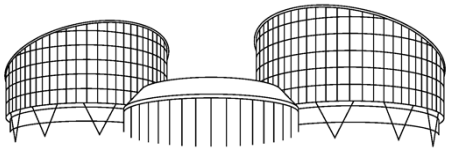

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF FÁBIÁN v. HUNGARY

(Application no. 78117/13)

JUDGMENT

STRASBOURG

5 September 2017

This judgment is final but it may be subject to editorial revision.

In the case of Fábián v. Hungary,

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

Guido Raimondi, *President*,
Angelika Nußberger,
Mirjana Lazarova Trajkovska,
Luis López Guerra,
András Sajó,
Işıl Karakaş,
Kristina Pardalos,
André Potocki,
Valeriu Griţco,
Faris Vehabović,
Ksenija Turković,
Branko Lubarda,
Yonko Grozev,
Síofra O'Leary,
Carlo Ranzoni,
Stéphanie Mourou-Vikström,
Pauliine Koskelo, *judges,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 9 November 2016 and on 31 May 2017,

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

PROCEDURE

1. The case originated in an application (no. 78117/13) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Mr Gyula Fábián ("the applicant"), on 5 December 2013.

2. The applicant was represented by Mr A. Grád, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

3. The applicant alleged that the suspension of disbursement of his State old-age pension while he was employed within the public sector amounted to unjustified and discriminatory interference with his property rights contrary to Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention.

4. The application was allocated to the Fourth Section of the Court (Rule 52 § 1 of the Rules of Court). The Government were given notice of

the application on 25 August 2014. The Government's observations on the admissibility and merits of the application were submitted on 17 December 2014. The applicant's observations in reply were submitted on 9 February 2015.

5. On 15 December 2015 a Chamber composed of Vincent A. De Gaetano, President, András Sajó, Boštjan Zupančić, Nona Tsotsoria, Paulo Pinto de Albuquerque, Krzysztof Wojtyczek, Iulia Antoanella Motoc, judges, and Françoise Elens-Passos, Section Registrar, delivered its judgment. It unanimously declared the application admissible and held that there had been a violation of Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 to the Convention in respect of the difference in treatment between pensioners employed in the public sector and pensioners employed in the private sector as well as between pensioners employed in different categories of the public sector. The Chamber considered that it was not necessary to examine the alleged violation of Article 1 of Protocol No. 1 taken alone.

6. On 11 March 2016 the Government requested the referral of the case to the Grand Chamber in accordance with Article 43 of the Convention. On 2 May 2016 the panel of the Grand Chamber granted that request.

7. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24.

8. The applicant and the Government each filed a memorial on the merits (Rule 59 § 1) and also, at the request of the judge appointed as Rapporteur, on the question whether the applicant had complied with the six-month time-limit laid down in Article 35 § 1 of the Convention in so far as he complained under Article 14 taken in conjunction with Article 1 of Protocol No. 1 that there was an unjustified difference in treatment between different categories of State employees. In addition, third-party comments were received from the European Trade Union Confederation, which had been granted leave by the President of the Grand Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

9. A hearing took place in public in the Human Rights Building, Strasbourg, on 9 November 2016 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*

Mr Z. TALLÓDI, *Agent*,
Ms M. WELLER, *Co-Agent*;

(b) *for the applicant*
Mr A. GRÁD, *Counsel*,
Ms R. NOVÁK,
Mr D. KARSAI,
Mr M.M. KÓNYA, *Advisers*.

The Court heard addresses by Mr Grád and Mr Tallódi, and replies by them to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

10. The applicant was born in 1953 and lives in Budapest.

11. He had been employed as a police officer when, having reached an age when he was entitled to do so, he took early retirement and started receiving a "service pension" (*szolgálati nyugdíj*) from 1 January 2000, when he was nearly 47 years old. The applicant, however, continued to work: he was employed in the private sector between 2000 and 2012 and from 1 July 2012 until 31 March 2015 he worked, as a civil servant, as the head of the Road Maintenance Department of the Budapest XIII District Municipality. The applicant paid the statutory contributions to the State old-age pension scheme from the first day of his employment (1 August 1973) until 31 March 2015.

12. On 28 November 2011 Parliament enacted Act no. CLXVII, which entered into force on 1 January 2012. According to section 5(1) of that law, service pensions like that of the applicant were converted into a "service allowance" (*szolgálati járandóság*), provided that the person concerned was born in or after 1955. Pursuant to section 3(2)(b) of the same Act, for recipients of a service pension who, like the applicant, were born in or before 1954, the service pension was to be converted into an old-age pension.

13. On 1 January 2013 an amendment to Act no. LXXXI of 1997 on Social-Security Pensions (hereafter "the 1997 Pensions Act") entered into force, according to which the disbursement of those old-age pensions whose beneficiaries were simultaneously employed in certain categories within the civil service would be suspended from 1 July 2013 onwards for the duration of their employment (see also paragraphs 23-28 below). No such restriction was put in place in respect of those who were in receipt of an old-age pension while being employed within the private sector.

14. On 18 February 2013 the National Pensions Administration (*Országos Nyugdíjbiztosítási Főigazgatóság*) sent a letter to the applicant in

his capacity as the recipient of an old-age pension, informing him of the amended legislation and instructing him to make a declaration as to whether he was employed in the civil service, in one of the categories concerned by the amendment of 1 January 2013. By a letter of 29 April 2013 the applicant notified the National Pensions Administration of his employment situation. Subsequently, on 2 July 2013, the National Pensions Administration informed the applicant that the disbursement of his pension had been suspended as of 1 July 2013. At that time his pension amounted to 162,260 Hungarian forints (HUF; at that time approximately 550 euros (EUR)) per month.

15. On 15 July 2013 the applicant lodged an administrative appeal with the National Pensions Administration (see paragraph 21 below) against the suspension of his pension payments in which he argued that his pension constituted an acquired right and that he was being discriminated against since pensioners working in the private sector continued to receive their pensions.

16. The National Pensions Administration sought further information from the applicant on 23 July 2013. The applicant elaborated on his appeal on 1 August 2013, referring, *inter alia*, to an application filed by the Ombudsman with the Constitutional Court in May 2013 (AJB-726/2013). In that application the Ombudsman set out the complaints which had been made to his Office about the amendment of the 1997 Pensions Act and raised the issue of a difference in treatment between pensioners employed in the civil service and those employed in the private sector. As far as the Court is aware, this case is currently still pending before the Constitutional Court.

17. On 27 September 2013 the National Pensions Administration discontinued the proceedings concerning the applicant's appeal, holding that the applicant had failed to provide the information sought from him on 23 July 2013.

18. The applicant's employment with the Budapest XIII District Municipality came to an end on 31 March 2015. On 24 April 2015 the competent authority decided that the disbursement of his pension would be resumed. His pension was increased to HUF 177,705 (at that time approximately EUR 585).

II. RELEVANT DOMESTIC LAW AND PRACTICE

19. The Fundamental Law of Hungary provides as follows:

Article XII

"(1) Everyone shall have the right to freely choose his or her work or occupation and to engage in entrepreneurial activities. Everyone shall be obliged to contribute to

the enrichment of the community through his or her work, in accordance with his or her abilities and opportunities.

(2) Hungary shall strive to create the conditions to ensure that everyone who is able and willing to work has the opportunity to do so."

20. At the relevant time, the employment of civil servants (*közalkalmazott*) was regulated by Act no. XXXIII of 1992 on the Legal Status of Civil Servants; the employment relationship of public officials (*köztisztviselő*), Government officials (*kormánytisztviselő*), officials in charge of public service administration (*közszolgálati ügykezelő*) and, in relation to some aspects, senior State officials (*állami vezető*) was governed by Act no. CXCIX of 2011 on Public Servants. Employment relationships in the private sector were governed by Act no. I of 2012 on the Labour Code.

21. The Hungarian compulsory social-security pension scheme is a contributory one. Persons in employment (be it in the public or private sector) pay a certain percentage – ten percent in 2013 – of their monthly income from work towards the scheme. Moreover, employers, private entrepreneurs and primary producers pay a social contribution tax of 27% of the amount of salaries paid, which goes, in whole or in part – the decision being made periodically on the basis of financial circumstances – towards the maintenance of the social-security pension system.

The Pension Fund (*Nyugdíjbiztosítási Alap*) thus obtained represents an item in the State budget. Pensions are paid from the Fund by the National Pensions Administration, which is a Government agency. If the Fund's expenditures exceed its revenues, the State shall secure the necessary resources from the central budget.

22. The periods during which a person contributes to the scheme qualify as service time. The amount of pension paid out under the scheme, which is not subject to tax, is dependent on the service time and on that part of a person's income which was subject to compulsory contributions.

23. In recent years, a number of measures were taken to terminate or reduce the concurrent receipt of State-paid pensions and State-paid salaries. Firstly, on 29 December 2012 Government Decree no. 1700/2012 on the principles of pension policy applicable to the civil service was issued. It prohibited the employment by central Government of persons entitled to an old-age pension, and stipulated that it was only in exceptional cases that vacancies could be filled by persons entitled to such a pension. Secondly, the 1997 Pensions Act was amended on 1 January 2013 to prohibit the simultaneous disbursement of remunerations financed by the central budget and old-age pensions or early-retirement pensions. This amendment applied, *inter alia*, to pensioners employed by local government bodies. A number of categories of persons in State employment were, however, exempted from the suspension of pension payments, such as members of Parliament, mayors, and judges and prosecutors on administrative leave, as well as

persons employed in the public sector under the rules of the Labour Code who carried out tasks not related to the exercise of public powers.

