budget is approved by [the All-Union Central Council of Trade Unions] and is managed by trade unions. ... Retirement pensions for pensioners who continue to work are likewise paid from the social-insurance budget (those who no longer work receive their pensions from the State social-insurance budget constituted through funds allocated by the State and kolkhozes). ..."

27. The rules governing social security mainly fell within the general sphere of labour law. The main legislative instrument in this area was the Act of 15 July 1970, which established the basis for labour legislation in the USSR and the SSRs (*Основы законодательства Союза ССР и союзных республик о труде*). The Act was incorporated into the SSRs' labour codes almost in its entirety, with the exception of the special provisions devolving powers to local legislatures.

28. Section 100 of the Act, incorporated in section 241 of the Latvian SSR's Labour Code (*Latvijas PSR Darba likumu kodekss*), provided:

> "All workers and civil servants shall be covered by compulsory State social insurance.
>
> Compulsory social insurance ... for workers and civil servants shall be provided at the State's expense. Social-insurance contributions shall be paid by enterprises, institutions and organisations without any deductions from the salaries of workers and civil servants. Failure by an enterprise, institution or organisation to pay social-insurance contributions shall not deprive workers and civil servants of their entitlement to State social insurance."

29. The relevant provisions of the State Pensions Act of 14 July 1956 (*Закон « О государственных пенсиях »*) read as follows:

Section 6

> "Pensions shall be paid by the State from the means allocated annually from the USSR State budget, including the means from the State social-insurance budget deriving from the contributions of enterprises, institutions and organisations, without any deduction from salaries."

Section 53

> "Pensions shall be calculated on the basis of the average monthly wage ... This includes all types of wages in respect of which insurance contributions are paid, except remuneration for overtime, for discharging additional functions, and any other types of occasional payment.
>
> The average monthly wage shall be calculated in respect of the last twelve months of employment, or, where the person claiming the pension so requests, for any five consecutive years in the ten-year period preceding the pension claim.
>
> ..."

30. The relevant provisions of the Rules on the Payment of State Social-Insurance Contributions (*Правила уплаты взносов на государственное социальное страхование*), adopted by joint Decree no. 890 of the USSR Council of Ministers and the All-Union Central Council of Trade Unions of 12 September 1983, read as follows:

Rule 1

> "Enterprises, institutions and organisations employing workers, civil servants and other categories of employees subject to compulsory State social insurance shall pay social-insurance contributions ..."

Rule 3

"Enterprises, institutions and organisations shall pay insurance contributions in accordance with the rates approved by the USSR Council of Ministers ..."

Rule 5

"Enterprises, institutions and organisations shall transfer insurance contributions (after deduction of the expenditure they have incurred for social-insurance purposes) to the social-insurance current accounts [opened by] the appropriate trade unions."

Rule 8

"The sums allocated for the purpose of State social insurance shall be deposited in the current accounts of the institutions of the State Bank of the USSR."

31. Allocations of tax revenues to the social security budget were not recorded in any specific documents, with the exception of the "employment record" containing details of the professional career of the person concerned. Despite the formal budgetary autonomy of the SSRs, such as Latvia at the time, there were no documents from which it could be ascertained exactly what proportion of the taxes deducted from an employee's income was used to fund his or her retirement pension.

32. Lastly, pursuant to section 19(2) of the Property in the USSR Act of 6 March 1990 (*Закон « О собственности в СССР »*), "[a]ll property created or acquired from the budgetary or other funds of the Union ... or from other funds of subordinate enterprises, organisations and institutions [was] ... part of the property of the Union ...".

2. The Constitution of the Republic of Latvia

33. The relevant provisions of the Latvian Constitution (*Satversme*), as inserted by the Act of 15 October 1998, are worded as follows:

Article 91

"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

"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."

3. The 1990 and 1995 State Pensions Acts

34. 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).

35. 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. Before 2006 the relevant parts of the transitional provisions read as follows:

Paragraph 1

"In the case of Latvian citizens, repatriated persons, their family members and their descendants, the period to be taken into account in the calculation ... of the State pension shall consist of the aggregate years of employment ... up to 1 January 1991, both within and outside Latvia, regardless of prior payment of social-insurance contributions. In the case of foreign nationals and stateless persons who were resident in Latvia on 1 January 1991, aggregate periods of employment and periods treated as such in Latvia shall be taken into account, as well as aggregate periods treated as such outside Latvia in the cases specified in sub-paragraphs (4), (5) and (10) of this paragraph. Up to 1 January 1991 ... the following periods treated as equivalent to employment shall be taken into account in calculating the pension:

...

(4) periods of study at higher-education institutions, and at other training institutions at post-secondary level;

(5) periods of doctoral studies ... postgraduate education or ongoing vocational training;

...

(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. ..."

Paragraph 2-1

"The procedures for calculating, certifying and classifying the periods referred to in paragraphs 1 and 2 of these transitional provisions shall be determined by the Cabinet."

Paragraph 3

"Expenses incurred in connection with the reckoning of the periods referred to in [paragraph 1 of] these transitional provisions in the calculation of State pensions shall be covered by the special State pension budget."

Paragraph 7

"The following shall be deemed to constitute evidence of periods of employment during the transitional period:

(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)."

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

4. The Constitutional Court's judgment of 26 June 2001

37. On 20 February 2001 twenty members of parliament applied to the Constitutional Court (*Satversmes tiesa*), seeking a ruling that paragraph 1 of the transitional provisions of the State Pensions Act, which made a distinction on the ground of nationality, was incompatible with Articles 91 and 109 of the Constitution and Article 14 of the Convention, taken together with Article 1 of Protocol No. 1. In a judgment of 26 June 2001 (case no. 2001-02-0106), the Constitutional Court held that there had been no breach of the provisions cited. It made the following observations, in particular:

"... [T]he applicants' authorised representative ... argues that, in view of their legal status, non-citizens are not connected to any State other than Latvia; accordingly, they are not able to exercise individually their right to social security ... The representative ... further submits that the distinction established in the provision in issue is not based on any economic or social factors; that, furthermore, the distinction is not founded on the legal status of citizens and non-citizens, as defined in Latvian legislation; and that the above argument is corroborated in particular by the fact that, once they are granted citizenship by means of naturalisation, non-citizens automatically become entitled to social security in respect of their years of employment outside Latvia.

...

(1) On 4 May 1990 the Supreme Council ... adopted the Declaration on the Restoration of the Independence of the Republic of Latvia ('the Declaration'). Paragraph 8 of the Declaration contains an undertaking 'to guarantee social, economic and cultural rights, as well as political freedoms corresponding to the universally recognised provisions of international human rights instruments, to citizens of the Republic of Latvia and citizens of other States permanently residing in Latvia. This shall fully apply to citizens of the USSR who wish to live in Latvia without acquiring Latvian nationality'.

On 29 November 1990, six months after adopting the Declaration, the Supreme Council ... passed the State Pensions Act. Entitlement to a State pension was granted to all persons residing in the Republic of Latvia whose place of residence at the time of the Act's entry into force on 1 January 1991 was in Latvia. The Act provided for the right to social cover in old age. It referred to two types of State pension: employment pensions ([including] retirement pensions ...) and social welfare pensions. Anyone covered by the social-insurance scheme of the Republic of Latvia was entitled to an employment pension. Anyone not entitled to an employment pension was guaranteed the right to a social welfare pension under the Act. Accordingly, for the purposes of the Act, the terms 'State pension' and 'social cover in old age' were identical. By section 44 of the Act, ... stateless persons who had arrived in Latvia from another country and had not been employed by enterprises or institutions of the Republic of Latvia received their pensions in accordance with agreements signed with the State concerned; in the absence of such an agreement, they were to be granted a social welfare pension. Thus, pensions were calculated according to the same rules for both of the above-mentioned categories ...

The pension system established by the Act was based on ... the principle of redistribution (solidarity), which did not encourage any interest on the workers' part in ensuring their own old-age cover. As Latvia strengthened its independence as a State, it soon became necessary to develop a new pension system complying with the principles of the European Union.

Having assessed the country's economic and demographic situation, the available resources and other circumstances, on 2 November 1995 Parliament passed a new Act with the same title ... which came into force on 1 January 1996. Paragraph 1 of the transitional provisions of the Act provides that the period to be taken into account in calculating the State pensions of foreign nationals and stateless persons who were resident in Latvia on 1 January 1991 comprises their aggregate periods of employment in Latvia or periods treated as such. Periods of employment outside Latvia before 1 January 1991 and periods treated as such are not taken into account in determining the relevant period for pension calculations ...

The pension scheme introduced in Latvia has been favourably received at international level. There has been a positive assessment of the radical change in relation to the traditional principle of solidarity between generations: money earned by the working generation is paid to current pensioners, but at the same time the insurance principle is applied, whereby people build up their own funds towards their pension. ... International experts acknowledge that it is not possible to resolve all social issues by means of the pension system, as any effort to do so will only create problems endangering the system's long-term stability ...

In passing the State Pensions Act, Latvia has adopted principles based on insurance premium payments in respect of ... State pensions, including the rule that the amount

of the pension depends on the period of employment ... [This] consists of periods of employment as defined by the Act and periods treated as such, irrespective of the person's nationality.

(2) ... In its case-law the European Court of Human Rights determines the compatibility of any claim with [Article 1 of Protocol No. 1], defining new criteria in each case. Not all claims automatically come under the concept of a 'possession' within the meaning of the Convention. To determine this issue, it is necessary to assess the correlation between the entitlement to the pension or benefit in question and the obligation to pay taxes and other contributions. [The existence of a] right or legitimate expectation must be duly demonstrated. A person complaining of interference with the exercise of the right of property must show that he or she has such a right.

In addition, the European Court of Human Rights makes a distinction between a system involving individual contributions to a [pension] fund, where the amount to be paid [from the fund] can also be determined in each particular case, and a system in which there is only an indirect link between the contributions paid and the amount received. The latter system cannot be regarded as sufficiently tangible; yet the right of property, as such, must be tangible ...

To establish whether the legislative provision in issue concerns the right of property, the nature of the pension system should be examined. The new pension scheme is a system that creates a 'possession'. It is based on the principle that a person belonging to it has paid contributions into specific [pension] funds and that the contributions form a share of the funds' overall capital. Furthermore, the amount [of this share of the capital] can be determined at any time. In such circumstances, the person acquires a 'possession' within the meaning of the Convention. In the *Gaygusuz v. Austria* case, cited by the applicants, the European Court of Human Rights found a link between the type of benefit in question, to which the applicant was not entitled under Austrian law, and the payment of contributions to the unemployment insurance fund. The Court therefore found that the claim fell within the scope of Article 1 of Protocol No. 1 ...

However, the pension system which existed in Latvia until 1 January 1991 was based on the solidarity principle, entailing the responsibility of the community as a whole and not creating a direct link between contributions and the amount of the pension. Where the solidarity principle is applied, it is impossible to determine what share of the fund belongs to each of the participants. Accordingly, the right of property protected by Article 1 of Protocol No. 1 ... does not arise in this case. This system does not confer on each individual any entitlement to an identifiable share of the fund, but rather the expectation of receiving material assistance according to the circumstances prevailing at the time the pension is to be paid. Pensions under this system are based on the so-called principle of collective security and cannot be granted on the basis of [each person's] individual contribution. It is true that an entitlement to the payment of a certain amount of benefit arises where the system remains continuously in force and the individual satisfies the relevant conditions. However, even in those circumstances there is no entitlement to a specific amount, since the amount is subject to fluctuations and to legal regulation ...

Accordingly, the provision in issue does not concern the right of property and is not at variance with Article 1 of Protocol No. 1 ... The applicants' submission that the provision in issue infringes Article 14 of the Convention is therefore likewise unfounded.

...

(4) ... Welfare legislation, to which the impugned provision relates, is a specific field of human rights and, in constitutional laws of States and international human-rights instruments, is regarded as a general obligation of the State. The regulatory mechanism is left to the discretion of each State's legislature. The exercise of social rights depends on the country's economic situation and the resources available.

