



THE EQUAL RIGHTS TRUST

One Lyric Square
5th Floor
Hammersmith
London W6 0NB
United Kingdom

Tel.: +44 (0) 20 3178 4113
info@equalrightstrust.org
www.equalrightstrust.org

Board of Directors

Bob Hepple (Chair)
Sue Ashtiany
Tapan Kumar Bose
Shami Chakrabarti
Claire L'Heureux-Dubé
Gay McDougall
Bob Niven
Sonia Picado
Michael Rubenstein
Theodore Shaw
Sylvia Tamale

The Equal Rights Trust
is a company limited by
guarantee incorporated in
England and a registered
charity. Company number
5559173. Charity number
1113288.

Dimitrina Petrova
Executive Director

29 September 2009

Gundars Daudze

Speaker of the Saeima

Gundars.Daudze@saeima.lv

Aija Barca

Chairperson of the Social and Employment Matters Committee

Aija.Barca@saeima.lv

Saeima

Jekaba str. 11

Riga LV 1811

Saeima Presidium

Fax: +371 67083033

Dear Mr Daudze,

I am writing to you on behalf of The Equal Rights Trust to provide an expert opinion on the proposed amendments to the State Pensions Act which were adopted at first reading by the Saeima on 27 August 2009 and which are expected to be confirmed at a forthcoming second reading.

The Equal Rights Trust (ERT) is an independent international organisation whose purpose is to combat discrimination and promote equality as a fundamental human right and a basic principle of social justice. Building on the highest achieved levels of protection against discrimination, best practices and current discussions, ERT promotes a holistic, unified approach to equality and human rights.

On 27 August 2009, the Saeima adopted at first reading amendments to the 1995 State Pensions Act under which the calculation of pensions for Latvian citizens and non-citizens retiring after 1 January 2010 will not cover any term of employment before 1991 at organizations which have been legally registered in former Soviet republics other than Latvia. The amendments have been proposed as a response¹ to the European Court of Human Rights finding that Latvia had discriminated against non-citizens as compared to citizens, in not recognizing their employment before 1991 by organizations which have been legally registered in Soviet republics other than Latvia, as counting towards pensions. Latvia is currently responding to the charges of discrimination against a certain segment of its population (the “non-citizens”) by levelling down pension benefits, thus treating citizens less favourably than before and as unfavourably as the non-citizens.

In the case of *Andrejeva v. Latvia*,² the European Court of Human Rights found that Latvia had discriminated against the applicant, Ms Andrejeva, on the ground of her statelessness as a Latvian “non-citizen”, in calculating her pension entitlement under the State Pensions Act. The Court established that the sole reason for refusing to take account of Ms Andrejeva’s employment “outside Latvia” for her pension calculations was her lack of Latvian citizenship (her status as a stateless person - *non-citizen of Latvia*) and found a violation of Article 14 (prohibition of discrimination) in conjunction with Article 1 of Protocol No.1 (right to peaceful enjoyment of possessions) of the European Convention on Human Rights.

¹ Likumprojekta „Grozījumi likumā „Par valsts pensijām”” Anotācija, protokols Nr.14, 73§ 6.punkts.

² Application no. 55707/00, judgment of 18 February 2009.

We respectfully submit that, notwithstanding the motivation to eliminate discrimination of non-citizens pensioners as compared to citizens, levelling down of essential social protection entitlements, resulting in deterioration of the socio-economic position of a larger category of pensioners residing in Latvia (all those who prior to 1991 have worked in organizations with non-Latvian legal personality or registered outside Latvia), is not compatible with international legal principles, customary international law, as well as Council of Europe and European Union law, and contradicts the object and purpose of national equality legislation adopted by EU member states.

It is a well established principle of international law that the application and implementation of legally binding provisions of international treaties, and, by extension, of binding decisions of international tribunals, should not abolish, restrict, or limit existing legal rights. Article 60 of the European Convention on Human Rights provides:

Nothing in this Convention shall be construed as limiting or derogating from any of the human rights and fundamental freedoms which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a Party.