24. Sections 83/C and 102/I of the 1997 Pensions Act as amended on 1 January 2013 provided as follows:

Section 83/C

"(1) The disbursement of an old-age pension shall be suspended ... if the pensioner concerned is employed as a civil servant, a government official, a senior State official, a public official, an official in charge of public service administration, a judge, an officer of the court, an officer of the prosecutor's office, a professional member of an armed service, or a professional member or contractor of the Hungarian Defence Force.

...

(3) For the period of suspension of the old-age pension the person concerned shall qualify as a pensioner.

(4) Disbursement of the old-age pension may be continued at the pensioner's request, if the beneficiary proves that the employment in subsection (1) above has been terminated.

...."

Section 102/I

"(1) Beneficiaries of an old-age pension working in any of the employments listed in section 83/C(1) on 1 January 2013 shall notify the pensions disbursement agency thereof by 30 April 2013.

(2) The old-age pension of persons working in any of the employments listed in section 83/C(1) on 1 January 2013 shall be suspended from 1 July 2013, provided that such employment is maintained on that date."

25. The lawmaker's explanation of section 83/C contains the following passage:

"The amendment introduced the prohibition of double compensation in respect of the employment relationships of civil servants, government officials, senior State officials, public officials, officials in charge of public service administration, judges, officers of the court or the prosecutor's office, professional members of an armed service, as well as professional members and contractors of the Hungarian Defence Force. Accordingly, persons working in such employments may not receive an old-age pension ... in addition to their remuneration, with the result that such payments must be suspended by the pension disbursement agency for the term of the employment."

26. In the decision to suspend pension payments under section 83/C(1) no account is taken of the amount of salary being earned by the person concerned.

27. Beneficiaries of pension payments under the compulsory social-security pension scheme who are at the same time in employment contribute to the scheme in the same way as other employed persons (see paragraph 21 above). They may request a yearly increase of their monthly

pension payment in an amount of 0.5% of one-twelfth of their income from work carried out during a calendar year. If disbursement of the pension has been suspended under section 83/C(1) of the 1997 Pensions Act, the payment of any such yearly increases is suspended as well. Once disbursement resumes, the yearly increases will be added to the amount of pension that was received prior to the suspension.

28. According to data supplied by the Government, the number of persons in receipt of an old-age pension on 1 July 2013 was 2,007,426. The pension payments of a maximum number of 5,288 persons were suspended at any one time in the course of 2013 under section 83/C(1) of the 1997 Pensions Act. The maximum number of persons concerned at any one time in 2014 was 4,545; in 2015 4,212; and, in the period between January and August 2016, 3,945. Between March 2013 and August 2016 an amount of HUF 30,602,215,675 (at the last-mentioned date approximately EUR 98 million) was not disbursed as a result of the amendment of the 1997 Pensions Act. However, persons who worked in the public health-care sector and who had their pension payments suspended pursuant to section 83/C(1) of the 1997 Pensions Act (3,169 persons between July 2013 and August 2016) were provided by the National Health Fund with monthly compensation equal to the amount of their pension. Between July 2013 and August 2016 such compensation amounted to HUF 25,190,700,000 (at the last-mentioned date approximately EUR 81 million), which reduced the total amount of savings in State expenditure to HUF 5,411,515,675 (approximately EUR 17 million in August 2016).

29. Act no. CLXXVIII of 2012 on the amendment of certain tax-related legislation amended the 1997 Pensions Act and entered into force in January 2013. This amendment abolished the previously existing ceiling in respect of statutory contributions to the pension scheme, in order to increase the revenues of the Pension Fund.

30. In 2000 the general statutory retirement age for men in Hungary was 62; an old-age pension could be drawn by those who had reached that age and had completed at least twenty years' service. That age was subsequently, and gradually, raised to 63 for both men and women born in 1953.

Various early-retirement schemes used to be statutorily available, both in the public sector (including the armed forces, to which, in Hungary, also the police belong) and the private sector, and over the years a great number of persons opted to make use of such schemes. From 1 January 2012 onwards those schemes – inasmuch as new entrants were concerned – were abolished by the entry into force of Act no. CLXVII (see also paragraph 12 above).

III. COMPARATIVE-LAW MATERIAL

31. The Court conducted a comparative study of the legislation of 36 member States[1] of the Council of Europe.

A. Possibility of simultaneous receipt of a State pension and a salary

32. In almost all of the 36 States surveyed it is possible, in one way or another, to receive a State pension and a salary simultaneously. Only in the former Yugoslav Republic of Macedonia is the State pension suspended, without exception, if the person continues to work and receive a salary.

33. However, in the vast majority of States, some form of reduction or suspension of the pension is applied in various situations. These can broadly be divided into the following categories.

1. Beneficiaries of an early-retirement pension

34. Many States' legislation distinguishes between people who retire early and people who retire at the legal age of retirement (usually between 60 and 65). Thus, in Andorra, Croatia, the Czech Republic, Estonia, Latvia, Romania and Slovakia, payment of the State pension is suspended while the person continues to work, if he or she retired before reaching the statutory age of retirement. In Portugal, such suspension is applied for three years if the person continues to work for the same company or group of companies.

35. Meanwhile, in some States such as Austria, Denmark, Germany, Luxembourg, Poland and Sweden, an early-retirement pension is reduced or suspended only if the salary earned reaches a certain level. This reduction applies in Iceland not only to early-retirement pensions, but to all forms of pension. In Finland, a person's early-retirement pension is not affected in any way by further employment.

2. Persons who continue to work in the public sector

36. In some of the States surveyed, the pension payment is suspended for people who continue to work in the public sector, whilst no obstacles apply in the private sector (see also paragraphs 38-43 below).

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1. Andorra, Armenia, Austria, Azerbaijan, Belgium, Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Georgia, Germany, Greece, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Moldova, the Netherlands, Norway, Poland, Portugal, Romania, Russia, Slovakia, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Turkey, Ukraine and the United Kingdom.

3. Beneficiaries of a disability or invalidity pension

37. There are some differences between how the States surveyed regulate salary earned simultaneously with a disability or invalidity pension. In some States such as Austria, reductions are applied if the total amount of pension and salary exceeds a certain threshold. In Croatia and Italy, the accumulation of pension and salary is not possible. On the other hand, pension payments are not suspended for disabled people in Ukraine. Accumulation is also possible in Romania for pensioners with a third-degree invalidity and blind persons.

B. Differences between employment in the private and public sectors when pension payments may be reduced or suspended

38. As stated above (paragraph 36), some States suspend State pension payments for people who continue to work in the public sector, whereas they may retain full payment if they continue to work in the private sector. For example, in Andorra, the retirement pension of a civil servant is suspended if that person continues to work as a civil servant or agent in the public administration. In Georgia, suspension of a pension would apply to all categories of jobs in the public sector. A person who continues to work in the private sector in Portugal may simultaneously receive a State pension, while the pension is suspended in the public sector. In Spain, Turkey and Ukraine, accumulation is possible for self-employed persons (up to a certain level), but not for most public-sector employees.

39. In Azerbaijan, while accumulation is possible without a suspension or reduction of the State pension, some categories of public-sector employees, including civil servants, are entitled to supplements to the pension. Supplements are calculated based on a certain percentage of the average salary during the employment period. These supplements will be reduced, or even suspended in some situations. However, they are not reduced or suspended if the person continues to work in the private sector.

40. The same goes for a special form of public-service pension in Denmark. Payment of the public-service pension is suspended if the person continues to work as a public servant, but not if he or she continues to work in the private sector.

41. In Italy, if the total amount of public-sector employees' earnings (including old-age pension) exceeds a certain (quite high) threshold, their salary is reduced to the level of that threshold, while the amount of pension remains the same.

42. In Austria, conversely, public servants, but not private-sector employees, are exempted from the reduction applied to pension payments.

43. However, a majority of the States surveyed do not make a distinction between the public and private sectors regarding whether pension payments may be reduced or suspended.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TAKEN ALONE

44. The applicant complained that the suspension of disbursement of his old-age pension amounted to a violation of Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "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 Chamber judgment

45. In its judgment, the Chamber first examined the applicant's complaint under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. Having reached a finding of a violation in that respect, the Chamber considered that it was not necessary to examine whether the facts of the case also constituted a violation of Article 1 of Protocol No. 1 taken alone.

B. The parties' submissions to the Grand Chamber

1. The applicant

46. The applicant submitted that it followed from the Court's case-law that, as a result of his regular contributions to the State pension scheme from the first day of his employment on 1 August 1973, he had acquired a property right in the form of a legitimate expectation, which therefore entailed the applicability of Article 1 of Protocol No. 1. Owing to the application of section 83/C of the 1997 Pensions Act, he had been deprived of his entire monthly pension. He argued that this deprivation could not be justified by the general interest and was not proportionate.

47. The applicant accepted that the Government enjoyed a wide margin of appreciation in assessing the requirements of the general interest. However, in his opinion, it was not enough for the Government merely to refer to the general interest without demonstrating that the impugned measure was actually required by that interest. He contended that in this regard the present case fell to be distinguished from the case with which the Government sought to compare it (*Panfile v. Romania* (dec.), no. 13902/11, 20 March 2012), in that in Romania the legislative measure prohibiting the simultaneous receipt of a State-paid pension and a salary acquired through State employment had been taken at the height of the financial crisis, and had been lifted when that crisis had abated. In contrast, by the time the amended legislation had entered into force in Hungary (1 July 2013), Hungary had already ceased to be subject to the EU excessive deficit procedure, the release from which had been the aim of the legislation. In addition, the Government had declared in 2013 that the country's economic situation was excellent, and also from their ambitious spending plans it appeared that they were of the view that the economic crisis was over.