Since the entry into force of the Pensions Act, all persons residing in Latvia, regardless of nationality, are entitled to a State pension [in respect of] social insurance, provided that they are socially insured and have paid insurance contributions for the requisite number of years. Paragraph 1 of the transitional provisions of the Pensions Act in its current wording was introduced in order to settle the issue of the reckoning ... of periods of employment prior to 1 January 1991 and periods treated as such in the new pension system. It should also be borne in mind that the impugned provision concerns only the category of persons who became entitled to a State pension from 1 January 1996.

With regard to foreign nationals and stateless persons who were resident in Latvia on 1 January 1991, periods of employment within the territory of Latvia prior to that date are taken into account in calculating their pension, in the same way as for Latvian citizens. Accordingly, the Latvian State is responsible for the periods of employment in Latvian territory of all permanent residents of Latvia, regardless of nationality.

The distinction made by the provision in issue is objectively justified by the nature and principles of the Latvian pension system. It cannot therefore be regarded as constituting discrimination within the meaning of the Constitution.

...

The Constitutional Court considers that the question of aggregate periods of employment of foreign nationals and stateless persons outside Latvia before 1 January 1991 must be resolved by means of international agreements, and with due regard to the principles of fairness, proportionality, reciprocity and other general rules of law.

...

The opinion of [the representative of] Parliament that Latvia should not assume the obligations of another State as regards the guarantee of a retirement pension for a period of employment in the territory of another State is well-founded. ..."

5. The State Pensions Act (new version)

38. In Laws of 20 October 2005 and 16 June 2008, which came into force on 1 January 2006 and 1 July 2008 respectively, Parliament amended a considerable number of the provisions of the State Pensions Act. The relevant paragraphs of the transitional provisions now read as follows:

Paragraph 1

"In the case of Latvian citizens, periods of employment and periods treated as such 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 period of payment of social-insurance contributions for the purpose of calculating their pension. In the case of foreign nationals, stateless persons and non-citizens of Latvia [*Latvijas nepilsoņi*], periods of employment and periods treated as such in the territory of Latvia, periods treated as such in the territory of 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), shall be counted towards the contribution period. Up to 31 December 1990 ... the following periods treated as equivalent to employment shall be taken into account in calculating the pension:

...

(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 ... doctoral studies, up to a maximum of three years, postgraduate education or ongoing vocational training;

...

(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. ..."

Paragraph 45

"The amendments to the introductory part of paragraph 1 of these transitional provisions, concerning the reckoning of periods of employment and periods treated as such for the purpose of calculating pensions, shall take effect on 1 January 2007."

Paragraphs 2-1, 3 and 7 of the transitional provisions (see paragraph 35 above) were not amended.

B. Provisions concerning civil procedure and the role of the public prosecutor

39. At the material time, administrative procedure was governed by Chapters 22 to 25 of the former Code of Civil Procedure (*Latvijas Civilprocesa kodekss*), which temporarily remained in force following the replacement of the Code by the new Civil Procedure Act (*Civilprocesa likums*). The relevant provision of the former Code read as follows:

Section 239(4)

"Applications challenging conduct by the central or local administrative authorities that has adversely affected the rights of a natural person or other legal entity shall be compulsorily examined by a court in the presence of the public prosecutor."

40. The relevant provisions of the new Civil Procedure Act, which came into force on 1 March 1999, are worded as follows:

Section 90

"(1) Public prosecutors shall be entitled to participate in the examination of a case where they have brought an action or application or where their participation is compulsory.

...

(3) The participation of the public prosecutor in the examination of a case shall be compulsory where it is prescribed by law or deemed necessary by the court.

(4) A public prosecutor who participates in the examination of a case shall be entitled to inspect material in the case file, to challenge judges, to adduce evidence and take part in examining it, to make [procedural] applications [to the court], to submit observations on issues arising in the course of the examination of the case and on the merits of the case in general, to appeal against court decisions, judgments and orders, to receive copies of the court's decision or of documents in the file, and to perform other procedural steps as determined by law.

...

(6) The withdrawal by a public prosecutor of an action or application he or she has brought before a court shall not deprive the person in whose interests the prosecutor was acting of the right to request the court to examine the case on the merits."

Section 471

"(1) After hearing the report by the senator [judge of the Senate], the court shall hear the observations of the parties or their representatives. It may set a limited time for making submissions; however, both parties shall be allotted equal time.

(2) The person who lodged the appeal on points of law, or the public prosecutor where it was the latter who lodged the appeal, shall address the court first. ...

(3) Senators may put questions to the parties.

(4) Each party shall have the right to one reply.

(5) If the public prosecutor takes part in the examination of a case where the appeal on points of law was not lodged by him or her, he or she shall give an opinion after the parties have presented their observations and their replies."

41. The relevant provisions of the Public Prosecutor's Office Act (*Prokuratūras likums*) of 19 May 1994 are worded as follows:

Section 1(1)

"The public prosecutor's office is an institution belonging to the legal service which shall independently supervise compliance with the law, within the limits of the powers defined in this Act."

Section 2

"The public prosecutor's office

...

(6) shall protect the legitimate rights and interests of individuals and the State in accordance with procedures established by law;

(7) shall bring applications or actions before the courts in accordance with procedures established by law;

(8) shall take part in the examination of cases by a court, in the circumstances provided for by law."

III. INTERNATIONAL AGREEMENTS ON SOCIAL SECURITY

42. 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. Lastly, on 12 June 2008 the Latvian Parliament approved the first reading of a bill concerning a similar agreement with Belarus.

43. The agreement with Ukraine provides in principle for mutual recognition of aggregate periods of employment in accordance with the relevant legislation of both parties (Article 16 § 1 of the agreement). With regard to the period before 1 January 1991, years of service in the territory of one or both parties are taken into account in the calculation of pensions by either party, and it is immaterial whether or not contributions have been paid in the territory in question (see Article 16 § 3).

44. The cooperation agreement on social security between Latvia and the Russian Federation was signed on 18 December 2007. The Latvian Parliament approved it in a Law of 2 October 2008. On the following day,

3 October, it was approved by the State Duma (the lower house of the Russian Parliament), and on 15 October by the Federation Council (the upper house). Article 3 of the agreement 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.

45. 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 has 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, the recalculation cannot be applied until after the agreement has come into force.

THE LAW

I. THE GOVERNMENT'S PRELIMINARY OBJECTIONS

A. The applicant's "victim" status

46. In their observations on the merits of the case, filed with the Chamber on 20 October 2006, the Government raised a plea of inadmissibility, arguing that the applicant had partly ceased to be a "victim" within the meaning of Article 34 of the Convention. In that connection, they pointed out that in February 2000 the Social-Insurance Agency had recalculated the applicant's pension to include her years of service for entities based in Ukraine; accordingly, she no longer had any grounds for maintaining her complaint under Article 1 of Protocol No. 1 in respect of the period from 1973 to 1981.

47. The Government maintained that objection before the Grand Chamber. They pointed out that since February 2000 the applicant had received LVL 28.67 (approximately EUR 40.80) more than before. They

also pointed out that the applicant's monthly pension had been recalculated *ex nunc* and not *ex tunc*. In other words, it was only with effect from 2000 that she had begun to receive the exact amount corresponding to the "Ukrainian" period of her career, and no payments had been made to her retrospectively. However, the Government submitted that that position complied with Article 28 of the 1969 Vienna Convention on the Law of Treaties, which laid down the general principle that international treaties did not have retrospective effect "[u]nless a different intention appears from the treaty or is otherwise established"; that had not been the case in this instance. In any event, the Government submitted that the difference between the amount of the pension currently received by the applicant and the amount she would receive if her pension were recalculated with retrospective effect was minimal and not capable of imposing an "excessive financial burden" on her.

48. The applicant acknowledged that, after the agreement with Ukraine had been concluded, the amount of her pension had been recalculated and slightly increased. However, the agreement did not contain any clause allowing the corresponding portion of her "Ukrainian" pension to be paid retrospectively. That also applied to other social security agreements, including the one with the Russian Federation which had just been approved and was due to take effect soon.

49. The Court points out that by Rule 55 of the Rules of Court, "[a]ny plea of inadmissibility must, in so far as its character and the circumstances permit, be raised by the respondent Contracting Party in its written or oral observations on the admissibility of the application". In the instant case, it notes that the pension in issue was recalculated in 2000; accordingly, there was nothing to prevent the Government from raising their objection at the admissibility stage. Having failed to do so, they are estopped from relying on it. In the light of these considerations, while acknowledging that the issue raised by the Government is relevant in relation to Article 41 of the Convention (see paragraph 104 below), the Court cannot allow this objection.

50. Furthermore, the Court takes note of the recent approval by the parliaments of the two States concerned of the cooperation agreement between the Russian Federation and Latvia on social security (see paragraphs 44-45 above). However, irrespective of what benefit the applicant might draw from that agreement after it comes into force, the Court observes that the situation complained of remains unchanged to date. It thus has no reason to consider that the applicant's status as a "victim" within the meaning of Article 34 of the Convention has thereby been affected.

B. As to the respondent State's jurisdiction under Article 1 of the Convention

51. In their replies to the questions put by the Grand Chamber, the Government stated that, in so far as the application concerned Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, its subject matter fell outside Latvia's "jurisdiction"; they therefore called on the Court to reject the application. They relied on Article 1 of the Convention, which provides:

> "The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of [the] Convention."

52. The Government submitted two arguments on this issue. Firstly, from a general standpoint, they argued that responsibility for the situation complained of lay not with one single State but with two different States, namely the Soviet Union and the Republic of Latvia. In the Government's submission, the incorporation of the Baltic States into the USSR in 1940 had taken place in breach of international law, with the result that those States could on no account be deemed to have inherited the former Soviet Union's rights and obligations. Accordingly, although the applicant might have had some hope of receiving the portion of her pension corresponding to the part of her career spent working in the territory of the former Soviet Union, that hope had been valid only in the context of a single State, the USSR, and could not exist, or have existed, in relation to Latvia. On the contrary, "existing praxis" showed that it was rather the Russian Federation that was the defunct State's successor, both domestically and at international level.

53. Secondly, with regard to the applicant's position, the Government pointed out that the recycling plant where she had been employed had had no distinct legal personality; that the local authorities of the Latvian SSR had had no means of exercising effective supervision of the activities of the enterprise in question, or the applicant's professional relations; that such relations had been governed by the laws of other SSRs; that the applicant's salary had been paid to her by giro transfers; and, lastly, that her employers had made no contributions on her behalf to the budget of the Latvian SSR or of the Republic of Latvia. On the contrary, the applicant's employer was established under Soviet federal law and had paid social tax on her behalf to the USSR Federal Treasury through the centralised Soviet trade union for workers in the chemical industry. The Government thus inferred that, while the applicant had been working for enterprises based in Ukraine and in Russia, she had been outside Latvia's jurisdiction and her work in Latvian territory was rather to be likened to a business trip. In short, Latvia was not required to assume a responsibility incumbent on another State and to pay pensions in respect of periods during which the beneficiaries had been employed in that State; if the applicant wished to claim her pension

entitlements, she would be better advised to apply to the Russian or Ukrainian authorities.

54. In the applicant's submission, the argument that Latvia was not a successor State to the former USSR was immaterial in the present case; such an argument could only be used to justify a total refusal to take into account employment during the Soviet period. However, she had never alleged a violation of a pecuniary right guaranteed by Article 1 of Protocol No. 1 taken alone. Her complaint concerned 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. That would be logical, since by ratifying the Convention, Latvia had undertaken to secure to everyone within its jurisdiction the rights and freedoms defined in Section I of the Convention. Latvia thus bore full responsibility.

55. As with the previous objection, the Court considers at the outset that this plea of inadmissibility has been lodged out of time (see paragraph 49 above). Even supposing that that were not the case, it must in any event be dismissed for the following reasons.

56. The Court reiterates that the concept of "jurisdiction" for the purposes of Article 1 of the Convention reflects the term's meaning in public international law and is closely linked to that of the international responsibility of the State concerned (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, § 312, ECHR 2004-VII). Such responsibility may arise for the acts of all State organs, whether they belong to the legislature, the executive or the judiciary (see, *mutatis mutandis*, *Young, James and Webster v. the United Kingdom*, 13 August 1981, § 49, Series A no. 44, and *Wille v. Liechtenstein* [GC], no. 28396/95, § 46, ECHR 1999-VII). Furthermore, the fact that the factual or legal situation complained of by the applicant is partly attributable to another State is not in itself decisive for the determination of the respondent State's "jurisdiction". The argument advanced by the Government equates the determination of whether an individual falls "within the jurisdiction" of a Contracting State with the question whether the individual can be considered to be the victim of a violation by that State of a right guaranteed by the Convention. These are, however, separate and distinct admissibility conditions (see *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, ECHR 2001-XII).

