



Suspension of the old-age pension of a civil servant who continued to work in the public sector did not breach the Convention

The case [Fábián v. Hungary](#) (application no. 78117/13) concerned the suspension of Mr Fábián's old-age pension on the grounds that he continued to be employed in the public sector.

In today's **Grand Chamber** judgment¹ in the case the European Court of Human Rights held:

- unanimously, that there had been **no violation of Article 1 of Protocol No. 1 (protection of property)** to the European Convention on Human Rights,
- unanimously, that the complaint relating to an allegedly unjustified difference in treatment between pensioners employed in different categories within the public sector **had been introduced out of time and was therefore inadmissible**,
- by 11 votes to six, that there had been **no violation of Article 14 (prohibition of discrimination) of the Convention, taken in conjunction with Article 1 of Protocol No. 1 to the Convention** as concerned Mr Fábián's complaint about the difference in treatment with pensioners working in the private sector.

The Court found in particular that a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the fundamental rights of Mr Fábián, who had not been made to bear an excessive individual burden.

The Court observed that the Contracting States enjoyed a wide margin of appreciation with regard to the funding methods of public pension schemes, and noted that the interference in question had pursued an aim in the general interest, namely protecting the public purse and ensuring the long-term sustainability of the Hungarian pension system.

The Court also noted that the suspension of disbursement of Mr Fábián's pension had been temporary. Furthermore, he had been able to choose between discontinuing his employment in the civil service and continuing to receive his pension, or remaining in that employment and having his pension payments suspended, and had opted for the latter. Moreover, Mr Fábián had not been left without any means of subsistence as he had continued to receive his salary.

The Court also found that Mr Fábián had not demonstrated that, as a member of the civil service whose employment, remuneration and social benefits were dependent on the State budget, he had been in a relevantly similar situation to pensioners employed in the private sector, whose salaries were funded through private budgets outside the State's direct control.

Principal facts

The applicant, Gyula Fábián, is a Hungarian national who was born in 1953 and lives in Budapest.

Mr Fábián took early retirement at the age of around 47 and started receiving a service pension from 1 January 2000. However, he continued to work, first in the private sector from 2000 to 2012, and then in the public sector from 1 July 2012 to 1 April 2015.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

On 1 January 2013 an amendment to the 1997 Pensions Act entered into force, according to which the disbursement of old-age pensions to persons employed at the same time in certain categories within the civil service would be suspended from 1 July 2013 onwards for the duration of their employment.

On 2 July 2013 the National Pensions Administration informed Mr Fábíán, who had been working as the head of the Road Maintenance Department of a district municipality in Budapest, that the disbursement of his pension – equivalent to around 550 euros (EUR) per month at the relevant time – had been suspended as of 1 July 2013 because he was employed at the same time in the public sector. Mr Fábíán appealed unsuccessfully against that decision. He left his post with the municipality on 31 March 2015 and began once more to receive his pension, which had been increased to around EUR 585. The rule in question did not apply to retired persons working in the private sector.

Complaints, procedure and composition of the Court

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Mr Fábíán complained about the suspension of disbursement of his pension.

Under Article 14 (prohibition of discrimination) of the Convention, read in conjunction with Article 1 of Protocol No. 1 to the Convention, Mr Fábíán alleged that he had been subjected to an unjustified difference in treatment compared with pension recipients working in the private sector and those working in certain categories within the public sector.

The application was lodged with the European Court of Human Rights on 5 December 2013.

In its Chamber [judgment](#) of 15 December 2015 the Court held unanimously that there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

On 11 March 2016 the Government requested that the case be referred to the Grand Chamber under Article 43 of the Convention (referral to the Grand Chamber), and on 2 May 2016 the panel of the Grand Chamber accepted that request. A hearing took place on 9 November 2016.

The European Trade Union Confederation (ETUC) was granted leave to intervene in the written procedure.

Judgment was given by the Grand Chamber of 17 judges, composed in this case as follows:

Guido **Raimondi** (Italy), *President*,
Angelika **Nußberger** (Germany),
Mirjana **Lazarova Trajkovska** (“The former Yugoslav Republic of Macedonia”),
Luis **López Guerra** (Spain),
András **Sajó** (Hungary),
İşıl **Karakaş** (Turkey),
Kristina **Pardalos** (San Marino),
André **Potocki** (France),
Valeriu **Griţco** (the Republic of Moldova),
Faris **Vehabović** (Bosnia and Herzegovina),
Ksenija **Turković** (Croatia),
Branko **Lubarda** (Serbia),
Yonko **Grozev** (Bulgaria),
Síofra **O’Leary** (Ireland),
Carlo **Ranzoni** (Liechtenstein),
Stéphanie **Mourou-Vikström** (Monaco),
Pauliine **Koskelo** (Finland),

and Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

Decision of the Court

[Article 1 of Protocol No. 1 to the Convention \(protection of property\)](#)

Firstly, the Court observed that the interference in question had been prescribed by section 83/C of the 1997 Pensions Act and had pursued an aim in the general interest, that of protecting the public purse with a view to ensuring the long-term sustainability of the Hungarian pension system and reducing public debt.