48. The measure was in any event not fit for the purpose it claimed to pursue, since it only affected a small group of pensioners, bearing in mind that pensions continued to have to be paid to pensioners working in the private sector and to those pensioners employed in the public sector who had been exempted from the ban on accumulation of State-paid pensions and salaries. In addition, in the same year, 2013, the pension ceiling had been raised considerably: whereas it had previously not been possible for a monthly pension to exceed HUF 300,000 (at that time approximately EUR 1,020), the highest monthly pension paid out had now reached HUF 2,000,000 (currently approximately EUR 6,500). Having regard to those factors, the impugned measure could not even in theory have contributed to helping Hungary obtain release from the excessive deficit procedure. The savings actually made currently amounted to no more than 0.0001% of Hungary's gross domestic product (GDP).

49. For the measure to have a genuine impact on the State budget, it should have provided for the suspension of pension payments to precisely those persons in State employment who had been exempted from such suspension, as it was they who were in receipt of substantially higher pensions than the persons, like the applicant, who had had their pension payments suspended. Moreover, those State employees' earnings were also considerably higher than the applicant's salary and the suspension of their pension payments would thus not have had the same impact on them as it had had on the applicant, who had only taken up employment after his retirement out of financial necessity. In that connection he submitted that his pension had been lower than the general monthly salary before tax in Hungary which, according to Hungary's Central Statistical Office, had

stood at HUF 229,700 a month (at that time approximately EUR 780) between January and November 2013.

50. No account had, however, been taken of his income when it was decided that the disbursement of his pension was to be suspended. This also distinguished the case from *Panfile*, since in Romania the ban on the accumulation of State-paid pensions and salaries only applied if a person's pension exceeded the national average salary before tax.

51. The applicant had, moreover, taken out a bank loan on the basis of his income consisting of his pension and his salary, and, following the suspension of his pension payments, had encountered problems reimbursing that loan. The loss of half his income had caused, and continued to cause, serious repercussions for his circumstances and those of his family. The applicant concluded that he had been made to bear an excessive and individual burden.

52. Finally, the applicant disputed the Government's claim that other Council of Europe member States had identical or even similar legislation in place.

2. The Government

53. The Government acknowledged that the pension right at issue in the applicant's case was a pecuniary right for the purposes of Article 1 of Protocol No. 1. While they accepted that the impugned measure constituted interference with the peaceful enjoyment by the applicant of that right, they disputed that it amounted to a total deprivation of his entitlements.

54. The Government further argued that the interference was legitimate and served the general interest. At the hearing before the Grand Chamber they submitted that, owing to an imbalance in the ratio of pension recipients as opposed to pension contributors – caused, *inter alia*, by an ageing population and the statutory availability of early-retirement schemes – the Hungarian State pension system had been facing serious challenges, with the situation being exacerbated by the 2008 global economic crisis. A number of measures had therefore been taken in order to reform the pension system. One such measure had been the abolition in 2013 of the ceiling on monthly pension contributions (see paragraph 29 above), which had been incorrectly described by the applicant as the elimination of the maximum amount that could be received by way of a monthly pension; in fact, the law in force prior to the measure had not contained such a maximum. In the short run, the abolition of the ceiling on pension contributions had resulted in a significant increase in the revenues of the Pension Fund and, while in the long run it might also lead to an increase in expenditure, important constraints – such as a highly degressive calculation of pension amounts – were in place to prevent such a development.

55. Apart from reforming the pension system, the Government had also taken action in the field of employment policy, aimed at both the reduction

of public debt and ensuring a fairer system of burden sharing and distribution of public funds. In 2012, compulsory retirement at the statutory pensionable age with a prohibition on resuming employment had been introduced in the civil service sector by Decree 1700/2012 (see paragraph 23 above) as a means of downsizing that service, where appropriate, and reducing youth unemployment. That decree was applicable only to central Government – that is, ministries and their subordinate bodies – and could thus not impose any obligation on local government bodies to dismiss persons in receipt of pension benefits in their employ. It was to the latter category of employees that the measure at issue in the present case applied; they were given the choice between either discontinuing their employment and continuing to receive their pension, or continuing their employment and having their pension payments suspended. This measure was thus part of a package of measures aimed at securing the long-term sustainability of the pension system, reducing public debt and facilitating the closure of the EU excessive deficit procedure that had been initiated against Hungary (by the Council of the European Union in accordance with Article 126 of the Treaty on the Functioning of the European Union).

56. According to the Government, the interference at issue had, moreover, been proportionate. In this connection they referred to the case of *Panfile*, cited above, which, like the present case, also concerned an applicant who – at the time a law had entered into force prohibiting the concurrent receipt of a pension and a State-paid salary – had been in receipt of pension benefits while simultaneously being in State employment. In that case the Court had noted that, since Mr Panfile had had the choice between continuing to receive his monthly pension and terminating his employment, or having the pension payment suspended while continuing to work for the State, he had not suffered a total deprivation of his entitlements, neither had he been divested of all means of subsistence. In the present case, however, the Chamber had not considered it necessary to examine the applicant's complaint under Article 1 of Protocol No. 1 taken alone. The principle of consistency required that such an examination be carried out in the present case also. That examination should lead, so the Government argued, to the same conclusion as the Court had reached in *Panfile*: the applicant had had the choice between receiving his pension or continuing to work, and it was to be assumed that he had elected to stay in employment because his salary was higher than his pension. As his pension had amounted to HUF 162,260 (at that time approximately EUR 550), he must have been in receipt of a monthly salary higher than the average salary in Hungary in 2013 (which had been HUF 151,118 (at that time approximately EUR 515)). For those reasons it could not be said that the applicant had been made to bear an excessive individual burden.

57. Finally, the Government argued that the Chamber judgment in the present case might entail serious consequences for the social-security

systems of a number of member States of the Council of Europe, as in some of those member States (they named seven) national law prescribed the reduction or suspension of pension allowances where the beneficiary was in simultaneous receipt of a salary.

C. The third-party intervener's arguments

58. The submissions of the European Trade Union Confederation (ETUC) contained information on legislation in force in the member States of the Council of Europe relating to the accumulation of old-age pension benefits with earnings from work, from which they concluded that the great majority of member States allowed such accumulation.

59. The ETUC further signalled a growing trend among states towards enshrining the fundamental right to social security in national constitutions. Accordingly, so they argued, any restriction of that right required precise justification.

D. The Grand Chamber's assessment

1. Applicability of Article 1 of Protocol No. 1 and the existence of interference

60. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the first paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015, and *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98).

61. The Court notes from the outset that at the relevant time the applicant was in receipt of an old-age pension. His entitlement to that pension sprang from paragraph 3(2)(b) of Act no. CLXVII: having been born before 1954, he satisfied the legal requirement for his service pension, of which he had been a recipient since 2000, to be converted into an old-age

pension when that Act entered into force on 1 January 2012 (see paragraphs 10 and 12 above).

62. In the proceedings before the Court there was agreement between the parties that the applicant's pension entitlements constituted a possession within the meaning of Article 1 of Protocol No. 1 and that suspension of his pension entitlement by virtue of the amendment of 1 January 2013 to the 1997 Pensions Act entailed interference with the applicant's rights as protected by this provision. The Court sees no reason to disagree.

63. On the other hand, the Government disputed the applicant's claim that the matter ought to be considered under the second rule mentioned above, that is to say, that the suspension in fact amounted to a deprivation of property within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1.

64. The Court has previously held that the modification or discontinuance of supplementary retirement benefits constituted "neither an expropriation nor a measure to control the use of property" (see *Aizpurua Ortiz and Others v. Spain*, no. 42430/05, § 48, 2 February 2010), and that the reduction of a pension by way of forfeiture was "neither a control of use nor a deprivation of property" (see *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI). As it did in those two cases, the Court considers that the interference with the applicant's property rights in the present case falls to be considered under the first rule mentioned above, namely the general principle of peaceful enjoyment of property (see also *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 64, 13 December 2011, and *Panfile*, cited above, § 19).

2. Compliance with Article 1 of Protocol No. 1

(a) Relevant principles

65. The principles relevant to the present case have recently been set out by the Grand Chamber in its judgment in *Béláné Nagy* (*Béláné Nagy v. Hungary* [GC], no. 53080/13, ECHR 2016):

> "112. An essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with this provision is that it should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis*, cited above, § 58; *Wieczorek*, cited above, § 58; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012).
>
> 113. Moreover, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful

enjoyment of possessions. The notion of 'public interest' is necessarily extensive. In particular, the decision to enact laws concerning social-insurance benefits will commonly involve consideration of economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is 'in the public interest' unless that judgment is manifestly without reasonable foundation (see, *mutatis mutandis*, *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII; *Wieczorek*, cited above, § 59; *Frimu and Others v. Romania* (dec.), nos. 45312/11, 45581/11, 45583/11, 45587/11 and 45588/11, § 40, 7 February 2012; *Panfile v. Romania* (dec.), no. 13902/11, 20 March 2012, and *Gogitidze and Others v. Georgia*, no. 36862/05, § 96, 12 May 2015).

114. This is particularly so, for instance, when passing laws in the context of a change of political and economic regime (see *Valkov and Others*, cited above, § 91); the adoption of policies to protect the public purse (see *N.K.M. v. Hungary*, no. 66529/11, §§ 49 and 61, 14 May 2013); or to reallocate funds (see *Savickas and Others v. Lithuania* (dec.), no. 66365/09, 15 October 2013); or of austerity measures prompted by a major economic crisis (see *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 37 and 39, 7 May 2013; see also *da Conceição Mateus and Santos Januário v. Portugal* (dec.) nos. 62235/12 and 57725/12, § 22, 8 October 2013; *da Silva Carvalho Rico v. Portugal* (dec.), § 37, no. 13341/14, 1 September 2015).