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).

The Court notes, nevertheless, that the parties' arguments as set out above are closely linked to the merits of the complaint under Article 14 of the Convention. It will therefore have regard to them in determining whether there has been a violation of that Article.

II. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

58. The applicant complained that the application in her case of paragraph 1 of the transitional provisions of the State Pensions Act, which made a distinction on the basis of nationality between those in receipt of retirement pensions, constituted discrimination prohibited by Article 14 of the Convention in the exercise of her right of property under Article 1 of Protocol No. 1. The relevant parts of 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."

A. The parties' submissions

1. The applicant

59. The applicant first reiterated her arguments concerning Latvia's responsibility for the purposes of Article 1 of the Convention (see

paragraph 54 above). She thus disputed the assertion that responsibility in her case rested with Russia or Ukraine. She further pointed out that Russia had never unilaterally paid her a pension or acknowledged its obligation to do so. In any event, before 1991, Latvia, Russia and Ukraine had formed part of the same State, the Soviet Union, and the taxes paid in respect of each employee had not been linked to any particular territorial unit of the USSR. The applicant therefore disputed that any territorial criterion could be applied in relation to that period.

60. The applicant acknowledged that during the Soviet era, the social-insurance system had been non-contributory and based on the principle of solidarity. However, regard being had to the Court's relevant case-law as it stood – the applicant cited, in particular, *Stec and Others v. the United Kingdom* ((dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X) – that fact was immaterial. Moreover, the exclusion of benefits financed from general tax revenues would disregard the fact that many beneficiaries under that type of system also contributed to its funding through the taxes they paid. In short, whether the benefit in question was contributory or not, Article 1 of Protocol No. 1 was applicable to it without distinction.

61. The applicant further pointed out that she had first come to Latvia at the age of 12 and had spent all her working life there, and that her employment during the Soviet era had involved protection of Latvia's environment. However, the amount of the retirement pension she received was considerably lower than the amount that a Latvian citizen in the same position would receive. Nationality was therefore the sole criterion for the distinction in issue, which had no objective and reasonable justification. Firstly, the applicant pointed out that her former employers had paid social tax to the Soviet tax authorities on her behalf, on the same basis as for those who had been recognised as Latvian citizens after 1991. Had the Soviet Union not broken up, she would receive, just like them, a monthly pension of 97.50 Soviet roubles, paid from the USSR central budget. Secondly, she pointed out that the difference in treatment complained of had not existed before 1 January 1996; it had been introduced only by the State Pensions Act 1995, and no reasons had been given for this change in the law, even by the members of parliament who had proposed it.

62. Thirdly, the applicant submitted that the interpretation of the above-mentioned Act by the Senate of the Supreme Court, as a result of which she was deemed not to have worked "in Latvia" during a period of seventeen years, was manifestly unreasonable. Before 2002 the State Pensions Act had not included any definition of the concept of "aggregate periods of employment in Latvia". The social services had decided to interpret it restrictively, and the judges of the Supreme Court had endorsed that arbitrary interpretation. The applicant emphasised that during the period from 1966 to 1991 neither her workplace nor the nature of her work, nor even the trade union to which she had been affiliated, had changed.

63. In those circumstances, the applicant submitted that the distinction made by the Latvian authorities amounted to discrimination prohibited by Article 14 of the Convention. It had caused her a substantial loss since it had deprived her, as a "non-citizen", of her pension in respect of seventeen years of employment. The applicant noted in this connection that the retirement pension was her only steady source of income. Admittedly, she also received a medical-treatment allowance and a housing allowance, but she was not able to decide freely how to spend those allowances, and they covered only an insignificant part of her expenses.

64. The applicant acknowledged that, under the Citizenship Act as currently applicable, she was entitled to apply for naturalisation, and that if she became a Latvian citizen she would receive a pension in respect of her entire professional career. However, in her opinion the naturalisation requirements in Latvia were too strict – especially for elderly persons – and had already been severely criticised by the Council of Europe's Parliamentary Assembly and Commissioner for Human Rights. In any event, the fact that the applicant had freely chosen not to take Latvian citizenship was not decisive in her case; although her status as a "permanently resident non-citizen" was not a special type of Latvian nationality, the rights and obligations attached to that status were evidence of the legal ties between the persons concerned and the Latvian State.

65. Lastly, the applicant was not persuaded by the Government's argument that the reckoning of periods of employment prior to 1991 was a matter to be addressed by means of international social security agreements. Even if the agreement with the Russian Federation – which had been the subject of intergovernmental negotiations for more than a decade – came into force, it would ultimately still be Latvia's responsibility to pay the relevant portion of her pension. She further reiterated that there was no legal basis for Russia and Ukraine to provide her with a pension, since her entire working life had been spent in the territory of Latvia.

2. The Government

66. The Government submitted that Article 1 of Protocol No. 1 was not applicable to the pension calculated in respect of the period prior to 1991. In that connection, they referred to and endorsed the reasons given by the Constitutional Court in its judgment of 26 June 2001 (see paragraph 37 above). They emphasised the need to make a clear distinction between the system of retirement pensions that had existed before 1 January 1991 and the system introduced after that date. The current pension system was based on the contributory approach, reflecting the principle of individual contributions. Each person's contributions thus formed a specified share of the pension fund, and the precise amount of that share could be determined at any time. All contributors therefore had a sufficiently tangible entitlement

to their share of the fund for it to qualify as a "possession" within the meaning of Article 1 of Protocol No. 1.

67. The former system, on the other hand, had been non-contributory and based on the solidarity principle, which entailed the responsibility of the community as a whole and was characterised by the lack of a direct link between the amount received by beneficiaries and the contributions paid by their employer. The Government therefore disputed that the applicant had had a "legitimate expectation" creating a pecuniary right for the purposes of Article 1 of Protocol No. 1. Under the previous system, individuals had not been entitled to claim a precise, identifiable amount of retirement pension; they could only have a vague hope that the State would award them an amount of some kind, to the extent that its budget allowed. Furthermore, even if there had been a certain expectation in this regard, it had been valid only in the context of a single State, the USSR, which had ceased to exist and to which Latvia was not the successor. Accordingly, the applicant's claim in the instant case was insufficiently tangible to constitute a "possession" within the meaning of Article 1 of Protocol No. 1. That Article was therefore not applicable to the portion of retirement pensions calculated in respect of periods of employment before 1991, and Article 14 of the Convention was likewise not applicable.

68. The Government acknowledged that in *Koua Poirrez v. France* (no. 40892/98, ECHR 2003-X) the Court had refused to make a distinction between contributory and non-contributory welfare benefits, finding that Article 1 of Protocol No. 1 was also applicable to the latter category and, subsequently, that there had been a violation of Article 14 of the Convention. However, in the Government's submission, there were significant differences between the present case and *Koua Poirrez*. Firstly, the State pension claimed by the applicant in the instant case did not amount to "emergency assistance" in that it was not her sole source of income. Secondly, Mr Koua Poirrez had quite simply been refused the allowance he had sought, whereas Ms Andrejeva did receive a certain amount of retirement pension.

69. The Government observed that in its judgment of 6 October 1999 the Senate of the Supreme Court had accepted that the fact of having worked for an entity established outside Latvian territory while remaining physically present in Latvia did not constitute "employment in the territory of Latvia" within the meaning of paragraph 1 of the transitional provisions of the State Pensions Act. In the Government's submission, such an interpretation was entirely reasonable, seeing that during the period in question the applicant's employment had not been governed by the law of the Latvian SSR. The Government pointed out that the provision in issue was based on the territorial principle; accordingly, periods of employment for all-Union enterprises "which were under the territorial jurisdiction of the Latvian SSR" were currently taken into account in calculating pensions. The set of

rules of 23 April 2002 (no. 165 – see paragraph 36 above) had merely confirmed the established practice regarding the interpretation of the provision in issue. Moreover, in its admissibility decision of 11 July 2006 in the instant case the Court itself had stated that "[t]he courts' interpretation of the State Pensions Act in the instant case cannot be regarded as manifestly arbitrary or unreasonable". The requirement of lawfulness had therefore been satisfied in the applicant's case.

70. Even assuming that Article 14 of the Convention was applicable in the present case, the Government were persuaded that the difference in treatment complained of fell within the broad margin of appreciation enjoyed by States in regulating their social policy. They argued that the Court should take into account the particular context of the case, which was linked to the process of restoring Latvian independence, a process that had also included reform of social policy. The Latvian authorities had had to lay the foundations of the new social welfare system, including the old-age insurance scheme, and to set a limit on the expenditure which the Latvian budget could afford in relation to the former USSR's social welfare payments. In that connection, the Government referred to the Constitutional Court's conclusion that, in accordance with general international law on State succession, Latvia had assumed responsibility for periods worked in Latvian territory by any of the country's permanent residents, regardless of nationality.

71. As regards periods of work elsewhere, the Government asserted that Latvia was under no obligation to assume responsibility for them. If, despite everything, it had decided to do so while reserving this additional guarantee to its own citizens, that decision could not be regarded as contrary to Article 14 of the Convention. In view of the financial burden borne by Latvia and the limited capacity of its national budget, it was not unreasonable for it to assume full responsibility for the pensions of its own citizens alone. Nevertheless, even though the applicant was not entitled to a retirement pension in respect of her periods of employment in "Russian" and "Ukrainian" enterprises, she received a range of social welfare benefits which compensated her for any such inconvenience and improved her standard of living. In short, the Government argued, the Latvian authorities had struck a balance between the public interest and the applicant's private interests; there was thus a reasonable relationship of proportionality between the means employed and the aim sought to be realised.

72. In addition, the Government pointed out that unlike Mr Koua Poirrez, who had been refused French nationality, the applicant could become a naturalised Latvian citizen at any time. If she chose to do so, the dispute in the present case would automatically be settled through the recalculation of her pension. The recalculation would have effect *ex nunc*, but that was in no way contrary to the Convention, which did not impose any obligation on the Contracting States to grant rights retroactively. The

Government thus contended that the situation complained of was largely the fault of the applicant herself, who had refused to apply for naturalisation despite having been entitled to do so since 1998. The sooner she did so, the sooner she would receive the desired portion of her pension.

73. Lastly, the Government argued that the reckoning of periods of employment outside Latvian territory was a matter to be addressed through inter-State agreements on social security. They pointed out that such agreements had already been concluded with several States and that a similar agreement with the Russian Federation had recently been approved by the parliaments of both States concerned. According to statistical data supplied by the Government, if the agreement came into force on 1 January 2009, it would apply to some 17,104 pensioners, including 16,850 "permanently resident non-citizens". That figure could subsequently rise by approximately 1,696 new pensioners every year.

B. The Court's assessment

1. Applicability of Article 14 of the Convention

74. The Court reiterates that Article 14 of the Convention has no independent existence, since it has effect solely in relation to the rights and freedoms safeguarded by the other substantive provisions of the Convention and its Protocols (see, among many other authorities, *Burden v. the United Kingdom* [GC], no. 13378/05, § 58, ECHR 2008). The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the provisions in question (see, among many other authorities, *Gaygusuz v. Austria*, 16 September 1996, § 36, *Reports of Judgments and Decisions* 1996-IV; *Thlimmenos v. Greece* [GC], no. 34369/97, § 40, ECHR 2000-IV; and *Koua Poirrez*, cited above, § 36). The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Article of the Convention, for which the State has voluntarily decided to provide (see *Stec and Others*, cited above, § 40).

75. It must therefore be determined 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.

76. The Government attached considerable importance in the instant case to the difference between Soviet pensions, which were paid by the State from common budgetary resources in accordance with the solidarity

principle, and the system gradually implemented from 1991, based on individual contributions by each beneficiary. The Court observes in this connection that in the *Stec and Others* decision (cited above, §§ 47-53**)** it abandoned the distinction between contributory and non-contributory benefits for the purposes of the applicability of Article 1 of Protocol No. 1; from now on, when a State chooses to set up a pension scheme, the individual rights and interests deriving from it fall within the ambit of that provision, irrespective of the payment of contributions and the means by which the pension scheme is funded.

