



December 2010

This Factsheet does not bind the Court and is not exhaustive

Social welfare

The European Convention on Human Rights (the Convention) guarantees *civil and political rights* (such as the right to life, the right to liberty and security and the right to a fair trial). Meanwhile, other Council of Europe instruments, notably [The European Social Charter](#), concern *economic and social rights* (such as housing, health, education, employment, legal protection and social welfare).

However, “*there is no water-tight division separating [the sphere of economic and social rights] from the field covered by the Convention*”; while the latter “*sets forth what are essentially civil and political rights, many of them have implications of a social or economic nature*” (Airey v. Ireland, 9 October 1979). These relate, *inter alia*, to social welfare.

Medical care

Payment for medical treatment

[Nitecki v. Poland](#)

21 March 2002 (inadmissibility decision)

The applicant, who had a very rare and fatal disease, alleged that he did not have the means to pay for his medical treatment. He complained before the Court of the authorities’ refusal to refund the full cost of his treatment (under the general sickness insurance scheme only 70% of the costs were covered).

The Court held that an issue could arise under Article 2 of the Convention (**right to life**) where it was shown that the authorities of a Contracting State put an individual’s life at risk through the denial of health care which they had undertaken to make available to the population generally. This was not the case with Mr Nitecki.

Removal of an alien who was ill

[D. v. the United Kingdom](#)

2 May 1997 (judgment)

The applicant, originally from St Kitts (Caribbean) was arrested for cocaine possession on his arrival in the United Kingdom and was sentenced to six years’ imprisonment. He was discovered to be suffering from AIDS. Before his release, an order was made for his deportation to St Kitts. He alleged that his deportation would reduce his life expectancy, as no treatment of the kind he had been receiving in the United Kingdom was available in St Kitts. He also argued that his removal would condemn him to living in poverty.

The Court emphasised that aliens who had served their prison sentences and were subject to expulsion could not in principle claim any entitlement to remain in the territory of a Contracting State in order to continue to benefit from medical, social or other forms of assistance provided by the expelling State during their stay in prison. However, the circumstances of the applicant’s case were highly exceptional. In view of the very advanced state of his illness and his dependency on the treatment he had been

receiving, there was a serious danger that the adverse living conditions in St Kitts would reduce his life expectancy and subject him to acute suffering. The implementation of the decision to deport him would therefore be in breach of Article 3 (**prohibition of inhuman or degrading treatment**).

Social welfare, guarantee of minimum standard of living

Pancenko v. Latvia

28 October 1999 (inadmissibility decision)

The question whether the applicant (first an ex-USSR citizen and “permanently resident non-citizen” of Latvia, then a Russian national and thereafter a Ukrainian national) had the right to remain in Latvia was the subject of lengthy proceedings. She accumulated considerable tax liabilities and complained, in particular, of her precarious situation in Latvia and her ineligibility for free medical assistance.

The Court reiterated that the Convention did not guarantee, as such, socio-economic rights such as the right to work, the right to free medical assistance or the right to claim financial assistance from a State to maintain a certain standard of living. However, it pointed out that a person’s living conditions could come within the ambit of Article 3 (**prohibition of inhuman or degrading treatment**) if they attained a minimum level of severity. This was not the case with Mrs Pancenko.

Larioshina v. Russia

23 April 2002 (inadmissibility decision)

The applicant was an elderly woman who lived off her old-age pension and other welfare benefits. She alleged that those benefits were insufficient to maintain a proper standard of living.

The Court held that a complaint alleging that the amount of a pension or other welfare benefit was insufficient could, in principle, raise an issue under Article 3 (**prohibition of inhuman or degrading treatment**). However, Mrs Larioshina’s situation had not attained the minimum level of severity required in order to find a violation.

Discrimination in the award of welfare benefits

Under what circumstances can welfare benefits amount to a “possession” protected by the Convention?