115. In addition, Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005-VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52; *Kjartan Ásmundsson*, cited above, § 45; *Sargsyan*, cited above, § 241; *Maggio and Others*, cited above, § 63; and *Stefanetti and Others*, cited above, § 66).

116. In considering whether the interference imposed an excessive individual burden the Court will have regard to the particular context in which the issue arises, namely that of a social-security scheme. Such schemes are an expression of a society's solidarity with its vulnerable members (see *Maggio and Others*, § 61, and *Stefanetti and Others*, § 55, both cited above, and also, *mutatis mutandis*, *Goudswaard-Van der Lans v. the Netherlands* (dec.), no. 75255/01, ECHR 2005-XI).

117. The Court reiterates that the deprivation of the entirety of a pension is likely to breach the provisions of Article 1 of Protocol No. 1 and that, conversely, reasonable reductions to a pension or related benefits are likely not to do so. However, the fair balance test cannot be based solely on the amount or percentage of the reduction suffered, in the abstract. In a number of cases the Court has endeavoured to assess all the relevant elements against the specific background (see *Stefanetti and Others*, cited above, § 59, with examples and further references; see also *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V). In so doing, the Court has attached importance to such factors as the discriminatory nature of the loss of entitlement (see *Kjartan Ásmundsson*, cited above, § 43); the absence of transitional measures (see *Moskal*, cited above, § 74, where the applicant was faced, practically from one day to the next, with the total loss of her early-retirement pension, which constituted her sole source of income, and with poor prospects of being able to adapt to the change); the arbitrariness of the condition (see *Klein*, cited above, § 46), as well as the applicant's good faith (see *Moskal*, cited above, § 44).

118. An important consideration is whether the applicant's right to derive benefits from the social-insurance scheme in question has been infringed in a manner resulting in the impairment of the essence of his or her pension rights (see *Domalewski*, cited above; *Kjartan Ásmundsson*, cited above, § 39; *Wieczorek*, cited above, § 57; *Rasmussen*, cited above, § 75; *Valkov and Others*, cited above, §§ 91 and 97; *Maggio and Others*, cited above, § 63; and *Stefanetti and Others*, cited above, § 55)."

(b) Application of these principles to the present case

(i) Whether the interference was "lawful"

66. The lawfulness of the interference, in terms of domestic law, is not in dispute: the Court is satisfied that it was prescribed by section 83/C of the 1997 Pensions Act (see paragraph 24 above).

(ii) Whether the interference was "in accordance with the general interest"

67. Bearing in mind the wide margin of appreciation of the State in the field of social security and pensions, the Court finds no reason to doubt that the prohibition on the simultaneous disbursement of salaries and pensions to which the applicant was subjected served the general interest of the protection of the public purse. As submitted by the Government and not disputed by the applicant, the suspension of pension payments at issue was, *inter alia*, also part of a package of measures aimed at assuring the long-term sustainability of the Hungarian pension system and reducing public debt.

68. Moreover, the Court cannot agree with the applicant's argument that the legislative interference at issue affected so few people that its impact on the State budget was minimal, and that other measures would have resulted in more meaningful savings. In this connection it reiterates that, provided that the legislature chose a method that could be regarded as reasonable and suited to achieving the legitimate aim being pursued, it is not for the Court to say whether the legislation represented the best solution for dealing with the problem or whether the legislative discretion should have been exercised in another way (see *James and Others*, cited above, § 51).

(iii) Whether the interference was proportionate

69. The next question to be addressed by the Court is whether the interference struck a fair balance between the demands of the general interest of the community and the requirements of the protection of the individual's fundamental rights.

70. In this connection, the Court notes at the outset that the issue in the present case arises in the particular context of a social-security scheme. As already set out above (see paragraph 65), such schemes are an expression of a society's commitment to the principle of social solidarity with its vulnerable members. The scheme at issue in the present case is a contributory old-age pension scheme. Such pensions are in general

disbursed in order to provide compensation for reduced earning capacity as a person gets older. However, when a person in receipt of an old-age pension continues or resumes work – and particularly, like the applicant in the present case, when he or she has not yet reached the statutory retirement age – his or her working life is apparently not yet over and earning capacity still exists.

71. The applicant took early retirement in 2000, when he was close to 47 years old, and has been a beneficiary of pension payments ever since, except for the period during which disbursement was suspended, that is from 1 July 2013 until 31 March 2015. It therefore appears that the applicant became entitled to a pension on the basis of contributions made over a far shorter period of time than that for which contributions are generally paid by persons who become entitled to an old-age pension only upon reaching the statutory retirement age (see paragraph 30 above). Thereafter he continued to contribute to the Pension Fund as a result of the fact that he carried on working in both the private and the public sector after taking early retirement and leaving the police force in 2000.

72. The Court reiterates that the funding methods of public pension schemes vary considerably from one Contracting State to another, as does the emphasis on the principle of solidarity between contributors and beneficiaries in national pension systems (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, §§ 92 and 98, 25 October 2011, and *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 50, ECHR 2005-X). As such matters involve social and economic policies, they fall in principle within the wide national margin of appreciation accorded to States in this area (see, among many authorities, *Béláné Nagy*, cited above, § 113; *Valkov and Others*, cited above, § 92; and *James and Others*, cited above, § 46).

73. In examining whether the national authorities acted within their margin of appreciation in the instant case, the Court will have particular regard to the following factors which, from an analysis of its case-law in cases relating to the reduction, suspension or discontinuance of social-security pensions, may be identified as being of relevance, namely the extent of the loss of benefits, whether there was an element of choice, and the extent of the loss of means of subsistence.

(α) Extent of loss of benefits

74. The case at hand does not concern either the permanent, complete loss of the applicant's pension entitlements (compare and distinguish *Béláné Nagy*, cited above, § 123; *Apostolakis v. Greece*, no. 39574/07, 22 October 2009; and *Kjartan Ásmundsson v. Iceland*, no. 60669/00, ECHR 2004-IX) or the reduction thereof (compare *da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, 1 September 2015; *Poulain v. France* (dec.), no. 52273/08, 8 February 2011; and *Lenz v. Germany* (dec.), no. 40862/98, ECHR

2001-X), but rather the suspension of his monthly pension payments (see *Panfile* and *Lakićević and Others*, both cited above). Although the applicant thus did not receive his pension for the duration of that suspension, the Court nevertheless considers that this did not amount to a total loss of his entitlements to an old-age pension. The suspension was of a temporary nature in that disbursement would be (and was) resumed when the applicant left State employment; it did, therefore, not strike at the very substance of his right and the essence of the right was not impaired.

75. Moreover, a similar suspension was at stake in the cases of *Panfile* and *Lakićević and Others* (both cited above). The fact that the former case was declared inadmissible and that a violation of Article 1 of Protocol No. 1 was found in the latter suggests that the extent of the loss of benefits – a temporary suspension, as in the present case – is not, in itself, decisive. Indeed, the Court has already held that the fair balance test cannot be based solely on the amount or percentage of the loss suffered but must be examined in the light of all the relevant factors (see *Béláné Nagy*, cited above, § 117, and *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, §§ 59-60, 15 April 2014).

(β) Element of choice

76. This brings the Court to the second factor: was there anything the applicant could have done in order to avoid or prevent the disbursement of his pension being suspended? In this connection the Court observes at the outset that there is no suggestion that when the applicant started his employment at Budapest XIII District Municipality on 1 July 2012 he had any inkling of the changes to the pension system that were afoot. It would therefore be disingenuous to hold that he could have avoided being affected by the amended legislation simply by electing not to re-enter State employment (contrast and compare *Mauriello v. Italy* (dec.), no. 14862/07, § 39, 13 September 2016, and *Torri and Others v. Italy* (dec.), nos. 11838/07 and 12302/07, § 37, 24 January 2012). But once the legislation at issue had entered into force, it was not the case that the disbursement of the applicant's pension was suspended without his having any choice in the matter. In similar fashion to the applicant in *Panfile* (cited above, § 23), and as the Government also pointed out (see paragraphs 55-56 above), the applicant was 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 opted for the latter.

77. In addition, the Court notes that as a result of the applicant's electing to stay in employment, he continued to make contributions to the Pension Fund, which resulted in an increase in his pension once pension payments were resumed (see paragraphs 18 and 27 above).

(γ) Extent of loss of means of subsistence

78. The extent to which a person's means of subsistence or living standard are affected by the discontinuance, reduction or suspension of pension payments constitutes an important factor in the Court's assessment of the proportionality of such measures. Thus, an excessive individual burden was found to have been imposed in cases in which, *inter alia*, the withdrawal or discontinuance of a pension amounted to the total loss of an applicant's sole source of income (see *Béláné Nagy*, cited above, § 123; *Apostolakis*, cited above, § 39; and *Moskal v. Poland*, no. 10373/05, § 74, 15 September 2009), and those in which a suspended pension constituted a considerable part of the monthly income before tax of the applicants, who worked on a part-time basis only (see *Lakićević and Others*, cited above, § 70). By the same token, the Court has held that a fair balance was struck in a number of cases because, *inter alia*, the cap on pensions complained about did not totally divest the applicants – who were among the top earners of the persons in receipt of a retirement pension in Bulgaria – of their only means of subsistence (see *Valkov and Others*, cited above, § 97), or because it was considered that the Contracting State concerned had been entitled to take into account the other sources of income of the applicant – who also received benefits under private pension schemes – when establishing the amount of a widow's allowance (see *Matheis v. Germany* (dec.), no. 73711/01, 1 February 2005). The Court applied a similar approach in the case relied on by the Government, that is, *Panfile*, in which, after the loss of his job due to the introduction of legal provisions preventing him from receiving concomitantly a pension and a salary, the applicant continued to receive a full monthly pension, whose level was higher than the level of the national average salary before tax (see *Panfile*, cited above, § 23).