77. The Court has also 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 (ibid., § 54). Thus, Article 1 of Protocol No. 1 does not guarantee as such any right to become the owner of property (see *Van der Mussele v. Belgium*, 23 November 1983, § 48, Series A no. 70; *Slivenko v. Latvia* (dec.) [GC], no. 48321/99, § 121, ECHR 2002-II; and *Kopecký v. Slovakia* [GC], no. 44912/98, § 35 (b), ECHR 2004-IX). Nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V; and *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X). 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 (see *L.B. v. Austria* (dec.), no. 39802/98, 18 April 2002). 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 (see *Stec and Others*, cited above, § 54).

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 the *Stec and Others* decision (cited above), 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.

2. Compliance with Article 14 of the Convention

81. According to the Court's settled case-law, discrimination means treating differently, without an objective and reasonable justification, persons in similar situations. "No objective and reasonable justification" means that the distinction in issue does not pursue a "legitimate aim" or that there is not a "reasonable relationship of proportionality between the means employed and the aim sought to be realised" (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, §§ 175 and 196, ECHR 2007-IV, and the authorities cited therein).

82. 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 (see *Gaygusuz*, cited above, § 42, and *Thlimmenos*, cited above, § 40). The scope of this margin will vary according to the circumstances, the subject matter and its background. Thus, for example, Article 14 does not prohibit a member State from treating groups differently in order to correct "factual inequalities" between them; indeed, in certain circumstances a failure to attempt to correct inequality through different treatment may, without an objective and reasonable justification, give rise to a breach of that Article (see *Thlimmenos*, cited above, § 44, and *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2006-VI).

83. Similarly, a wide margin of appreciation is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. 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, for example, *National & Provincial Building Society, Leeds Permanent Building Society and Yorkshire Building Society v. the United Kingdom*, 23 October 1997, § 80, *Reports* 1997-VII, and the Grand Chamber judgment in *Stec and Others*, cited above, § 52). In more general terms, the Court has held 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 *Žd*anoka *v. Latvia* [GC], no. 58278/00, § 112, ECHR 2006-IV).

84. Lastly, as to 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, it is for the Government to show that it was justified (see *D.H. and Others*, cited above, § 177).

85. In the circumstances of the present case, the Court observes at the outset that in their respective judgments of 4 May and 6 October 1999 the Riga Regional Court and the Senate of the Supreme Court found that the fact of having worked for an entity established outside Latvia despite having been physically in Latvian territory did not constitute "employment within the territory of Latvia" within the meaning of the State Pensions Act. The parties disagreed as to whether at that time such an interpretation could have appeared reasonable or whether, on the contrary, it was manifestly arbitrary, particularly as no regulatory instrument had contained an interpretation of the provision in issue until 2002 (see paragraphs 36 and 62 above). Having regard to the conclusions set out below, the Court does not consider it necessary to determine this issue separately.

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).

87. It remains to be determined whether there was a reasonable relationship of proportionality between the above-mentioned legitimate aim and the means employed in the present case. The Court notes in this connection 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. However, the Court has held 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 (see *Gaygusuz*, cited above, § 42, and *Koua Poirrez*, cited above, § 46).

88. The Court cannot discern any such reasons in the present case. Firstly, it has not been established, or even alleged, that the applicant did not satisfy the other statutory conditions entitling her to a pension in respect of all her years of employment. She was therefore in an objectively similar situation to persons who had an identical or similar career but who, after 1991, were recognised as Latvian citizens. Secondly, there is no evidence that during the Soviet era there was any difference in treatment between nationals of the former USSR as regards pensions; indeed, the Government did not in any way dispute the applicant's assertion that the Soviet social tax was paid and administered in the same way for all employees, regardless of national origin or place of birth (see, *mutatis mutandis*, *Luczak v. Poland*, no. 77782/01, §§ 49 and 55, 27 November 2007). Thirdly, the Court observes a notable difference between the applicant and Mr Gaygusuz and Mr Koua Poirrez in that she is not currently a national of any State. She has the status of a "permanently resident non-citizen" of Latvia, the only State with which she has any stable legal ties and thus the only State which, objectively, can assume responsibility for her in terms of social security.

89. In those circumstances, while being mindful of the broad margin of appreciation enjoyed by the State in the field of social security, the arguments submitted by the Government are not sufficient to satisfy the Court that there was a "reasonable relationship of proportionality" in the instant case that rendered the impugned difference of treatment compatible with the requirements of Article 14 of the Convention.

90. The Government took the view that the reckoning of periods of employment was essentially a matter to be addressed through bilateral inter-State agreements on social security. The Court, for its part, is fully aware of the importance of such agreements in the effective solution of problems such as those arising in the instant case. However, it reiterates that by ratifying the Convention, the respondent State undertook to secure "to everyone within [its] jurisdiction" the rights and freedoms guaranteed therein. Accordingly, in the present case the Latvian State cannot be absolved of its responsibility under Article 14 of the Convention on the ground that it is not or was not bound by inter-State agreements on social security with Ukraine and Russia (see *Gaygusuz*, cited above, § 51, and *Koua Poirrez*, cited above, § 46).

91. Lastly, the Court cannot 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.

92. Having regard to the foregoing, the Court finds that in the present case there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

93. The applicant also alleged a violation of her rights under Article 6 § 1 of the Convention in that the Senate of the Supreme Court had held its hearing before the appointed time, thus preventing her from taking part in the examination of the appeal on points of law lodged by the public prosecutor on her behalf. The relevant parts of Article 6 § 1 provide:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

94. In the applicant's submission, her right to a fair hearing before the Senate of the Supreme Court had been infringed. The fact that only points of law were examined during cassation proceedings was immaterial in her case, since the dispute between the two parties had precisely been limited to legal issues. Admittedly, the hearing had been arranged following an appeal by the public prosecutor, but he had intervened only at the request of the applicant's lawyer. In any event, the right to a hearing was expressly guaranteed by the Code of Civil Procedure, and it was for the applicant herself to decide whether it was advisable for her to submit her argument to the Senate.

95. The Government submitted firstly that it was no longer possible to verify the truth of the applicant's allegations, since the file on the hearing in question had already been destroyed. In any event, they disputed that there had been a violation of Article 6 § 1. In the first place, the Government contended that, in view of the specific nature of cassation proceedings, which were limited to points of law, the appellant's presence at the hearing was not always essential. Secondly, the appeal examined on 6 October 1999 had been lodged by the public prosecutor, who had adopted a similar position to that of the applicant. The Government were therefore of the view that arguments identical or similar to those which the applicant could have put forward herself had been duly submitted by the public prosecutor. Similarly, in its judgment the Senate had carried out a sufficiently thorough analysis of those arguments. The applicant's absence during the hearing could not therefore have influenced the outcome of the proceedings.

B. The Court's assessment

96. The Court notes that the right to a fair hearing as guaranteed by Article 6 § 1 of the Convention includes the right of the parties to the hearing to submit any observations that they consider relevant to their case. It may therefore be relied on by anyone who considers that an interference with the exercise of one of his civil rights is unlawful and complains that he has not had the possibility of submitting that claim to a tribunal meeting the requirements of Article 6 § 1 (see *Cañete de Goñi v. Spain*, no. 55782/00, § 34, ECHR 2002-VIII, with further references). Another element of the broader concept of a "fair hearing" within the meaning of this provision is the principle of equality of arms, which requires a "fair balance" between the parties: each party must be afforded a reasonable opportunity to present his case under conditions that do not place him at a substantial disadvantage *vis-à-vis* his opponent or opponents (see, among other authorities, *Gorraiz Lizarraga and Others v. Spain*, no. 62543/00, § 56, ECHR 2004-III). This includes the opportunity for the parties to comment on all observations

filed, even by an independent member of the national legal service, with a view to influencing the court's decision (see, for example, *J.J. v. the Netherlands*, 27 March 1998, § 43, *Reports* 1998-II, and *Quadrelli v. Italy*, no. 28168/95, § 34, 11 January 2000).

97. The Court further reiterates that Article 6 § 1 of the Convention does not compel the Contracting States to set up courts of appeal or of cassation. However, where such courts do exist, the proceedings before them must comply with the guarantees of Article 6, for instance in that it guarantees to litigants an effective right of access to the courts for the determination of their civil rights and obligations (see *Levages Prestations Services v. France*, 23 October 1996, § 44, *Reports* 1996-V, and *Annoni di Gussola and Others v. France*, nos. 31819/96 and 33293/96, § 54, ECHR 2000-XI).

98. Lastly, the Court would reiterate that like all the other substantive provisions of the Convention, Article 6 § 1 is intended to guarantee rights that are not theoretical or illusory, but practical and effective (see *Artico v. Italy*, 13 May 1980, § 33, Series A no. 37). This is particularly relevant with regard to Article 6 § 1, in view of the prominent place held in a democratic society by the right to a fair trial (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII). It must also be borne in mind that hindrance can contravene the Convention just like a legal impediment (see *Airey v. Ireland*, 9 October 1979, § 25, Series A no. 32).

99. In the instant case it is undisputed that the domestic law – more specifically, section 471 of the Civil Procedure Act – guaranteed the applicant the right to take part in the public hearing before the Senate of the Supreme Court (see paragraph 40 above). Nevertheless, she was unable to exercise that right, not because of any negligence on her own part but because the Senate had decided to hold a hearing earlier than scheduled. In this connection, the Court has frequently held that procedural rules are designed to ensure the proper administration of justice and compliance with the principle of legal certainty, and that litigants must be entitled to expect those rules to be applied (see, among other authorities, *Cañete de Goñi*, cited above, § 36; *Gorou v. Greece (no. 3)*, no. 21845/03, § 27, 22 June 2006; and *Miholapa v. Latvia*, no. 61655/00, § 24, 31 May 2007). This principle applies both ways, not only in respect of litigants but also in respect of the national courts.

100. The Court notes that the appeal on points of law was lodged not by the applicant herself or by her lawyer but by the public prosecutor attached to the Riga Regional Court, in accordance with section 90 of the Civil Procedure Act. The Government argued that in this particular case, the favourable position adopted by the public prosecutor had dispensed the Senate from having to afford the applicant the opportunity to attend the hearing herself. The Court is not persuaded by that argument. It is true that section 90 of the Civil Procedure Act empowers the public prosecutor to perform certain procedural steps on a party's behalf, and section 2 of the

Public Prosecutor's Office Act assigns public prosecutors the general task of protecting "the legitimate rights and interests of individuals" (see paragraphs 40-41 above). However, that does not appear to invalidate the principle that the chief function of the prosecuting authorities is to represent the interests of society at large, which are not necessarily the same as those of either of the parties to civil proceedings (see, *mutatis mutandis*, *Vermeulen v. Belgium*, 20 February 1996, § 29, *Reports* 1996-I; *Kress v. France* [GC], no. 39594/98, §§ 67-71, ECHR 2001-VI; and *Gorou (no. 3)*, cited above, § 22). In any event, it does not appear from the evidence before the Court that under Latvian law, a public prosecutor acting in such a manner may represent one of the parties or replace that party at the hearing.

101. The Court observes that in the case of *Gorou v. Greece (no. 4)* (no. 9747/04, 11 January 2007) it declared as manifestly ill-founded the applicant's complaint under Article 6 § 1 of the Convention concerning the refusal of the Court of Appeal to adjourn the hearing to enable her to attend. However, the circumstances of that case were fundamentally different from those of the present case: Ms Gorou was a civil party to criminal proceedings instituted by the public prosecutor's office and conducted in the criminal courts, and the Court found that a civil party's "rights regarding the principles of equality of arms and of adversarial proceedings [were] not the same as those of the defendant *vis-à-vis* the public prosecutor" (ibid., § 26). In the instant case, however, Ms Andrejeva was a party to administrative proceedings governed by the Civil Procedure Act and instituted at her request. Accordingly, as the main protagonist in those proceedings she should have been afforded the full range of safeguards deriving from the adversarial principle.