Secondly, the Court noted that the system in question was a contributory old-age pension scheme and that such pensions were in general intended to provide compensation for reduced earning capacity as persons got older. When persons in receipt of an old-age pension continued or resumed work – like Mr Fábíán – when they had not yet reached the statutory retirement age, their working life was apparently not yet over and earning capacity still existed. Hence, Mr Fábíán, who had taken early retirement when he was close to 47 years old, had become entitled to a pension on the basis of contributions made over a far shorter period of time than that for which contributions were usually paid. Thereafter he had continued to contribute to the Pension Fund as a result of his employment in the private and the public sector, after taking early retirement in 2000.

Thirdly, the Court reiterated that the funding methods of public pension schemes varied considerably from one Contracting State to another and that matters relating to social and economic policies fell in principle within the wide margin of appreciation accorded to States in this area. In examining whether the national authorities had acted within their margin of appreciation in the instant case, the Court examined various factors. It noted that Mr Fábíán's case did not concern either the permanent, complete loss of his pension entitlements or the reduction thereof. Rather it concerned the temporary suspension of his pension payments, which would be (and were) resumed when Mr Fábíán left State employment. Therefore, the suspension did not strike at the very substance of the applicant's right and the essence of the right had not been impaired. The Court also observed that when the legislation at issue had entered into force, disbursement of Mr Fábíán's pension had been suspended but he had been able to choose between discontinuing his employment in the civil service and continuing to receive his pension, or remaining in that employment and having his pension payments suspended. He had opted for the latter. He had therefore continued to make contributions to the Pension Fund, which had resulted in an increase in his pension once the payments were resumed. The Court also noted that, after disbursement of his pension had been suspended, Mr Fábíán had continued to receive his monthly salary. Hence, he had not been left without any means of subsistence; moreover, he had not argued that he risked falling below the subsistence threshold.

Consequently, bearing in mind the State's wide margin of appreciation in the matter and the legitimate aims of protecting the public purse and ensuring the long-term sustainability of the Hungarian pension system, the Court found that a fair balance had been struck between the demands of the general interest of the community and the requirements of the protection of the fundamental rights of Mr Fábíán, who had not been made to bear an excessive individual burden. **Accordingly, the Court held that there had been no violation of Article 1 of Protocol No. 1 taken alone.**

[Article 14 \(prohibition of discrimination\), taken in conjunction with Article 1 of Protocol No. 1 to the Convention](#)

The Court found that Mr Fábíán's complaint relating to the difference in treatment between pensioners employed within the public sector was out of time, and declared it inadmissible (Article 35 §§ 1 and 4 of the Convention). Mr Fábíán had raised the complaint for the first time in his

observations of 9 February 2015, that is to say, after the expiry of the six-month time-limit for lodging complaints.

The Court went on to find that Mr Fábíán had not demonstrated that, as a member of the civil service whose employment, remuneration and social benefits were dependent on the State budget, he had been in a relevantly similar situation to pensioners employed in the private sector. Following the entry into force of section 83/C of the Pensions Act, it was the applicant's post-retirement employment in the civil service that had entailed the suspension of his pension payments. It was precisely the fact that, as a civil servant, he had been in receipt of a salary from the State that was incompatible with the simultaneous disbursement of an old-age pension from the same source. As a matter of financial, social and employment policy, the impugned bar on simultaneous accumulation of pension and salary from the State budget had been introduced as part of legislative measures aimed at correcting financially unsustainable features in the pension system of the respondent State. Steps taken to reform deficient pension schemes had, in turn, been part of action taken with the aim of reducing public expenditure and debt. This did not prevent the accumulation of pension and salary for persons employed in the private sector, whose salaries, in contrast to those of persons employed in the civil service, were funded not by the State but through private budgets outside the latter's direct control. Furthermore, under Hungarian law, employment in the civil service and employment in the private sector were treated as distinct categories, and Mr Fábíán's specific profession within the civil service was difficult to compare with any in the private sector; moreover, no relevant comparisons had been suggested by him. Finally, with regard to his employment relationship, the State had not functioned only as regulator and standard-setter but had also been his employer. It was therefore for the State to lay down, in that capacity as employer, the terms of employment for its personnel and, as manager of the Pension Fund, the conditions for disbursement of pensions. Consequently, the Court held that **there had been no discrimination, and therefore no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.**

Separate opinions

Judges O'Leary and Koskelo expressed a joint concurring opinion. Judge Ranzoni expressed a concurring opinion. Judges Sajó, Vehabović, Turković, Lubarda, Grozev, and Mourou-Vikström expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.