79. Turning to the circumstances of the present case, it is clear that when the applicant's old-age pension payments were suspended he continued to receive his salary. He has not disclosed in the proceedings before the Court the amount of the monthly salary he was earning at the relevant time, but he indicated that the suspension of his pension payments resulted in the loss of about half his income. The Government posited that the applicant's salary must have been higher than the amount of old-age pension he was receiving monthly (HUF 162,260; approximately EUR 550 at the relevant time; see paragraph 14 above), as he chose to stay on in his post and to continue receiving his salary rather than opt for the continued disbursement of his pension. This was not disputed by the applicant.

80. Having regard to the material in its possession relating to average salaries and taxes (see paragraphs 22, 49 and 56 above), the Court is satisfied that the applicant was left with an income in the range of the average salary after tax in Hungary.

81. It is true that the disbursement of the applicant's old-age pension would also have been suspended had his salary been much lower than the

average salary, or if the applicant had been in part-time employment only, in which circumstances his pension would have constituted a considerably greater part of his income than was actually the case. However, it is not the Court's task to examine the domestic legislation in the abstract: it should limit its examination to the manner in which that legislation was applied to the applicant in the particular circumstances (see *Sahin v. Germany* [GC], no. 30943/96, § 87, ECHR 2003-VIII).

82. The Court considers that the suspension of the applicant's pension payments by no means left him devoid of all means of subsistence. Moreover, the applicant has not argued that he risked falling below the subsistence threshold.

(iv) Alleged discriminatory aspect

83. Finally, owing to the fact that the application of the impugned measure on the applicant was less individualised than was the case with the measure at issue in *Kjartan Ásmundsson* (cited above), the Court considers that an examination of the allegedly discriminatory nature of the suspension of the applicant's pension payments is to be conducted below within the framework of the applicant's complaint under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

(v) Conclusion

84. On the basis of the foregoing, and once more 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 finds that a fair balance was struck between the demands of the general interest of the community and the requirements of the protection of the applicant's fundamental rights, and that he was not made to bear an excessive individual burden.

85. Accordingly, there has been no violation of Article 1 of Protocol No. 1 taken alone.

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

86. The applicant further complained of an unjustified difference in treatment in that the suspension of old-age pension payments to which he was subjected on account of his employment in the public sector did not apply, firstly, to old-age pension recipients working in the private sector and, secondly, to old-age pension recipients working in certain categories within the public sector. He relied on Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1.

A. Preliminary issue

87. The complaint relating to discrimination as set out in the application form of 5 December 2013, by means of which the present case was lodged with the Court, referred only to an allegedly unjustified difference of treatment between pensioners employed in the public sector and those employed in the private sector. In his reply dated 9 February 2015 to the observations of the Government (see paragraph 4 above), the applicant mentioned for the first time a similarly unjustified difference of treatment within the public sector in that certain State employees were exempted from the ban on accumulation of old-age pensions and State-paid salaries (see paragraph 23 above).

88. The question arises whether the second instance of discrimination complained of, that is, the alleged discrimination between different categories of State employees, was lodged with the Court in compliance with the six-month rule set out in Article 35 § 1 of the Convention. However, any exploration of that matter should be preceded by an examination of the question whether the Court is competent at this stage of the proceedings to deal with this issue, bearing in mind that the complaint relating to the alleged second instance of discrimination was declared admissible by the Chamber and the Government did not address the issue until requested to do so in the proceedings before the Grand Chamber (see paragraph 8 above).

1. Whether or not the Court has jurisdiction to examine the issue of the applicant's compliance with the six-month rule

89. The Court reiterates firstly that the Grand Chamber is not, either by the Convention or the Rules of Court, precluded from deciding questions concerning the admissibility of an application under Article 35 § 4 of the Convention, since that provision enables the Court to dismiss applications it considers inadmissible "at any stage of the proceedings". Thus, even at the merits stage the Court may reconsider a decision to declare an application admissible if it concludes that it should have been declared inadmissible for one of the reasons given in the first three paragraphs of Article 35 of the Convention (see *Blečić v. Croatia* [GC], no. 59532/00, § 65, ECHR 2006-III, with further references).

90. Secondly, the fact that the Government did not raise any alleged failure by the applicant to comply with the six-month rule, either in the proceedings before the Chamber or in their request for referral of the case to the Grand Chamber, does not prevent the Grand Chamber from ruling on it. According to the case-law, it is not open to the Court to set aside the application of the six-month rule solely because a Government have not made a preliminary objection to that effect (see *Blečić*, cited above, § 68). In the present instance the Court sees no need to examine whether the

Government are estopped from making the above objection since it finds in any event that it concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts), and *Sabri Güneş v. Turkey* [GC], no. 27396/06, § 29, 29 June 2012).

2. Compliance with the six-month rule

(a) The parties' submissions to the Grand Chamber

(i) The Government

91. The Government argued that the period of six months had started to run at the latest on 27 September 2013 when the National Pensions Administration discontinued the examination of the applicant's appeal (see paragraph 17 above). In view of the fact that the complaint alleging discrimination between public servants was lodged with the Court only on 9 February 2015 in the applicant's observations in reply to those of the Government – hence, more than six months after the applicant had become aware of the alleged violation – that complaint must, so the Government submitted, be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

(ii) The applicant

92. According to the applicant, the running of the six-month period had started on 1 July 2013, when the payment of his pension had been suspended (see paragraph 14 above). The discrimination between pensioners employed in the public and private sectors, as well as the discrimination between different categories of employees within the public sector, was contained in the amendment to the 1997 Pensions Act itself. Therefore, the applicant's complaint that the suspension of his pension constituted discriminatory treatment contrary to Article 14, which he lodged within six months of the aforementioned date, related to both forms of discrimination.

(b) The Grand Chamber's assessment

(i) Relevant principles

93. The principles relevant to the issue under consideration were set out by the Grand Chamber in its judgment in *Sabri Güneş*, cited above:

> "39. The six-month time-limit provided for by Article 35 § 1 has a number of aims. Its primary purpose is to maintain legal certainty by ensuring that cases raising issues under the Convention are examined within a reasonable time, and to prevent the authorities and other persons concerned from being kept in a state of uncertainty for a long period of time (see *P.M. v. the United Kingdom* (dec.), no. 6638/03, 24 August

2004). It also affords the prospective applicant time to consider whether to lodge an application and, if so, to decide on the specific complaints and arguments to be raised (see *O'Loughlin and Others v. the United Kingdom* (dec.), no. 23274/04, 25 August 2005) and facilitates the establishment of facts in a case, since with the passage of time, any fair examination of the issues raised is rendered problematic (see *Nee v. Ireland* (dec.), no. 52787/99, 30 January 2003).

40. That rule marks out the temporal limit of the supervision exercised by the Court and signals, both to individuals and State authorities, the period beyond which such supervision is no longer possible (see *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I). The existence of such a time-limit is justified by the wish of the High Contracting Parties to prevent past judgments being constantly called into question and constitutes a legitimate concern for order, stability and peace (see *De Becker v. Belgium* (dec.), no. 214/56, 9 June 1958).

41. Article 35 § 1 contains an autonomous rule which has to be interpreted and applied in such a manner as to ensure to any applicant claiming to be the victim of a violation by one of the Contracting Parties of one of the rights set forth in the Convention and its Protocols the effective exercise of the right of individual petition pursuant to Article 35 § 1 of the Convention (see *Worm v. Austria* (dec.), no. 22714/93, 27 November 1995).

42. The Court reiterates that with regard to procedure and time-limits, legal certainty constitutes a binding requirement which ensures the equality of litigants before the law. That principle is implicit in all the Convention's Articles and constitutes one of the fundamental elements of the rule of law (see, among other authorities, *Beian v. Romania (no. 1)*, no. 30658/05, § 39, ECHR 2007-V (extracts))."

94. Moreover, some indication of the factual basis of the complaint and the nature of the alleged violation of the Convention is required to introduce a complaint and interrupt the running of the six-month period (see *Abuyeva and Others v. Russia*, no. 27065/05, § 222, 2 December 2010, and *Allan v. the United Kingdom* (dec.), no. 48539/99, 28 August 2001). As regards complaints that were not included in the initial communication, the running of the six-month period is not interrupted until the date when such complaints are first submitted to the Court (see *Allan*, cited above). Allegations made after the expiry of the six-month time-limit can only be examined by the Court if they constitute legal submissions relating to, or particular aspects of, the initial complaints that were introduced within the time-limit (see *Kurnaz and Others v. Turkey* (dec.), no. 36672/97, 7 December 2004, and *Sâmbata Bihor Greco-Catholic Parish v. Romania* (dec.), no. 48107/99, 25 May 2004).

(ii) Application of these principles to the present case

95. The Court will examine whether the applicant's submissions relating to the allegedly unjustified difference in treatment between pensioners employed in different categories within the public sector, as set out in his observations of 9 February 2015, should be considered as legal submissions in respect of his initial complaint and/or as a particular aspect of that

complaint to which the six-month rule would not apply, rather than as a separate complaint introduced at a later stage.

96. It considers that the nature of a violation alleged under Article 14 requires that a complaint brought under this heading should provide at least an indication of the person or group of persons in comparison with whom the applicant claims he or she was treated differently, as well as of the ground of the distinction that was allegedly applied. The complaint should thus contain the parameters required to define the scope of the issue to be examined by the Court, and also by the Government should the Court decide to invite them to submit their observations on the admissibility and/or merits of the complaint. In this connection it is further to be borne in mind that justifications for differences in treatment may well vary depending on the comparator group or groups and/or the ground or grounds of distinction at issue. For these reasons, the Court cannot accept that the mere fact that a complaint under Article 14 of the Convention was included in the application form is sufficient to constitute introduction of all subsequent complaints made under that provision.