102. To sum up, the Court concludes that the fact that the appeal on points of law was lodged by the prosecution service in no way curtailed the applicant's right to be present at the hearing of her case, a right she was unable to exercise despite having wished to do so. There has therefore been a violation of Article 6 § 1 of the Convention.

IV. APPLICATION OF ARTICLES 41 AND 46 OF THE CONVENTION

103. The relevant parts of Articles 41 and 46 of the Convention provide:

Article 41

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

Article 46

"1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution."

A. Damage

104. The applicant claimed, firstly, 1,423 euros (EUR) in respect of the pecuniary damage caused by the violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. She submitted that that sum corresponded to 1,000 Latvian lati (LVL), the difference between the retirement pension she had actually received since her retirement in August 1997 up to October 2006 and the pension she should have received had the discrimination complained of not taken place. The applicant explained that in calculating that amount, she had taken into account the eighteen amendments of the basic pension rate that had occurred in the meantime and the increase of her pension following the entry into force of the agreement with Ukraine (see paragraphs 21-22 above).

105. In respect of non-pecuniary damage sustained by the applicant, she defined it as a "feeling of frustration and helplessness, stress, prolonged anxiety and financial uncertainty due to [a] violation of the Convention for almost eleven years – from the moment of her initial application for the old-age pension". According to her, since "[t]he calculation of non-pecuniary damage is impossible in essence, [she] relies on [the] principle of equity applied by the Court". She further maintained that she had suffered as a result of not being able to attend the hearing of her appeal on points of law in the Supreme Court. The applicant claimed in particular the following sums in respect of non-pecuniary damage:

(a) EUR 1,000 for the damage resulting from the alleged violation of Article 6 § 1 of the Convention;

(b) EUR 5,073 for the suffering and anxiety she had experienced during the proceedings between 2002 and 2005 for her divorce and the division of marital property;

(c) EUR 10,000 for the deterioration of her health during the period in question.

106. In addition to the pecuniary award by way of just satisfaction, in the event of the Court's finding of a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, the applicant asked the Court to indicate to the Government that they should "recalculate her pension, taking into account her work periods accrued in Russia, from the moment of the judgment delivery".

107. The Government submitted that the question of just satisfaction was not ready for decision and requested the Court to reserve it in accordance with Rule 75 §§ 1 and 4 of the Rules of Court. They argued that the national authorities, in particular the State Social-Insurance Agency, would be much better placed to recalculate and, if necessary, index-link the applicant's monthly pension. In any event, the Government stated, firstly, that the Court no longer had jurisdiction to make an award to the applicant for pecuniary damage in respect of her employment for an entity based in Ukraine (from 1973 to 1981), and, secondly, that the Court's judgment should not have retrospective effect.

108. In respect of non-pecuniary damage, the Government disputed that there was a causal link between the violations found and the damage alleged in points (b) and (c) of paragraph 105 above. As regards the alleged violation of Article 6 § 1 of the Convention, the Government left the matter to the Court's discretion. They added, however, that in their opinion the finding of a violation would in itself constitute sufficient just satisfaction for any non-pecuniary damage the applicant might have suffered.

109. Lastly, the Government submitted that the question of the exact calculation of the applicant's pension might be more effectively dealt with in the course of the procedure for the execution of the Court's judgment, under the supervision of the Committee of Ministers of the Council of Europe, in accordance with Article 46 of the Convention.

110. In the Court's view, the evidence available to it is sufficient to conclude that the question of the application of Article 41 of the Convention is ready for decision and should therefore be examined. The Court reiterates at the outset that the respondent State remains free to choose the means by which it will discharge its legal obligation under Article 46 of the Convention, provided that such means are compatible with the conclusions set out in the Court's judgment (see *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII). Having regard to the special circumstances of the case, in particular the recent approval of the cooperation agreement on social security between the Russian Federation and Latvia by the legislatures of both States (see paragraphs 44-45 above), the Court considers that it is not required to indicate precisely what would be the best means of ensuring the effective implementation of its judgment in the applicant's individual situation.

111. The Court further reiterates that the principle underlying the provision of just satisfaction is that the applicant should, as far as possible, be put in the position he or she would have enjoyed had the violation of the Convention not occurred (see, *mutatis mutandis*, *Kingsley v. the United Kingdom* [GC], no. 35605/97, § 40, ECHR 2002-IV). Furthermore, the indispensable condition for making an award in respect of pecuniary damage is the existence of a causal link between the damage alleged and the violation found (see *Nikolova v. Bulgaria* [GC], no. 31195/96, § 73, ECHR

1999-II), and this is also true of non-pecuniary damage (see *Kadiķis v. Latvia (no. 2)*, no. 62393/00, § 67, 4 May 2006).

112. Without wishing to speculate on the precise amount of the pension to which the applicant would have been entitled had the violation of Article 14 not occurred, the Court must have regard to the fact that she undoubtedly suffered pecuniary and non-pecuniary damage. Ruling on an equitable basis, as is required by Article 41 of the Convention, and having regard to all the special circumstances of the case, it awards her EUR 5,000 to cover all heads of damage (see, *mutatis mutandis*, *Koua Poirrez v. France*, no. 40892/98, § 70, ECHR 2003-X).

B. Costs and expenses

113. Before the Chamber the applicant claimed LVL 150 (EUR 213) for "translation costs", without producing any documentary evidence in support of her claim. She maintained that claim before the Grand Chamber, adding the following amounts:

(a) LVL 307.05 (EUR 436.90) as reimbursement for the expenses incurred by her representative in the proceedings before the Grand Chamber. In support of that claim, the applicant produced two separate invoices handwritten in Latvian – for LVL 257.49 and LVL 49.56 – together with English versions. The two invoices were issued by a private limited company and mention the applicant's representative as the recipient of services. The Latvian versions of the invoices describe the services rendered as "translation" and "translation from Latvian into English". The two English versions of the same invoices, however, refer to "preparation of documents for the European Court of Justice" (*sic*);

(b) LVL 37.88 (EUR 53.90) as reimbursement for postal expenses, attested by a bill from the Latvian Post Office;

(c) expenses incurred for the participation of her two representatives in the Grand Chamber hearing, consisting of LVL 820 (EUR 1,166.80) for air tickets and EUR 189 for accommodation. These amounts were not substantiated by documentary evidence.

114. The Government accepted that the applicant's claims were justified only as regards the reimbursement of her postal expenses. As to her other claims, they submitted that they were insufficiently substantiated and did not satisfy the fundamental requirements laid down in the Court's relevant case-law.

115. The Court reiterates that to be entitled to an award for costs and expenses under Article 41 of the Convention, the injured party must have actually and necessarily incurred them. In particular, Rule 60 § 2 of the Rules of Court states that itemised particulars of any claim made under Article 41 of the Convention must be submitted, together with the relevant supporting documents or vouchers, failing which the Court may reject the

claim in whole or in part. Furthermore, costs and expenses are only recoverable in so far as they relate to the violation found (see, among many other authorities, *Iatridis v. Greece* (just satisfaction) [GC], no. 31107/96, § 54, ECHR 2000-XI; *Beyeler v. Italy* (just satisfaction) [GC], no. 33202/96, § 27, 28 May 2002; and *Svipsta v. Latvia*, no. 66820/01, § 170, ECHR 2006-III).

116. In the present case the Court observes that the applicant's claim for reimbursement of costs and expenses manifestly fails to satisfy these requirements, since most of the sums claimed are not substantiated by any supporting documents. As regards the invoices referred to in paragraph 113, point (a) above, they are worded in excessively general terms and do not make it possible to ascertain the precise nature of the services rendered and whether they were objectively necessary in the proceedings before the Court; moreover, the wording of the Latvian and English versions is completely different. Nevertheless, the Court accepts that, in view of the complexity of the case, the applicant must have incurred costs, especially in the proceedings before the Grand Chamber. In those circumstances, ruling on an equitable basis as required by Article 41, it decides to award her EUR 1,500 in respect of all costs and expenses, together with any taxes that may be chargeable to her (see *Svipsta*, loc. cit., and *Zaicevs v. Latvia*, no. 65022/01, § 64, 31 July 2007).

C. Default interest

117. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT

1. *Dismisses* unanimously the Government's preliminary objections;

2. *Holds* by sixteen votes to one that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds* unanimously that there has been a violation of Article 6 § 1 of the Convention;

4. *Holds* by sixteen votes to one
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into Latvian lati at the rate applicable at the date of settlement:

(i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of all damage sustained;
(ii) EUR 1,500 (one thousand five hundred euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

5. *Dismisses* unanimously the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 18 February 2009.

Michael O'Boyle
Deputy Registrar

Jean-Paul Costa
President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly dissenting opinion of Judge Ziemele is annexed to this judgment.

J.-P.C.
M.O'B.

PARTLY DISSENTING OPINION OF JUDGE ZIEMELE

1. To my regret, I cannot subscribe to the Grand Chamber's finding of a violation of Article 14 in conjunction with Article 1 of Protocol No. 1 in this case.

2. Having restored its independence following fifty years of unlawful occupation, the Republic of Latvia created a pension system based on the principle of contributions. In view of the fact that no pension funds existed upon the restoration of independence, Latvia decided to guarantee a minimum pension to all residents, including the applicant, when they attained the retirement age provided for in law. This case is not about the basic pension; it is about the question whether Latvia is responsible for additional pension seniority accrued outside the Latvian Soviet Socialist Republic (Latvian SSR) during the days of the Soviet Union. In my opinion, the States responsible for this pension period are the Soviet Union and its successor, the Russian Federation, which collected the pension payments.

3. In addition, Latvia decided that, to the extent possible, it would also provide for pension entitlements taking into account the aggregate years of work in the Soviet Union. In this context, the Latvian legislature drew a distinction between two main situations as concerns individuals who had worked during the Soviet period: (i) it took entire responsibility for Latvian citizens irrespective of where they worked during that period; and (ii) it took responsibility for "foreign nationals and stateless persons" who had worked in the territory of the former Latvian SSR (see paragraph 35 of the judgment). Later, a category of "non-citizens" in Latvia, a special legal status created by law in 1995 pending the decision of Soviet-era settlers as to their nationality[1], was added. As a result, stateless persons, foreigners and non-citizens who had worked for enterprises situated outside the Latvian SSR but resided in Latvia at the time when independence was restored fell outside the scope of this approach. The question before the Court is whether the transitional provisions of the State Pensions Act 1995 (see paragraph 35 of the judgment) concerning non-citizens were unreasonable and thus discriminatory in terms of the Convention.

Summary of the main reasons

4. The majority, in their application of Article 14 together with Article 1 of Protocol No. 1 to the facts of the case and the observations of the parties,

1. According to the Constitutional Court of Latvia, the status of a "non-citizen" in Latvia cannot be compared to any legal status known in international-law documents. It is a special status created by national law in response to a special historical situation. In view of the range of rights that non-citizens have under national law, they cannot be equated with citizens, foreigners or stateless persons as commonly used in State practice (Case no. 2004-15-0106, 7 March 2005, §§ 15 et seq.).

look at the transitional provisions of the Latvian State Pensions Act in isolation from the relevant international-law context. In interpreting the Convention in this case, a basic rule of treaty interpretation has not been followed. The rule has been summed up as follows: "A treaty cannot be considered in isolation. Not only is it anchored in social realities, but its provisions must be set against other legal norms with which they may be in competition" (see D. Daillier and A. Pellet, *Droit International Public*, Paris: Librairie générale de droit et de jurisprudence, 2002, 7th ed., p. 266). This leads the majority to a series of mistakes, such as ignorance of the most comparable case-law. They do not examine properly the nature of the alleged property right that the transitional provisions set forth, although in all the case-law concerning welfare payments the Court has always done so.