The same principle should apply by inference to decisions of the European Court of Human Rights, whose judgments are meant to implement Convention rights and therefore should not be used as a pretext to limit any legitimate rights pre-existing the judgment.

With regard to the enjoyment of economic and social rights, the International Covenant on Economic, Social and Cultural Rights is based on the principle of progressive implementation and non-regression, discouraging “deliberately retrogressive measures” that impede the goal of progressive implementation.³ This means that states may not

³ See, e.g., UN Committee on Economic, Social and Cultural Rights, General Comment 3, para. 9.

contravene what has been acquired and weaken the scope of rights previously recognized by a national legislation. The principle requires levelling upwards of norms allowing for the strengthening of legal protections accorded to persons rather than alignment with the lowest common denominator of national legislations.

The EC Treaty has among its objectives to promote “a high level of employment and social protection”, and “the raising of the standard of living and the quality of life”⁴. In the light of these goals, EC Directives protecting employment and pay (including pension) rights are intended as minimum standards and should not be used to justify the lowering of existing protections. The EC Directive establishing a General Framework for Equal Treatment in Employment and Occupation states:

The implementation of this Directive should not serve to justify any regression in relation to the situation which already prevails in each Member State.⁵

Similarly, in respect to EU sex discrimination law⁶, the European Court of Justice (ECJ) jurisprudence does not permit inequality to be eradicated by retrospective “levelling down”.⁷ Upon a finding of discrimination the treatment of the disadvantaged group must immediately and fully be equalized upwards to the level of the benefitting group. Although the instant case is not related to sex discrimination, it may be argued that courts across Europe would approach the matter of pension-related discrimination on grounds other than sex from a similar perspective.

⁴ Treaty Establishing the European Community, consolidated version, Official Journal of the European Communities, 24. 12. 2002, Article 2.

⁵ European Council Directive EC/2000/78, Preamble, para. 28.

⁶ Treaty Establishing the European Community, consolidated version, Official Journal of the European Communities, 24. 12. 2002, Article 141.

⁷ Case C-200/91 Coloroll Pension Trustees Ltd v Russel [1993] ECR I-4879.

I would further draw your attention to the important distinction between formal and substantive forms of equality, and to the modern international understanding of the right to equality as broader than the right to non-discrimination. Principle 1 of the 2008 Declaration of the Principles on Equality, an international document of best practice signed by 128 prominent legal practitioners, academics and human rights activists from 44 countries, states:

The right to equality is the right of all human beings to be equal in dignity, to be treated with respect and consideration and to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. All human beings are equal before the law and have the right to equal protection and benefit of the law.⁸

Principle 26 of the same Declaration states:

In adopting and implementing laws and policies to promote equality, there shall be no regression from the level of protection against discrimination that has already been achieved.⁹

In the instant proposed legislation, the amendments to the State Pensions Act would ensure formal equal treatment of pensioners regardless of their citizenship status, but would at the same time increase inequality in Latvian society, by pulling down the level of social protection for a much larger category of pensioners, both citizens and non-citizens. The amendments would weaken the right to equality by undermining the capability of that larger group of pensioners – those who have, before 1991, worked in non-Latvian former Soviet organisations – to participate on an equal basis with others in any area of economic, social, political, cultural or civil life. Additionally, it would create a new injustice, by treating less favourably all those who have worked in such organisations as compared to those who have worked in Latvian-registered organizations.

⁸ *Declaration on Principles of Equality*, Published by The Equal Rights Trust, London 2008, p. 5.

⁹ *Ibid.*, p. 14.

The Equal Rights Trust appeals to you and your colleagues to reconsider, in the forthcoming second reading, the amendments to the State Pensions Act which were adopted on 27 August 2009, and vote for the adoption of amendments which would harmonise upwards the pension entitlement of the non-citizens to those of citizens of similar employment history.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D Petrova', written in a cursive style.

Dimitrina Petrova
Executive Director