97. The Court notes that the allegation raised in the present case concerning the difference in treatment between various categories of State employees in receipt of an old-age pension was not mentioned in any communication received from the applicant prior to 9 February 2015, not even as part of the background facts of the case. In the opinion of the Court, this complaint is distinct from the one relating to the alleged difference of treatment between pensioners employed in the private sector and those employed in the public sector. Nor can it be regarded as so closely connected to the original complaint that it cannot be examined separately.

98. Consequently, the Court concludes that the complaint concerning a difference in treatment between pensioners employed by the State was introduced in the applicant's submissions of 9 February 2015. Regardless of whether the six-month period started running on 1 July 2013, when the applicant's pension payments were suspended, or on 27 September 2013, when the National Pensions Administration discontinued the examination of the applicant's appeal, the Grand Chamber, unlike the Chamber, concludes that this part of the application was introduced outside the six-month time-limit and is therefore inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention.

99. Accordingly, the Grand Chamber has no jurisdiction to entertain this complaint and will confine its examination below to the merits of the applicant's grievance relating to the alleged discrimination between State and private-sector employees in receipt of an old-age pension.

B. Merits

100. The Court will examine the applicant's complaint under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1, alleging that, as a person in receipt of an old-age pension and working in the civil service, he was treated differently from recipients of an old-age pension working in the private sector. He submitted that the latter continued to receive their pensions whilst his pension payments were suspended for the continued duration of his employment in the civil service.

Article 14 of the Convention provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

1. The Chamber judgment

101. In so far as the matter complained of by the applicant falls within the Court's jurisdiction as delimited in paragraph 99 above, the Grand Chamber notes that the Chamber, being satisfied that the subject-matter of the case fell within the ambit of Article 1 of Protocol No. 1, found Article 14 of the Convention to be applicable. This was because the applicant had been denied payment of his pension on the ground of his being employed in the civil service, which was covered by the term "other status" for the purposes of Article 14. Moreover, the Chamber was of the view that retirees working in the civil service and those working in the private sector were in an analogous situation seen from the perspective of the core argument advanced by the Government, namely that employed persons do not require a substitute for salary.

102. The Chamber went on to consider that the impugned measure was capable, to some extent, of reducing public spending, and it therefore accepted that the aim of the legislation underlying the differential treatment in question – namely the protection of the "public purse" – could be regarded as legitimate. However, it found that the difference in treatment between retirees employed in the civil service and retirees employed in the private sector, with regard to entitlement to the continued receipt of an old-age pension, was not based on any "objective and reasonable justification", as members of both groups earned salaries and the pensions paid out to retirees employed in the private sector could therefore also be regarded as redundant public expenditure. For these reasons, it found that there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

2. The parties' submissions to the Grand Chamber

(a) The applicant

103. The applicant submitted that, since the respondent State had put in place a compulsory pension scheme, it followed from the Court's established case-law that his complaint of interference with his rights under that scheme fell within the scope of Article 1 of Protocol No. 1, and that any amendment of the scheme accordingly had to be compatible with Article 14 of the Convention. He maintained that he had been in the same situation as other recipients of an old-age State pension and that disbursement of his pension had been suspended solely on account of the fact that he was simultaneously employed in the civil service, which was a ground amounting to "other status" for the purposes of Article 14.

104. Contrary to what the Government claimed, there were no other member States of the Council of Europe which made a similar distinction between persons employed in the public and private sectors when it came to paying out pensions. Where any such distinctions were made, they related to the payment of early-retirement pensions and, as such, were of no relevance to the present case.

105. The applicant further contended that there was no objective and reasonable justification for the difference in treatment.

106. Firstly, it did not pursue a legitimate aim. Since considerable numbers of pensioners in post-retirement employment were exempted from the ban, the aim of putting an end to the simultaneous receipt of State-paid pensions and salaries could not be achieved by the enactment of section 83/C of the 1997 Pensions Act. It could, furthermore, not be accepted that a prohibition on the accumulation of pension and salary was as such in the general interest, without an indication, which the Government had failed to provide, of the use to which the money saved had been put.

The applicant acknowledged that the protection of a country's economic system might constitute a legitimate aim for general measures of economic strategy in a serious economic crisis. But Hungary, having been affected by the global financial crisis (as had the whole of Europe) in 2008, did not require protection of the economic system five years later, at a time when the EU excessive deficit procedure had been closed, the economic crisis declared over, and the pension ceiling quashed. In addition, the prohibition was not temporary but continued to apply despite an improved economic situation.

107. Secondly, there was no reasonable relationship of proportionality between the means employed and the aim sought to be achieved. Only a very small group of pensioners was affected by the prohibition on accumulation of salaries and pensions, and the savings made were insignificant, whereas the applicant had had to bear a total deprivation of his pension. Moreover, the applicant could not have been expected to give up

his job and seek employment in the private sector, as such an argument would render Article 14 devoid of substance.

(b) The Government

108. The Government argued that persons having taken up post-retirement employment in the private sector did not draw their salary from the public budget and did not therefore benefit from a double income from public sources. They were of the view that this essential distinction between pensioners employed in the private sector and pensioners employed in the civil service was of such significance that, despite the other features which the two groups had in common, it was decisive in concluding, in the context of the contested legislation, that they were not in an analogous situation. The Government pointed out that this had also been the approach taken by the Court in the case of *Panfile* (cited above, § 28). In its judgment in the present case, the Chamber had not provided any specific justification for its departure from this case-law.

109. There were also, seen from the perspective of the reasons behind the introduction of the ban on accumulating pensions and salaries, other features which set employees in the civil service apart from those in the private sector. Thus, in respect of public employees, the State was in the position not only of regulator in the field of employment policy, but also of employer. The State could therefore directly implement its employment policy with regard to its employees without having to consider possible interference with private-law relationships as it would with regard to persons working in the private sector.

110. A further difference, so the Government submitted, lay in the fact that public servants had a special duty of loyalty to the State and were under an obligation to observe certain ethical norms not applicable to those employed in the private sector. The suspension of pension payments corresponded to an ethical obligation not to abuse the law. Even though the receipt of retirement benefits without retiring was not illegal, it was unethical in the sense that it maximised personal advantages to the detriment of the community.

(c) The third-party intervener's arguments

111. Taking the view that the right to social security was a fundamental social right of special importance, the ETUC submitted that there should be no discrimination in allocating benefits to different categories of insured persons.

3. The Grand Chamber's assessment

(a) Relevant principles

112. The Court has consistently held that Article 14 complements the other substantive provisions of the Convention and its Protocols. It has no independent existence since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded thereby. Although the application of Article 14 does not presuppose a breach of those provisions – and to this extent it is autonomous – there can be no room for its application unless the facts at issue fall within the ambit of one or more of them. The prohibition of discrimination enshrined in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and the Protocols thereto require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention Article, for which the State has voluntarily decided to provide (see, among many other authorities, *Biao v. Denmark* [GC], no. 38590/10, § 88, ECHR 2016; *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 158, ECHR 2016; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 63, ECHR 2010; and *E.B. v. France* [GC], no. 43546/02, §§ 47-48, 22 January 2008).

113. In order for an issue to arise under Article 14 there must be a difference in the treatment of persons in analogous, or relevantly similar, situations (see, amongst many authorities, *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 64, ECHR 2017; *X and Others v. Austria* [GC], no. 19010/07, § 98, ECHR 2013; and *Konstantin Markin v. Russia* [GC], no. 30078/06, § 125, ECHR 2012 (extracts)). In other words, the requirement to demonstrate an analogous position does not require that the comparator groups be identical. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated differently (see *Clift v. the United Kingdom*, no. 7205/07, § 66, 13 July 2010). However, not every difference in treatment will amount to a violation of Article 14. Firstly, the Court has established in its case-law that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14 (see *Carson and Others*, cited above, § 61, and *Eweida and Others v. the United Kingdom*, nos. 48420/10 and 3 others, § 86, ECHR 2013 (extracts)). Secondly, a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Fabris v. France* [GC], no. 16574/08, § 56, ECHR 2013 (extracts); *Topčić-Rosenberg v. Croatia*, no. 19391/11, § 36, 14 November 2013; and *Weller v. Hungary*, no. 44399/05, § 27, 31 March 2009).

114. 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. The scope of the margin will vary according to the circumstances, the subject-matter and the background (see *Stummer v. Austria* [GC], no. 37452/02, § 88, ECHR 2011).

115. A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy for example (see *Hämäläinen v. Finland* [GC], no. 37359/09, § 109, ECHR 2014). 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 *Carson and Others*, cited above, § 61). Any measures taken on such grounds, including the reduction of the amount of pension normally payable to the qualifying population, must nevertheless be implemented in a non-discriminatory manner and comply with the requirements of proportionality (see *Lakićević and Others*, cited above, § 59, and *Stec and Others*, cited above, § 55). In any case, irrespective of the scope of the State's margin of appreciation, the final decision as to the observance of the Convention's requirements rests with the Court (see, *inter alia*, *Konstantin Markin*, cited above, § 126).

116. Lastly, as regards 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 *Khamtokhu and Aksenchik*, cited above, § 65; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV).

117. In cases, such as the present one, concerning a complaint under Article 14 of the Convention taken 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 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 (see *Stec and Others*, cited above, § 55, with further references).