An extensive and evolving body of case-law exists on this complex subject. Noteworthy rulings include:

- **Müller v. Austria** (16 December 1974, admissibility decision of the European Commission of Human Rights¹): “the obligation to pay contributions to a social security scheme may ... create a property right over a portion of the assets thus constituted”.
- **Stec and others v. the United Kingdom** (6 July 2005, admissibility decision, Grand Chamber): “If ... 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 proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements.”

Discrimination based on gender

¹ Between 1954 and 1999 the Commission, together with the Court and the Committee of Ministers of the Council of Europe, supervised Contracting States’ compliance with their Convention obligations.

Wessels-Bergervort v. the Netherlands

4 June 2002 (judgment)

The applicant and her husband had lived all their lives in the Netherlands. The applicant's husband worked and paid social security contributions in Germany for 19 years. He was granted a married person's old-age pension in the Netherlands which was reduced by 38% to allow for the 19 years in which he had not paid contributions in that country. The applicant's pension was reduced by the same proportion. She complained of the fact that her pension was defined by reference to the length of time for which her husband had contributed, whereas the reverse would not apply (if she had been the one paying contributions abroad).

The Court accepted that there had been no objective and reasonable justification for the difference in treatment between the applicant and a married man in a comparable situation. Violation of Article 14 (**prohibition of discrimination**) taken in conjunction with Article 1 of Protocol No. 1 (**protection of property**).

Discrimination based on nationality

Gaygusuz v. Austria

16 September 1996 (judgment)

The applicant was a Turkish national living in Austria, where he had been working before becoming long-term unemployed. After a certain cut-off point he lost his entitlement to unemployment benefit. The Austrian authorities refused to grant him an advance on his pension in the form of "emergency assistance", on the ground that he did not have Austrian nationality.

The Court noted that the award of emergency assistance was linked to the payment of contributions to the unemployment insurance fund, a condition met by Mr Gaygusuz. The refusal had been based exclusively on his nationality. The Court held that this difference in treatment between Austrians and non-Austrians had not been based on any "objective and reasonable justification". Violation of Article 14 (**prohibition of discrimination**) taken in conjunction with Article 1 of Protocol No. 1 (**protection of property**).

Koua Poirrez v. France

30 September 2003 (judgment)

The applicant was a Côte d'Ivoire national resident in France. The French authorities refused to award him a disabled adult's allowance (D.A.A.) on the grounds of his nationality, although he had been issued in France with a card certifying that he was disabled, and had been adopted by a French national (at the age of 21).

The Court held that a non-contributory benefit such as the D.A.A. could give rise to a pecuniary right for the purposes of the Convention. There had been no objective and reasonable justification for the difference in treatment with regard to the award of welfare benefits between French nationals (or nationals of countries that had signed a reciprocal agreement, which was not the case of Côte d'Ivoire) and other foreigners. Violation of Article 14 (**prohibition of discrimination**) taken in conjunction with Article 1 of Protocol No. 1 (**protection of property**).

Unwarranted stopping of welfare benefits

Kjartan Ásmundsson v. Iceland

12 October 2004 (judgment)

The applicant was seriously injured on board a trawler and had to give up his work as a seaman. His disability was assessed at 100%, which made him eligible for a disability pension from the Seamen's Pension Fund on the ground that he was unable to carry out the work he had performed before his accident. In 1992, on account of the Fund's financial difficulties, changes were made to the way disability was assessed: the defining factor was no longer an inability to perform the same work, but an inability to perform

any work. The applicant's disability was reassessed at 25%. As this rate was below the threshold of 35%, the Fund stopped paying him a pension.

The legitimate concern to resolve the Fund's financial difficulties seemed hard to reconcile with the fact that the vast majority of the 689 disability pensioners continued to receive disability benefits at the same level as before the adoption of the new rules, while 54 persons, including the applicant, had to bear the total loss of their pension entitlements; this was an excessive and disproportionate burden, in the Court's view. It would have been a different matter had the reduction in entitlement been reasonable and proportionate. Violation of Article 1 of Protocol No. 1 (**protection of property**).