5. In my view, there was nothing unreasonable in the transitional provisions of the Act since one cannot say that Latvia was responsible for the pension promises of the USSR or the fact that the USSR could not and the Russian Federation did not uphold them. Moreover, it was Latvia that was a victim of the Soviet aggression and the Court has normally drawn a distinction between States or regimes which have caused suffering and States which of their own good will, free from any obligation, have decided to compensate, at least partly, for the damage caused (see, *mutatis mutandis*, *Associazione Nazionale Reduci dalla Prigionia dall'Internamento e dalla Guerra di Liberazione and 275 Others v. Germany* (dec.), no. 45563/04, 4 September 2007, in which Germany was not attributed responsibility for the damage caused by the German *Reich*, and *Woś v. Poland* (dec.), no. 22860/02, ECHR 2005-IV, in which partial compensation for slave labour during the Second World War did not create an additional obligation on Poland). In *Epstein and Others v. Belgium* ((dec.), no. 9717/05, 8 January 2008) it was precisely the distinction drawn in the 2003 Law on victims of war based on nationality that was at issue. The contested provision in the Belgian Law stated:

> "1. Persons who
>
> (1) were resident in Belgium on 10 May 1940; and
>
> (2) did not possess Belgian nationality on 10 May 1940, acquired it after that date and retained it on 1 January 2003 ...
>
> shall, with effect from 1 January 2003, be entitled, subject to the same conditions and the same procedure, to the advantages secured to persons granted political prisoner status, in respect of pensions and war pensions."

The Court held that there was no obligation under the Convention to repair the damage caused by a third State and that, even if the State decided to do something about it, it enjoyed a wide margin of appreciation in setting the criteria for the enjoyment of the right to compensation. The case was dismissed on *ratione materiae* grounds. It should also be noted that in

Belgium the reparation of the damage caused took the form of pension advantages.

6. The Republic of Latvia, as an independent subject of international law, was under no obligation either to extend its social protection to, or repair the loss of Soviet social protection in respect of, persons who had worked in the Soviet Union, another subject of international law to which Latvia was not a successor State (see, with respect to Lithuania, *Jasinskij and Others v. Lithuania*, no. 38985/97, Commission decision of 9 September 1998, Decisions and Reports 94). However, since the dissolution of States is accompanied by significant difficulties, Latvia decided to guarantee a minimum pension to everyone living in the country, citizens and non-citizens alike, and additionally to compensate for losses incurred as a result of the demise of the USSR on the basis of the criteria of citizenship and territory. As far as Latvia was concerned, as is laid down in the transitional provisions of the State Pensions Act 1995, the compensation took the form of a pension advantage that the State extended, subject to certain conditions. In other words, citizenship is not a criterion for having a pension; it is a criterion for further entitlement (see, *mutatis mutandis*, *Kireev v. Moldova and Russia* (dec.), no. 11375/05, 1 July 2008, in which only citizens of the Republic of Moldova had the right to compensation).

7. In this regard, the majority make a mistake in saying that "the applicant was refused the pension in question solely because she did not have Latvian citizenship" (see paragraph 78 of the judgment). The mistake is twofold. The applicant was granted a minimum State-guaranteed pension like everyone else. This right was not refused. Furthermore, the State Pensions Act 1995 is only one of the laws regulating social security in old age. The Social Security Act provides for benefits in the event that a person is not fully entitled to a State-guaranteed old-age pension (as explained by the Constitutional Court – see paragraph 37 of the judgment). The majority assume that the applicant ought to enjoy the pension advantage without examining in detail the nature of the transitional provisions and the context of their adoption. It should be pointed out in this connection that the Convention does not guarantee any right to compensation for damage if the initial cause does not constitute a violation of the Convention, nor does it regard as a possession old property over which it has been impossible to exercise effective control, or a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 83 and 93, ECHR 2001-VIII).

8. Furthermore, Latvia has engaged in active negotiations of relevant bilateral treaties with those States that under international law bore *a priori* direct responsibility for the years of employment accrued during the Soviet period. Suffice it to say that Latvia and the Russian Federation are in the

final stages of concluding a treaty concerning their respective responsibilities in social security matters, including the Soviet period.

9. The present case is different from *Stec and Others v. the United Kingdom* ((dec.) [GC], nos. 65731/01 and 65900/01, §§ 74 and 76, ECHR 2005-X), the admissibility decision which has served as the guiding case-law to the majority, and *Koua Poirrez v. France* (no. 40892/98, ECHR 2003-X), because the interacting rules of international law in this case are different. Nevertheless, for the sake of a complete argument I will address the question of the application of the *Stec and Others* principles in this case. First of all, I believe that what the Court is saying in both the admissibility decision and the judgment in *Stec and Others* is perfectly in line with the approach of a human rights court, namely that where the State creates a system of benefits these should not be allocated on the basis of criteria that are discriminatory. However, and as is shown by the outcome in the *Stec and Others* case (no violation of Article 14), the Court did not abolish either the margin of the State in pursuing its social policies or the criterion of "manifestly without reasonable foundation" for assessing the proportionality of distinctions drawn in the field of social and economic policies (see *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI). The situation is also different according to whether we are confronted with alleged discrimination based on sex, as in the *Stec and Others* case, or on residence or citizenship status. This distinction was correctly drawn in the *Carson and Others* case, where the Court stated that "the individual does not require the same high level of protection against differences in treatment based on this ground [residence] as is needed in relation to differences based on an inherent characteristic, such as gender or racial or ethnic origin" (see *Carson and Others v. the United Kingdom*, no. 42184/05, § 80, 4 November 2008, and also point 37 below). In other words, the Court does not take an absolutist approach in its case-law on Article 14. Whereas the majority quote the standard for the application of Article 14 from the *Stec and Others* admissibility decision (see paragraph 79 of the present judgment), which seems to indicate that any distinctions would automatically be discriminatory, I note that this was not the standard followed in the *Stec and Others* judgment.

10. I regret that the majority failed to address the key question that the present case raises. In circumstances where the occupation and control of a territory have been contrary to rules of international law and there is an obligation under international law to put an end to the illegality that results from a State having been in physical control of that territory (see *Namibia (South-West Africa)*, Advisory Opinion, *ICJ Reports* 1971, §§ 117-18), can the Convention require the injured State to bear responsibility for amounts of pensions that had allegedly been earned in the service of a wrongdoing State where (a) the funds stayed with the wrongdoing State and (b) the injured State guarantees a certain minimum pension to all?

The scope of the case

11. The Government raised a preliminary objection as concerns the years during which the applicant had worked for an all-Union enterprise, Orghim with its registered office in the Ukrainian Soviet Socialist Republic (Ukrainian SSR). The Government argued that by the time of the lodging of the application, the facts submitted by both parties showed that since the bilateral treaty between Latvia and Ukraine had been signed in 1999, the applicant had become eligible to have her pension recalculated taking into consideration the years of work during which the enterprise based in the Ukrainian SSR had paid relevant contributions to the Soviet budget (see paragraph 25 of the judgment). In her 2002 observations, the applicant had already rebutted the Government's submission regarding the treaty with Ukraine, saying that the existence of this treaty had allowed an increase of the amount of her pension but had not allowed a retrospective repayment to be made (see paragraph 48 of the judgment).

12. The majority consider that the Government are estopped from raising the preliminary objection at this stage since it was raised for the first time in their observations on the merits submitted on 20 October 2006 after the decision on admissibility had been adopted on 11 July 2006 (see paragraphs 46 and 49 of the judgment). It is to be noted that in these submissions, as reiterated in their submissions to the Grand Chamber, the Government repeated that the fact concerning the treaty with Ukraine had been known all along to the Court and should have been part of the Court's initial assessment of the scope of the case since it related to the question of whether the applicant could claim to be a victim in this part of her application. Normally, the Court assesses the victim status of applicants as part of the initial establishment of its jurisdiction. Of course, if the issue is closely linked to the merits of the case, the Court may indeed say so.

13. I consider that the majority's approach in this case is both too formalistic as concerns the doctrine of estoppel (contrast *Blečić v. Croatia* [GC], no. 59532/00, §§ 65-66, ECHR 2006-III) and avoids the issue of the *ex nunc* or *ex tunc* character of the pecuniary right which was raised by the applicant. Moreover, the parties were asked before the Grand Chamber to elaborate on the victim status of the applicant with respect to her employment for an entity based in the Ukrainian SSR. The Grand Chamber has the power to reassess the Government's preliminary objections. It could have decided that they are linked to the merits, which, in its turn, would have required that the Court rule on the *ex nunc* or *ex tunc* character of the right claimed. The judgment of the Grand Chamber does not give a clear answer to that question, except by saying that the issue will be dealt with under Article 41. Under this heading, the Court notes that the applicant has suffered both pecuniary and non-pecuniary damage and awards an amount

to cover all "heads of damage". It is now the reader who is left to speculate about the Court's view on the nature of the right.

14. The judgment treats the submissions concerning the "jurisdiction" of Latvia for the acts complained of by the applicant as a question relating to the Government's objections to the admissibility of the case (see paragraph 55 of the judgment). The Government, having explained that neither the former Latvian SSR nor the Republic of Latvia had any control over all-Union enterprises based in the former Ukrainian SSR and the Russian Soviet Federative Socialist Republic for which the applicant worked, invited the Court "to conclude that the present case falls outside the jurisdiction of the Republic of Latvia within the meaning of Article 1 of the Convention" (see the Government's observations, § 19). Of course, this is not a question of jurisdiction strictly speaking, as the Court demonstrates to the Government in this part of the judgment, but it is one of responsibility for events that took place in the USSR. It is clearly an argument on the merits, the conclusion at which the majority finally arrive two paragraphs later (paragraph 57), only to dismiss it without any elaboration as irrelevant in paragraph 78 (see point 16 below).

Application of the Convention in isolation from international law

15. The respondent Government explained that the reasons for the distinction drawn in the transitional provisions of the State Pensions Act 1995 had to do with the fact that Latvia had not succeeded to the rights or obligations of the Soviet Union. Latvia was not a successor State to the ex-USSR (see paragraphs 52 and 67 of the judgment). It was a State identical to that occupied by the Soviet Union in 1940 (see paragraph 52 and the Government's oral submissions before the Grand Chamber, § 23). It therefore follows that whatever rules of international law applied to domestic decisions after the restoration of independence, they came from the area of prohibition of the use of force and *State continuity*[1]. The applicant did not challenge the State continuity argument but said that it was irrelevant since her life had been the same as that of any Latvian citizen during the Soviet times. "Latvia, Russia and Ukraine had formed part of the same State, the Soviet Union" (see paragraph 59 of the judgment) and she should have the same amount of pension that a Latvian citizen in the same position would receive (see paragraph 61).

16. It is a striking feature of this judgment that it chooses to ignore the context of the demise of the Soviet Union and the special status of the Baltic States in international law, namely their long but ultimately unsuccessful

1. On 26 August 2001 the Institute of International Law adopted guiding principles on State Succession in Matters of Property and Debts, defining State continuity as follows: "Continuity means that legal personality under international law subsists despite changes in territory, population, political and legal regime and name."

occupation, within which the dispute between the applicant and the respondent State arose (see, conversely, *Kovačić and Others v. Slovenia* [GC], nos. 44574/98, 45133/98 and 48316/99, § 256, 3 October 2008). It goes even further in stating that the respondent State's submission to the effect that it is not a successor to the rights and obligations of the former USSR as regards welfare benefits is misconceived (see paragraph 78 of the judgment).

17. The reasoning that the majority offer is as follows: "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" (see paragraph 78 of the judgment). There are several problems with this statement. First of all, the phrase "even assuming that the Government were correct" is incomprehensible. Are the majority suggesting that Latvia is a new successor State to the ex-USSR? The adoption of such a position by the Court would go against its own approach in several other cases (see, for example, *Ždanoka v. Latvia* [GC], no. 58278/00, ECHR 2006-IV) and in a more relevant pronouncement of the Commission in the *Jasinskij and Others* case (cited above). It would also go against the position of the majority of international-law actors. Whatever the meaning, it is here that the majority should have undertaken "an exercise in competent legal reasoning", which for the purposes of the interpretation of an international treaty is "an effort at 'systemic integration' – namely integration in the system of principles and presumptions that underlie the idea of an inter-State legal order" (Report of the Study Group of the International Law Commission, *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, UN Doc. A/CN.4/L.682, § 465). It should be pointed out that one of the general principles of international law relevant to this case is the principle of *ex injuria non jus oritur* as well as the obligation of non-recognition of an unlawful situation as legal (see point 22 below).