(b) Application of these principles to the present case

(i) Applicability of Article 14

118. From the principles stated in paragraphs 112 and 117 above, it follows that the applicant's complaint clearly falls within the ambit of Article 1 of Protocol No. 1 and that Article 14 is applicable. Indeed, this was not in dispute between the parties.

(ii) Existence of an analogous or relevantly similar situation

119. As already indicated in paragraph 113 above, the first issue to be examined is whether the applicant, as a person in receipt of an old-age pension subsequently employed in the civil service, was in an analogous or relevantly similar situation compared with a person in receipt of an old-age pension subsequently employed in the private sector.

120. Whereas the applicant claimed that he was indeed in a relevantly similar situation to recipients of old-age pensions with subsequent employment in the private sector, the Government disputed that claim, placing reliance on, in particular, the Court's decision in *Panfile* (cited above).

(α) General considerations

121. The Court reiterates that a difference in treatment may raise an issue from the point of view of the prohibition of discrimination as provided for in Article 14 of the Convention only if the persons subjected to different treatment are in a relevantly similar situation, taking into account the elements that characterise their circumstances in the particular context. The Court notes that the elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject-matter and purpose of the measure which makes the distinction in question.

122. As a general starting-point the Court considers, firstly, that the Contracting Parties, by necessity, enjoy wide latitude in organising State functions and public services, including such matters as regulating access to employment in the public sector and the terms and conditions governing such employment, in the context of their obligations under the Convention.

Secondly, for institutional and functional reasons, employment in the public sector and in the private sector may typically be subject to substantial legal and factual differences, not least in fields involving the exercise of sovereign State power and the provision of essential public services. Civil servants, unlike persons employed in the private sector, may be engaged in the exercise of the State's sovereign power, and therefore their functions as well as the duty of loyalty owed to their employer may be of a different nature, although the extent to which this is the case may depend on the specific functions they have to perform.

Thirdly, as a result of the above, it cannot be assumed that the terms and conditions of employment, including the financial ones, or the eligibility for social benefits linked to employment, will be similar in the civil service and in the private sector, nor can it therefore be presumed that these categories of employees will be in relevantly similar situations in this regard. Another important difference in this context is that the salaries as well as the employment-linked social benefits of State employees, unlike those of private-sector employees, are paid by the State.

123. Each of the three kinds of considerations mentioned above is widely reflected in various ways in a long-standing line of case-law recognising a distinction between civil servants and private employees as two categories that are not comparable.

124. The first of these may be seen in *Valkov and Others* (cited above, § 117), where the Court held, in the context of a cap on pensions examined under Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1, that it was not for an international court to pronounce on the question whether the authorities of a Contracting State had made a valid distinction between the character of the respective employments of two groups. Decisions involving such distinctions were policy judgments which were in principle reserved for the national authorities, which had direct democratic legitimation and were better placed than an international court to evaluate local needs and conditions. The Court also noted that on a number of occasions the Court and the former Commission had countenanced the distinctions that some Contracting States drew, for pension purposes, between civil servants and private employees (ibid., § 117, with further references).

125. An example of the second type of factors taken into account as relevant considerations may be found in *Heinisch v. Germany* (no. 28274/08, § 64, ECHR 2011 (extracts)), albeit in a context unrelated to the prohibition of discrimination laid down in Article 14. In that case the Court, in examining the necessity of a restriction on free speech under Article 10 § 2 of the Convention, held that the duty of loyalty which employees owed to their employer might be more pronounced in the case of civil servants and employees in the public sector compared with employees in private-law employment relationships.

Also of interest in this connection is the fact that, whilst the above line of authority concerns the interpretation and application of substantive Convention guarantees (that is, Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 in the first case, and Article 10 in the second case) with regard to differential treatment of employees placed in distinct categories under domestic law, the Court has accepted certain distinctions also for the purposes of the due process guarantee in the context of the applicability of the civil limb of Article 6 § 1 to disputes regarding civil servants. Thus, when developing the former *Pellegrin* doctrine (see

Pellegrin v. France [GC], no. 28541/95, § 67, ECHR 1999-VIII) into what later became known as the *Eskelinen* test (see *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 62, ECHR 2007-II), the Court recognised the State's interest in controlling access to a court when it comes to certain categories of staff, stating that "it is primarily for the Contracting States, in particular the competent national legislature, not the Court, to identify expressly those areas of public service involving the exercise of the discretionary powers intrinsic to State sovereignty where the interests of the individual must give way" (ibid., § 61).

Although these findings in *Heinisch* and *Eskelinen* were not formulated with a view to an assessment of whether or not a difference of treatment raised an issue under Article 14 of the Convention, they do nonetheless shed light on the Court's assessment of the distinctive features of civil servants' role in the exercise of public powers and functions in contrast to that of other categories of employees.

126. The third type of factor was relied on by the Court in *Panfile* (cited above), when disposing of a complaint under Article 14 of the Convention taken together with Article 1 of Protocol No. 1, where a distinction between the sources of the salaries of employees in the public and private sectors (respectively from State funds and from private funds) led it to conclude that those two categories of persons could hardly be regarded as being in an analogous or relevantly similar situation within the meaning of Article 14 (see *Panfile*, cited above, § 28).

127. Whilst the above analysis shows the importance of the three aforementioned considerations in the Court's case-law, the present case has revealed a need to take yet a further – fourth – factor into account, namely the role of the State when acting in its capacity as employer. This role is distinct from the one the State assumes when acting in its capacity as regulator of the minimum conditions of employment and of the provision of social-welfare benefits linked to employment in sectors outside its direct control. In particular, as employers, the State and its organs are not in a comparable position to private-sector entities either from the perspective of the institutional framework they operate under or in terms of the financial and economic fundamentals of their activities; the funding bases are radically different, as are the options available for taking measures to counter financial difficulties and crises.

128. Finally, it should also be observed that even when confronted with issues of comparisons between professionals belonging to different categories, irrespective of public and private-sector divides as referred to above, the Convention institutions have been disinclined to view different types of functions as giving rise to analogous or relevantly similar situations. Thus, in *Valkov and Others* (cited above, § 117), the Court was not prepared to draw any conclusions from the applicants' arguments regarding the nature of the tasks performed by members of the groups

invoked as comparators. It referred to a number of previous rulings in which no similarity had been found between the disparate situations in question, on the basis that "each one [was] characterised by a corpus of rights and obligations of which it would be artificial to isolate one specific aspect" (see *Van der Mussele v. Belgium*, 23 November 1983, § 46, Series A no. 70, where the treatment of lawyers in private practice acting in legal-aid cases was compared to that of judicial and para-judicial professions and where the requirement for lawyers to provide services free of charge to indigent persons was compared to the absence of such a requirement for medical practitioners, veterinary surgeons, pharmacists and dentists; see also *Allesch and Others v. Austria*, no. 18168/91, Commission decision of 1 December 1993, unreported, concerning the comparison of the pension entitlements of engineers with those of other liberal professions; and *Liebscher and Others v. Austria*, no. 25170/94, Commission decision of 12 April 1996, unreported, on issues concerning the comparison of lawyers in private practice with chartered public accountants regarding the possibility to establish limited-liability companies).

129. Thus, it is in the light of the general considerations highlighted above that the Court will assess the circumstances of the present case, while bearing in mind that it is incumbent on the applicant, who alleges the differential treatment, to demonstrate the existence of an "analogous or relevantly similar situation" (see paragraph 113 above).

(β) Whether the applicant was in an analogous or relevantly similar situation

130. Turning to the circumstances of the present case, the Court observes that it concerns old-age pensions under the Hungarian compulsory social-security pension scheme, to which both State employees and private-sector employees were affiliated and to which they contributed in the same way and to the same extent. This scheme provided for pension entitlements for both groups, regardless of whether they had previously worked in the public or the private sector (see paragraphs 21-22 above). Accordingly, old-age pensions disbursed to employees in the public sector originated from the same source as pension payments to employees working in the private sector. Nevertheless, this is not in itself sufficient to establish that the situations of persons in receipt of a pension and employed in the civil service after retirement and those in receipt of a pension but re-employed in the private sector were relevantly similar for the purposes of the assessment of the present case.

131. The Court observes firstly that, following the entry into force of section 83/C of the 1997 Pensions Act, it was the applicant's post-retirement employment in the civil service that entailed the suspension of his pension payments. It was precisely the fact that, as a civil servant, he was 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. As already stated in paragraph 126 above, it was the distinction between the sources of the salaries of employees in the public and private sectors that led the Court to conclude in *Panfile* that those two categories of persons could hardly be regarded as being in an analogous or relevantly similar situation within the meaning of Article 14.

132. The Court further notes that, under Hungarian national law, employment in the civil service and employment in the private sector were treated as distinct categories (see paragraph 20 above). Moreover, the applicant's specific profession within the civil service was difficult to compare with any in the private sector and no relevant comparisons were suggested by him. Finally, as regards his employment relationship, the State did not function only as regulator and standard-setter but was also his employer. In line with the considerations stated in paragraph 127 above, the Court regards it as significant that it was 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.

(iii) Conclusion

133. Taking all these aspects of the present case into account, the Court finds that the applicant has not demonstrated that, as a member of the civil service whose employment, remuneration and social benefits were dependent on the State budget, he was in a relevantly similar situation to pensioners employed in the private sector.

134. It follows that there has been no discrimination and, therefore, no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

FOR THESE REASONS, THE COURT

1. *Holds*, unanimously, that there has been no violation of Article 1 of Protocol No. 1 taken alone;

2. *Holds*, unanimously, that the complaint relating to an allegedly unjustified difference in treatment between pensioners employed in different categories within the public sector was introduced out of time and is therefore inadmissible pursuant to Article 35 §§ 1 and 4 of the Convention;

3. *Holds*, by eleven votes to six, that there has been no violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 5 September 2017.