Procedural safeguards in the award and payment of welfare benefits

Right of access to an independent and impartial tribunal

Kovachev v. Bulgaria

[Report](#) of the European Commission of Human Rights of 28 October 1997 and [resolution](#) of the Committee of Ministers (former Article 32 of the Convention) of 11 June 1998

The applicant complained before the domestic courts of the refusal to increase his disability allowance. The courts refused to examine the case on the merits because the social welfare regulations did not provide for a court appeal and conferred exclusive jurisdiction on the administrative authorities in such cases.

The Court held that the applicant should have been able to assert his claims before an independent and impartial tribunal. Violation of Article 6 § 1 (**access to a court**).

Requirement of particular expedition in judicial proceedings

Mocie v. France

8 April 2003

The applicant applied to the competent courts seeking mainly an increase in his military invalidity pension. The first set of proceedings commenced in 1988 and was still pending when the European Court delivered its judgment almost 15 years later; a second set of proceedings lasted for almost eight years.

The Court noted that the invalidity pension had made up the bulk of the applicant's income. The proceedings, which had, in substance, been aimed at boosting the applicant's pension in view of his deteriorating health, had therefore been of particular importance to him and called for "particular diligence" on the part of the authorities. Violation of Article 6 § 1 (**right to a fair hearing within a reasonable time**).

Obligation to enforce administrative/judicial decisions

Burdov v. Russia

7 May 2002

The applicant, who had taken part in emergency operations at the site of the Chernobyl nuclear disaster, suffered health problems as a result and was awarded compensation. The award was upheld by the courts. He complained of the failure to pay the compensation because of lack of funds.

The Court held that a State authority could not cite lack of funds as an excuse for not honouring a judgment debt. Mr Burdov should not have been prevented from benefiting from the success of the litigation on the ground of alleged financial difficulties experienced by the State. Violation of Article 6 § 1 (**right to a fair hearing**) and Article 1 of Protocol No. 1 (**protection of property**).

Selection of pending cases

[Gegia v. Georgia](#)

Communicated to the respondent Government on 12 May 2009

The applicant worked in the public prosecutor's office from 1949 to 1986, latterly as a prosecutor. Under the legislation in force at the time he was granted, for life, a retirement pension based on the salary of a serving prosecutor. In 2005 a law was enacted abolishing that rule and Mr Gegia's pension was reduced accordingly. The applicant complained unsuccessfully to the courts about the retroactive application of the law. The main issue at stake is whether the reduction in the applicant's pension was in breach of Article 1 of Protocol No. 1 (protection of property).

[Thior v. Switzerland](#)

Communicated to the respondent Government on 12 September 2009

The applicant was born in Senegal in 1996. He has brain damage and severe learning disabilities. In 2002 he moved to Switzerland with his mother. The latter married a Swiss national, who is not the applicant's father. The applicant's mother requested the authorities to pay for the applicant's schooling in a specialised institution. Her request was refused on the grounds that the applicant was a foreign national and that his parents, both of whom were also foreign nationals, had not been living uninterruptedly in Switzerland for ten years and had not contributed for a year to the public social insurance scheme. The issue to be decided is whether the refusal to pay for the applicant to be taught in a specialised school amounts to a violation of Article 8 (right to respect for private and family life) taken alone or in conjunction with Article 14 (prohibition of discrimination).

[Mauriello v. Italy](#)

Communicated to the respondent Government on 5 October 2009

The applicant worked as a court typist between 1990 and 2000 and paid a total of almost 45,000 euros into the National Civil Servants' Insurance Fund. She was obliged to retire at the statutory maximum retirement age. As she had not paid contributions for long enough to qualify for a retirement pension, the applicant applied to the domestic courts seeking permission to carry on working until the age of 70. Her application was turned down. The contributions she had paid were transferred to the National Social Insurance Fund with a view to the setting-up of an account under the compulsory old-age, invalidity and survivors' insurance scheme. She now receives only a survivor's pension. The main issue to be determined is whether the deduction by the State of retirement pension contributions without any effective benefits in return was in breach of Article 1 of Protocol No. 1 (protection of property).

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