Furthermore, no doubt, once a Law is enacted by the State Party it has to comply with the Convention. No one disputes this principle. However, the principle *per se* does not lead very far, nor does it provide for specific solutions to concrete legal issues. The Government make the point that, for the purposes of interpreting the contested provision in national law, international law relevant to situations of State continuity ought to be taken into consideration since this context inspired the specific solutions that Latvia adopted. The Court does not have competence to interpret national law, but it does interpret the Convention and, where applicable, takes the international-law context into consideration. Of course, the transitional provisions of the 1995 Act have to comply with the Convention as

interpreted in accordance with the general rule of interpretation of international treaties.

When a particular provision in national law is linked to the fact that a State has not taken over any obligations as regards welfare benefits promised by another State, it is contrary to both the taking of proper note of the facts of the case and the rules of interpretation used in applying the Convention to say that this is irrelevant. Certainly, other alleged property rights cases which have arisen in the context of the reunification of Germany and the dissolution of Yugoslavia have taken the particular context into consideration when applying the Convention (see, for example, *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Hadžić v. Croatia* (dec.), no. 48788/99, 13 September 2001; and *Schwengel v. Germany* (dec.), no. 52442/99, 2 March 2000).

The Court *must* take State continuity into consideration

18. The Court must take the demise of the Soviet Union and Latvia's continuity into account in adjudicating the present case. The Court's obligation derives from both its own case-law and general international law. The Court has long stated that one of the main principles of the application of the Convention provisions is that it does not apply them in a vacuum (see *Loizidou v. Turkey* (merits), 18 December 1996, *Reports of Judgments and Decisions* 1996-VI). Explaining in more detail its rules of interpretation, the Court has stated: "In addition, the Court has never considered the provisions of the Convention as the sole framework 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 *Demir and Baykara v. Turkey* [GC], no. 34503/97, § 67, ECHR 2008).

19. Indeed, since the Convention remains an international treaty, even with a special character, the rules of the Vienna Convention on the Law of Treaties of 1969 provide the backbone for the interpretation of the Convention as a matter of international law. Article 31 of the Vienna Convention provides that, in addition to the ordinary meaning of the term, their context has to be taken into account. Article 31 § 3 (c) explains: "There shall be taken into account, together with the context: ... any relevant rules of international law applicable in the relations between the parties." It is to be noted that Article 31 has the heading "General rule of interpretation". There is one single rule of interpretation with several parts. However, "... not all parts will always be relevant in all cases; but when they are, they *must* be utilized" (D. French, "Treaty Interpretation and the Incorporation of Extraneous Legal Rules", *International and Comparative Law Quarterly*, vol. 55, no. 2, April 2006, p. 301). Of course, the case will not become one about the use of force between States or the law of State

succession versus State continuity (see, *mutatis mutandis*, the Separate Opinion of Judge Higgins in the *Oil Platforms* case, judgment of 6 November 2003, ICJ, §§ 45-46). It is still a case about alleged discriminatory treatment in the enjoyment of the alleged right to property following the demise of a State.

20. In practice, the Court has regularly been mindful of the other applicable rules of international law when determining how the Convention provisions should apply. The cases of *Prince Hans-Adam II of Liechtenstein* (cited above) and *Al-Adsani v. the United Kingdom* ([GC], no. 35763/97, ECHR 2001-XI), among others, are eminent examples. In all of these cases, even if they raise different questions under international law, the common feature is that other existing rules of international law have substantially affected the application of the Articles of the Convention.

21. The special legal status of Latvia following the demise of the Soviet Union is relevant at least at two levels. Firstly, the Court has to form an opinion as to whether Latvia's argument that it did not succeed to any obligations of the Soviet Union, including in the field of social rights, is correct under international law. This is necessary for the proper understanding of the transitional provisions of the 1995 Act, which, to the extent that they provide for proprietary rights, fall within the ambit of Article 1 of Protocol No. 1. Non-citizens, foreigners and stateless persons fall within the ambit of Article 1 only to the extent that the transitional provisions grant these groups a right. However, without assessing relevant international rules concerning acquired rights in situations involving the restoration of independence by a State, it is difficult to see whether Latvia is correct in arguing that it was under no obligation to do anything more. Even if Latvia passed legislation which might give rise to the recognition of an "asset" for the purposes of Article 1 of Protocol No. 1 to certain groups of individuals and not to others, it is important in determining the scope of Latvia's obligations under the Convention to consider whether this was merely an expression of good will or whether it was because Latvia was obliged to offer the pension in the amount expected (see, *mutatis mutandis*, *Epstein and Others*, cited above). Secondly, the argument concerning the special status of Latvia in international law is relevant for the decision as to whether the distinction drawn was justified or not. Following the Court's case-law on Article 14, the two levels of reasoning are closely linked.

Are there any relevant international obligations in a situation of illegal annexation?

22. In this connection, it is important to keep in mind that international law remains the relevant legal system providing for rules for the determination of its subjects and changes therein, if necessary. In the *Ilaşcu and Others* case, the Court once again proved that it follows general

principles of international law concerning the attribution of State responsibility for acts or omissions under the Convention (see *Ilaşcu and Others v. Moldova and Russia* [GC], no. 48787/99, §§ 320 and 322, ECHR 2004-VII). It is not for the Court, even through the special character of the Convention or *implicitly*, to develop new rules for the identification of entities that can have rights and obligations for the purposes of international law. The fact that the Latvian SSR was a former republic of the Soviet Union does not at all mean that the State of Latvia has some automatic obligations that appertain to the territory concerned during its illegal occupation. On the contrary, *saying or implying that Latvia has some automatic obligations stemming from the Soviet period would defy the fact that the occupation and annexation of Latvia were illegal in international law* and it would raise a question as to the Court's compliance with the general principle of *ex injuria non jus oritur* and the obligation of non-recognition in international law (see points 29 and 34-36 below).

23. The fact that Latvia may take some responsibility over what happened in the territory of the Latvian SSR does not mean that there was an obligation to do so. This is generally the case in situations involving the creation of new States and the disappearance of old States, where the responsible State has to be identified and where the "clean slate" rule has dominated State practice. It is only through significant efforts that some rules challenging the "clean slate" approach have emerged over the last two or three decades (see, among many authorities, P. Dumberry, *State Succession to International Responsibility*, Leiden, Boston, Martinus Nijhoff Publishers, 2007, pp. 52-58). Given this complex area of international law, the principle of cooperation and inter-State negotiations has been seen as a key principle and was rightly supported by the Court in the case of *Kovačić and Others* (cited above), while ignored in the present case (see point 8 above).

24. The Eritrea-Ethiopia Claims Commission, a very recent body dealing with particular State continuity/State succession claims, observed that as concerns obligations to pay pensions, State practice varied. In some cases, following the partition of a unitary State, each of the successors assumed the responsibility for pensions attributable to the predecessor State payable to persons in the successor's territory. The Claims Commission noted that the law stated in the *Danzig Pension Case* was still relevant. The court in that case allocated responsibility for pensions based on the nationality of the recipient, assigning responsibility for pensions to the successor State whose nationality the recipient had assumed (*Danzig Pension Case*, *Ann. Dig.* vol. V, case no. 41). To the extent that the *Danzig Pension Case* might be relevant to situations of illegal annexation (for a clear exclusion of such situations from the scope of codification of the law of State succession, see *Yearbook of the International Law Commission, 1999*, vol. II (Part Two), p. 27; see also point 26 below), it involves an

element which, especially in the modern world of human rights, has become somewhat less important. Nevertheless, it still holds true that having a nationality makes a considerable difference compared to being stateless. In situations of disappearance of States, nationality acquires particular importance. This explains the numerous efforts by the Council of Europe and the United Nations to codify some international rules on nationality in situations of State succession. In these situations more than ever, nationality is a basis for a clear entitlement to a number of important rights, including, as in the case of Latvia, the attribution of pension advantages to its citizens in the absence of any other likely contender.

25. 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.

26. The particular context of illegal annexation distinguishes this case even from other cases decided by the Court in which the State succession element was taken into account. For fifty years, Latvia was unlawfully subjugated by the Soviet Union (see *Ždanoka*, cited above). In terms of international law, with the restoration of the independence of Latvia in 1991, we are in the presence of a situation much closer to that known as *decolonisation* under United Nations law or sometimes referred to in the doctrine as a situation of *disannexation*, similar to what happened with Austria and Czechoslovakia in the context of the Second World War and following the *Anschluss*; the only difference is that unfortunately for the Baltic States, the restoration of their independence was only possible some four decades later (see, among many authorities, A. Zimmermann, "Continuity of States", in the online *Max Planck Encyclopedia of Public International Law*). It is to be recalled that in 1983 the European Parliament, noting that "the Soviet annexation ... has still not been formally recognised by most European States and the USA, the United Kingdom, Australia and the Vatican still adhere to the concept of Baltic States", suggested that the issue of the Baltic States be submitted to the United Nations Sub-committee on Decolonization (1982-1983 EUR.PARL.DOC (no.7.908) 432-33 (9183)).

27. In practice this meant that when the applicant moved to the Latvian SSR in 1954, for her it was just another corner of the Soviet Union, as she confirmed in her observations. Her situation is typical of many who were encouraged to move into the Baltic republics as part of the policy of

Sovietisation and *Russification* of the Baltic States by the Soviet Communist Party after their unlawful incorporation into the Soviet Union[1]. The Court ought to be able to draw a distinction between fundamentally different circumstances in fact and in international law. It is thus a very different setting when a person enters, let us say, France or the United Kingdom, which are in a position to decide whether to allow the person into their territory. Upon restoration of independence Latvia was faced with the issue of Soviet-era settlers, reaching numbers that came close to making Latvian citizens a minority in their own State, but Latvia had very limited choices in terms of its policies with respect to the Soviet-era immigrants.

28. It is curious that the text of the judgment does not seem to draw a distinction between the different legal entities concerned over the relevant period of time. Surely there is a difference for the purposes of law between the Latvian SSR, the USSR and the Republic of Latvia. One is left puzzled by the exact meaning of the use of terms "Latvia" in the context of the year 1954 or "Ukraine" in the context of the 1970s and 1980s (see paragraphs 10-11 of the judgment). Suggesting that the Republic of Latvia, as a subject of international law and thus a Party to the Convention, is a successor to the USSR, in terms of international law, does not make sense and goes against well-established State practice, as has been shown above.

29. Even worse, it may imply that, as far as the European Court of Human Rights is concerned, the obligation of international law not to accord recognition to unlawful entities is irrelevant (contrast *Namibia (South-West Africa)*, Advisory Opinion, cited above, §§ 117-18). This is a departure from well-established case-law since the Court has consistently held that, for example, Turkey is responsible for the acts or omissions under the Convention taking place in the "Turkish Republic of Northern Cyprus", a comparator to the Latvian SSR.

30. Whatever rights or privileges were granted to the applicant under Soviet law, they were granted by the Soviet Union, whose effective control over the Latvian SSR until 1991 is probably not questioned. Similarly, it is not questioned that today the Russian Federation continues the rights and

1. The situation in the Latvian SSR has been described as follows: "Those members of the Latvian elite that had not fled to the West or perished in the Gulag were little trusted by the authorities. The Communist Party of Latvia was miniscule when the Soviets arrived ... These factors pushed the authorities to import Russians and Soviet-born or Soviet-educated Russified Latvians to fill the leading posts in society. ... Thus, embedded in the Leninist political system was an ethnic hierarchy, with Russians and Russified Latvians ruling over the indigenous Latvians. ... The scale of the migration flow eventually led many Latvians to conclude that Moscow was attempting to dilute the Latvian population or assimilate it altogether. ... Only 21.1 per cent of the Russians claimed knowledge of Latvian in the 1989 census. ... [T]he regime ... did politicise the language issue, often making the knowledge of Russian and willingness to speak it a sign of political loyalty." See Nils Muižnieks, "Latvia: Origins, Evolution and Triumph" in I. Bremmer and R. Taras (eds.), *Nations and Politics in the Soviet Successor States*, Cambridge University Press, 1993, pp. 184-87.

obligations of the Soviet Union (see *Ilaşcu and Others*, cited above, § 378; and also, for example, H. Hamant, *Démembrement de l'URSS et Problèmes de Succession d'États*, Editions Bruylant, 2007, p. 128). Even if views may differ on the modalities of continuity of the Baltic States, there is almost unanimity that they are not new successor States to the Soviet Union and that they are a case apart from the ex-Soviet republics proper in view of their unlawful occupation by the Soviet Union (see, among many authorities, H. Hamant, op. cit., p. 129; P. Dumberry, op. cit., p. 151; and I. Ziemele, *State Continuity and Nationality: the Baltic States and Russia*, Leiden, Boston, Martinus Nijhoff Publishers, 2005). Furthermore, both parties in their replies to the questions put forward during the public hearing noted that had the applicant retired in 1990 her pension would have been paid from the means usually assigned from the USSR State budget. The USSR State Bank, and not the Soviet republics, kept control over the State and social-insurance budget. After the demise of the USSR these assets were not divided between the former republics. They were inherited by the Russian Federation.

