Old-age pensions for foreign nationals: significance of nationality and impact of international law 3/34/24



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Latvian law lays down different principles for including employment periods and periods equivalent to employment in the insurance period for Latvian nationals and foreign nationals, including EU nationals receiving an old-age pension. This has caused disputes between pension recipients and the National Social Insurance Agency (NSIA), as well as building the case law based on interpretations of the Latvian Constitution, EU law and international agreements.

One of these disputes was heard by the Administrative Division of the Latvian Supreme Court on 9 July 2024. A Lithuanian national permanently living in Latvia asked the court to recalculate his Latvian old-age pension and include in his insurance period the periods he:

- worked in Russia
- spent in compulsory military service in the Armed Forces of the Union of Soviet Socialist Republics (USSR)

The petitioner claimed the NSIA was in breach of the EU law that prohibits discrimination on the grounds of nationality and guarantees the free movement of workers and equal social security across the EU.

The Supreme Court dismissed the petitioner's appeal and said the NSIA had correctly applied paragraph 1 of the transitional provisions of the State Pensions Act, which treats the following periods as equivalent to insurance periods for foreign nationals:

- The period of employment and equivalent to employment accrued in Latvia
- Periods equivalent to employment accrued in the former USSR the period of studies and the period of political repressions, representing the period accrued outside Latvia

The Supreme Court said the rules are objectively justified and proportionate because they reflect Latvia's constitutional identity, which is based on the principle of continuity of the state, and they protect the country's economic system, given the historical, economic and demographic conditions in which Latvia set up its pension system after regaining independence. The Supreme Court also said the rules do not restrict the freedom of establishment or the free movement of workers because:

- 1. They do not disadvantage the petitioner compared to workers who carry out all of their activities in Latvia.
- 2. They do not infringe the petitioner's entitlement to a Latvian old-age pension and benefits based on social insurance contributions.

The Supreme Court dismissed the petitioner's arguments for applying international agreements and established that the Latvia-Russia social security agreement covers Latvian non-nationals and Russian nationals only and it does not cover third-country nationals, including former USSR nationals, while the Latvia-Lithuania agreement on the inclusion of insurance periods accrued in the former USSR does not

affect the range of persons eligible for pensions under paragraph 1 of the transitional provisions of the State Pensions Act. The Supreme Court affirmed the petitioner's right to apply to the competent authority in Lithuania and make sure that any periods accrued in the former USSR and ignored in computing his Latvian old-age pension are included in his insurance period for Lithuanian pension purposes if Lithuanian law provides for including such periods in the insurance period of Lithuanian nationals.

So, the Supreme Court recognised that the regional court had correctly assessed the circumstances of the case and applied the relevant laws in the light of requirements of the Latvian Constitution, EU law and international agreements. The Supreme Court also said the provisions of EU law applicable to the case are clear and there is no need to refer a preliminary question to the Court of Justice of the European Union.