31. In other words, we are dealing with the consequences of illegal annexation when after the withdrawal of the sovereignty of the predecessor State a portion of the population, as transformed during the occupation, was left in a situation of uncertainty. I do not see why, through the door of the Convention, Latvia, an injured State, and its citizens should be made to compensate for a situation they did not create. However, unlike many other situations of a similar character known in history, the applicant was not stripped of social protection and pension rights, as she received the minimum pension available to all residents of Latvia. In addition, albeit of limited legal value, it should be mentioned that the applicant had two options available to acquire a higher amount of pension but she chose not to use them. She could have registered her Russian nationality or acquired Latvian nationality and her claim would have been taken care of. The majority's view on her legal status (see paragraph 88 of the judgment) is not entirely correct since it omits to take into consideration the special simplified procedure that the Citizenship Act of the Russian Federation applied to former USSR citizens if they decided to register their Russian citizenship. The statement in the judgment that the applicant had "stable legal ties" with the Republic of Latvia appears without any explanation or elaboration as to the reasons for this view. Regrettably, the majority fail to appreciate the fact that the situation before them concerns the restoration of independence by a State following long years of incorporation that resulted from illegal threats or use of force. It follows that the argument about the possibility of acquiring a nationality in such a context is different as compared to any other normal situation (on this, see A. Eide, "The Rights of 'Old' versus 'New' Minorities", *European Yearbook of Minority Issues*, vol. 2, 2002/3, p. 377).

The State Pensions Act 1995 has one legitimate aim!

32. The majority limit themselves to accepting that the State Pensions Act 1995 pursued at least one legitimate aim, "namely the protection of the country's economic system" (see paragraph 86 of the judgment). Interestingly, they cannot avoid the reference to the context of restoration of independence and the break-up of the USSR, despite stating earlier that reference to this context is misconceived in the present case. Naturally, since the legitimate aim is narrowed down to the protection of the country's economic system, the assessment of the proportionality of the means employed is quite simply different from what one could expect if the relevant international-law context were taken into consideration. This assessment has no connection whatsoever to the realities, the tasks and the aims that the independent Latvian authorities had to face when building a modern independent State in a post-conflict context.

33. In any event, even in accordance with the Court's case-law, States have a wide margin of appreciation when it comes to rebuilding or reforming their economic systems. Surely the margin should be taken seriously in a case where a State as such re-emerges on the world map.

Does the distinction drawn amount to discrimination?

34. The majority consider that there are no weighty reasons for the distinction based on nationality essentially for the following reasons. Firstly, the applicant was in an objectively similar situation to persons who had an identical or similar career but who, after 1991, were recognised as Latvian citizens. Secondly, there is no evidence that during Soviet times there were any differences in treatment between Soviet nationals as regards pensions – in other words, the Soviet social tax was paid and administered in the same way for all employees. Thirdly, the applicant does not have any other nationality. Her closest ties are with Latvia, "which, objectively, can assume responsibility for her in terms of social security" (see paragraph 88 of the judgment and point 31 above).

35. I fail to see how these assumptions prove as a matter of law that a distinction was not justified. It is equally unclear to me why the majority find that the Soviet context is more relevant to their assessment of the proportionality of the distinction. It was not the alleged equality of all Soviet citizens on the basis of which the Latvian State Pensions Act was passed. First of all, I find that the majority contradict themselves in referring to some alleged facts from the Soviet past despite having just said that the explanations by the Government as to the legal context characterising Latvia during that period were irrelevant. In the absence of any explanation as to the choice of the relevant context, I find that decision to be arbitrary. Secondly, the majority confirm my earlier point that it is impossible to

examine the compatibility of the contested provisions of the national law with the Convention in isolation from the wider context (see points 18-19 above). Finally, one wonders how the Court's choice to refer to the alleged Soviet realities in such a way as to arrive at the conclusion that the distinction was not justified complies with the general principle of *ex injuria non jus oritur* and the obligation of non-recognition of an unlawful situation as legal in international law.

36. If, as a matter of law, we take into account that (a) the presence of the Soviet Union in the territory of Latvia was unlawful, being contrary to several rules of international law, and (b) that certain well-known principles applicable in situations of occupation (for example, Article 49 § 6 of Geneva Convention (IV) of 12 August 1949 relative to the Protection of Civilian Persons in Times of War) prohibit not only deportations or forced transfers of the population, such as those carried out by the USSR during the Second World War, but also any measures taken by an occupying power in order to organise or encourage transfers of parts of its own population into the occupied territory (see *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, *ICJ Reports* 2004, § 120), then references to the alleged equality of Soviet citizens, similarity of careers and the assumption that the applicant's closest ties are with Latvia simply do not meet the challenge of this case. It is true that there is not an international convention as concerns the content of the non-recognition obligation, especially as it may be relevant in the evaluation of claims to pensions put forward in circumstances similar to those at issue in this case. There are, however, important examples of State practice and judicial decisions, including the Court's own, which could serve as guidance.

37. In terms of international law it is commonly known that the Latvian SSR was an illegal creation and was subject to the non-recognition rule on the part of third States. There is an obligation not to recognise "official acts performed" by the Soviet Union "on behalf or concerning" the Latvian SSR. Such acts are illegal and invalid (see, *mutatis mutandis*, *Namibia (South-West Africa)*, Advisory Opinion, cited above, § 125). One can also note several cases decided by the Court of Justice of the European Union in which it recognised that only acts of the Republic of Cyprus instead of the acts of the authorities in the northern part of Cyprus had legal consequences under Community law (see, for example, Case C-432/92, § 40). The pension for the applicant's work during the Soviet period was promised to her by the Soviet Union. This promise, the alleged equality of Soviet citizens and her move to the Latvian SSR for residence purposes cannot serve, if international law is taken seriously, as a basis for the Court's argument that the Republic of Latvia ought to have extended full pension advantages to non-citizens in Latvia.

The Court could have paid attention to another principle in international law set forth by the International Court of Justice in the *Namibia* case. It could have looked at the transitional provisions of the Latvian law with a view to determining whether the measure took the interests of the whole population sufficiently into consideration (see *Namibia*, cited above, § 125). Once again, it is important to keep in mind that everyone in Latvia receives a basic pension and that there is a scheme of other social benefits applicable to all, without any distinction on the basis of nationality.

38. Furthermore, even as a matter of Convention law and general human rights law, the distinction in the Latvian State Pensions Act does not automatically mean that there is discrimination (see *Carson and Others*, cited above).

It is to be noted that the United Nations International Convention on the Elimination of All Forms of Racial Discrimination specifically provides in Article 1 § 2 that it does not apply to "distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens". It is true that the Committee on the Elimination of Racial Discrimination has construed this exception strictly but none of the developments in human rights law, including the European Convention on Human Rights, have abolished the sovereign right of a State to impose distinctions between citizens and non-citizens in so far as their purpose or effect contains no element of discrimination based on race, colour, descent, or national or ethnic origin (see K. Boyle and A. Baldaccini, "A Critical Evaluation of International Human Rights Approaches to Racism" in S. Fredman, *Discrimination and Human Rights. The Case of Racism*, Oxford University Press, 2001, p. 155; see also point 9 above). There is certainly plenty of State practice where relevant distinctions are drawn in a number of areas of life. C. Tomuschat has noted that "concerning social rights, national laws normally draw many distinctions which a layperson in that field cannot easily review as to their justification" (see C. Tomuschat, "International Covenant on Civil and Political Rights (1966)", in online *Max Planck Encyclopedia of Public International Law*, § 28). The Court has correctly been careful and has held that States enjoy a wide margin of appreciation in determining their social and economic policies.

39. In cases which *do not* raise issues of State succession or State continuity, the Court's approach is that very weighty reasons should exist for any distinction based on nationality (see paragraph 87 of the judgment). It is certainly in line with the Court's role to maintain the same approach in instances which arise in State succession or State continuity contexts. However, in such cases, for all the above reasons, the Court has to accept that the particular context is an important justification for the necessary distinctions (see *Kuna v. Germany* (dec.), no. 52449/99, ECHR 2001-V). Justifications for the distinction, even if they go back to the history of the

country, ought to be carefully examined as the Court has in fact done in other cases (see *Epstein and Others*, cited above).

Conclusions

40. In the circumstances of the present case, I do not see that the applicant has incurred a heavier burden than the rest of the generation that spent their life working in the Soviet Union. In 1992 Latvia experienced a total collapse of the national economy. The State had practically no money. At the end of 1992 a flat-rate pension was introduced in the entire country, whereby all individuals were entitled, without any distinction, to the amount of 15 Latvian lati (LVL – 21.34 euros). Four years later, even if the citizens in principle had to be compensated for their years of work during the Soviet period, the standard pension received by the majority of the population amounted to LVL 22. The State could not afford any more. Since the applicant was working at the time, this measure did not apply to her. The approach of Latvia was balanced with respect to different demands in a particularly complicated historical context.

41. The issue that this case raised is many times more complicated and delicate than meets the eye and the rather simplistic approach of the majority is hard to understand. Not only is it a case where the Court should have addressed a complex area of international law but it is a case where questions of nation-building in a post-colonial context and frictions between a new titular nation and a new minority which had lost its former privileges are necessarily in the background. With this case, the Court is placed in the midst of all that. The judgment will be read through these various perspectives, even if the Court was trying to avoid entering into any of these questions. Be that as it may, the Court cannot always avoid taking a position on complex matters and instead deal with issues in a narrow and isolated manner. The Court should not go against the general rule of interpretation as set forth in the Vienna Convention on the Law of Treaties and thus act *ultra vires*. In international law this raises a somewhat new challenge as concerns the value of such judicial decisions. The Court should not contribute to the fragmentation of international law in the name of alleged human rights, nor should it readily take decisions that may undermine State-building since the enforcement of human rights still requires strong and democratic State institutions (for an example where the Court follows this approach, see *Ždanoka*, cited above).

42. The majority indeed only focused on the distinction drawn on the basis of lack of nationality in the transitional provisions of the State Pensions Act and brought the prohibition of such a distinction close to having an absolute character. They did not contradict the arguments of the respondent State; they simply failed to see the relevance of such arguments. The Court therefore does *not* pronounce on any relevant issues under

international law in this case. As a result, it does not contradict the fact of the unlawful occupation of Latvia and the continuity of the Latvian State in international law.

What are the consequences of the approach taken in this case? It sends a strong message to all States Parties as concerns their social security laws since the chances are that whenever there is a distinction based on acquired characteristics (residence, nationality or other status) it will be contrary to Article 14 unless some truly weighty justifications are provided. Even if I believe that this goes way beyond the scope of the Convention *ratione materiae*, the fact remains that the Court has given its decision and all States Parties will have to bear the consequences. The Court will have to ensure that in all similar cases it takes the same approach.

43. I personally continue to see the case for what it is: a problem of responsibility for pensions accrued under the USSR following its demise. I do not think that this was the type of case where pronouncements of a fundamental character on the prohibition of discrimination in the enjoyment of social rights were appropriate. The case could nevertheless have been an important contribution to the clarification of the application of the Convention with respect to acquired rights in the complex context of State continuity following illegal annexation. In addition to some cases with respect to Turkey, it could have been a further example of the Court's approach to the question of the contents of the obligation of non-recognition of a situation as legal in international law. Unfortunately, the Court has missed this opportunity.