Søren Prebensen	Guido Raimondi
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) Joint concurring opinion of Judges O'Leary and Koskelo;
(b) Concurring opinion of Judge Ranzoni;
(c) Joint dissenting opinion of Judges Sajó, Vehabović, Turković, Lubarda, Grozev and Mourou-Vikström.

G.R.
S.C.P.

JOINT CONCURRING OPINION OF JUDGES O'LEARY AND KOSKELO

A. Introduction

1. While we agree entirely with the majority judgment as regards the finding of no violation of Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention, we feel compelled to write a separate, concurring opinion as regards the majority's reasoning in relation to the discrimination complaint brought under the latter provisions.

2. We regret that the Grand Chamber has not seized the opportunity to refine or elaborate sufficiently the Court's case-law on comparators for the purposes of Article 14 of the Convention. The existing case-law is underdeveloped and, at times, unclear, with the comparability test often glossed over and emphasis placed principally, if not exclusively, on justification and/or proportionality[1]. We are not suggesting that a domestic court, faced with a claim of differential treatment on a prohibited ground, should always follow a rigid three-stage assessment of comparability, justification and proportionality in that order[2]. However, we would suggest that the present case demonstrates particularly well why insufficient attention from the Court to the question of the comparator, and insufficient rigour in its definition, can give rise to problems, not least in the fields of social security and pensions.

3. Before addressing the questions relating to comparability raised by the majority judgment, some clarification regarding the facts of the present case is necessary.

B. Background to the domestic case giving rise to the complaint before the Grand Chamber

4. When the Grand Chamber is called on to examine, under Article 1 of Protocol No. 1 in conjunction with Article 14 of the Convention, the consequences for an applicant of legislative pension reform which is just

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1. See, for example, *Spadea and Scalabrino v. Italy*, 28 September 1995, §§ 45-47, Series A no. 315-B; *Chassagnou v. France* [GC], nos. 25088/94 and 2 others, §§ 91-95, ECHR 1999-III; and *Grande Oriente d'Italia di Palazzo Giustiniani v. Italy (no. 2)*, no. 26740/02, §§ 48-57, 31 May 2007.

2. See, for example, the judgment of Baroness Hale in *AL (Serbia) (FC) (Appellant) v. Secretary of State for the Home Department* [2008] UKHL 42 for an explanation why such a rigid approach may be inapt or unnecessary in many cases. See further C. McCruddon, "Equality and Non-Discrimination" in D. Feldman et al., *English Public Law*, OUP, 2004, for differences in domestic and European discrimination provisions and the consequences for the different role played by the comparator thereunder.

one part of a very complex domestic whole, it is not only desirable, but necessary, that the Court has at its disposal all relevant information relating to the national pension regime, the impugned reform and the particular circumstances of the applicant. Where the success or failure of a discrimination claim depends, as a first step, on the establishment of an appropriate and relevant comparator, such detail is not merely useful, it is essential.

5. However, the case file before the Grand Chamber, like that before the Chamber, remained sadly lacking in detail. This was no doubt due to the absence of any analysis by a domestic court of the legal questions before this Court. The only appeal introduced by the applicant at domestic level was an administrative one before a government agency, the National Pensions Administration (see paragraphs 16-17 and 21 of the majority judgment). Once the latter discontinued the applicant's case due to a failure on his part to provide necessary information, the case was pursued no further at domestic level. The respondent Government did not raise before the Court any preliminary objection under Article 35 § 1 of the Convention for failure to exhaust domestic remedies and the Court does not, under its current practice, raise such an objection of its own motion[3]. Under these circumstances, the Court was confronted with a dearth of information of central importance to its assessment under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14. In our view, the quality of the legal analysis in which it engaged inevitably suffered as a consequence.

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3. See, for example, *International Bank for Commerce and Development and Others v. Bulgaria*, no. 7031/05, 2 June 2016, § 131, and the case-law cited therein. In contrast, the Court has explicitly held that it is not open to it to set aside the application of some admissibility criteria, such as the six-month rule, solely because a Government has not made a preliminary objection to that effect (see, for example, *Blečić v. Croatia* [GC], no. 59532/00, §§ 67-68, ECHR 2006-III). The rationale for the Court's power to raise such a rule of its own motion is the need to prevent past decisions being called into question after an indefinite lapse of time and the fact that the rule marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible. Yet, as demonstrated in § 70 of the Grand Chamber judgment in *Vučković and Others v. Serbia (preliminary objection)* [GC], nos. 17153/11 and 29 others, 25 March 2014, the importance of the principle of exhaustion is no less compelling: "States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system … *It should be emphasised that the Court is not a court of first instance; it does not have the capacity, nor is it appropriate to its function as an international court, to adjudicate on large numbers of cases which require the finding of basic facts or the calculation of monetary compensation – both of which should, as a matter of principle and effective practice, be the domain of domestic jurisdictions*" (emphasis added). It is worth considering whether the rule on exhaustion should not equally be considered a public policy rule which can be raised by the Court, where necessary, of its own motion.

6. The majority judgment does provide something of an overview of the circumstances of the case. The applicant was 47 years old when, in 2000, after 27 years of service and one year before some very generous early-retirement schemes were abolished, he chose to avail himself of one such scheme open to members of the police force[4]. The statutory retirement age in Hungary varied, at the relevant time, between 62 and 63. The applicant only reached this statutory retirement age in 2016, three years after his case had been lodged before the Court. The majority judgment indicates that both (certain) public and (some) private-sector employees used to be eligible for early-retirement pensions[5]. However, the terms and conditions of eligibility for such pensions are nowhere further elaborated[6]. It is noteworthy that the applicant could have continued to work in the police force beyond the age of 47 and, had he done so, he would have continued to contribute to his pension, which would have continued to increase[7]. It is also relevant, as the respondent Government pointed out, that neither the applicant nor his (State) employer had ever paid any additional pension contribution in order to cover the additional cost of the preferential treatment embodied in the longer disbursement period. In receipt of his early-retirement pension, he continued to work, first in the private sector for twelve years and subsequently in the civil service. It was when he was re-employed in the latter in 2012 that the impugned pension reform measure was adopted. The latter provided for suspension of the applicant's pension entitlement for as long as his employment in the civil service continued. To continue receiving his pension he had to stop working in the civil service or return to employment in the private sector. In short, receipt of both a State-funded pension and a State-funded salary was excluded. Some of this information could only be pieced together following the oral submissions of the respondent Government at the hearing on 9 November 2016 and in response to detailed questions posed to both parties by judges of the Court. The evidentiary problems to which this situation gives rise are patent.

C. No violation of Article 1 of Protocol No. 1

7. As indicated previously, we subscribe fully to the majority's finding of no violation of Article 1 of Protocol No. 1 in the circumstances of the present case[8]. We will refer below to elements of the reasoning relating to

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4. For the relevance of choice, see paragraphs 76-77 of the majority judgment's assessment under Article 1 of Protocol No 1.
5. See paragraph 30 of the majority judgment.
6. A similar tendency to vagueness and generalisation can be detected in the comparative material presented in paragraphs 31-43 of the majority judgment.
7. See paragraph 22 of the majority judgment.
8. See paragraphs 60-84 of the majority judgment.

this complaint only to the extent that they are relevant to the assessment of comparability.

D. Analysis of discrimination under Article 14 of the Convention and the question of comparators

Component parts of an Article 14 discrimination assessment

8. According to the Court's established case-law, there can be no room for the application of Article 14 of the Convention unless the facts at issue fall within the ambit of one or more Convention provisions[9]. Even if a case is within the ambit, Article 14 does not prohibit every difference in treatment in the exercise of rights and freedoms: "[t]he competent national authorities are frequently confronted with situations and problems which, on account of the differences inherent therein, call for different legal solutions; moreover certain legal inequalities tend only to correct factual inequalities[10]." Thus, in order for an issue to arise under Article 14, "there must be a difference in the treatment of persons in analogous, or relevantly similar, situations[11]." If that is the case, the difference in treatment in question will be considered discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised[12]. Lastly, it is important to remember that the list of prohibited grounds in Article 14 is long and, more importantly, open-ended due to the reference to "other status" and the Court's generous, expansive approach thereto[13].

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9. See *Abdulaziz, Cabales and Balkandali v. the United Kingdom*, 28 May 1985, § 71, Series A no. 94.

10. See *Case "relating to certain aspects of the laws on the use of languages in education in Belgium"* (merits), 23 July 1968, § 10, Series A no. 6.

11. See the authorities cited in paragraph 113 of the majority judgment.

12. See, for example, *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 51, ECHR, 2006-VI.

13. The Court has found "other status", *inter alia*, where the impugned distinction was based on military rank (*Engel and Others v. the Netherlands*, 8 June 1976, Series A no. 22); the type of outline planning permission held by the applicant (*Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, Series A no. 222); whether the applicant's landlord was the State or a private owner (*Larkos v. Cyprus* [GC], no. 29515/95, ECHR 1999-I); the kind of paternity the applicant enjoyed (*Paulík v. Slovakia*, no. 10699/05, ECHR 2006-XI (extracts)); the type of sentence imposed on a prisoner (*Clift v. the United Kingdom*, no. 7205/07, 13 July 2010); the nationality or immigration status of the applicant's son (*Bah v. the United Kingdom*, no. 56328/07, ECHR 2011); or ownership of large or small parcels of land (*Chassagnou*, cited above).

Importance of the comparability test

9. In almost any case where discrimination is alleged, it is of crucial importance to adopt and apply a sufficiently well-elaborated and rigorous analytical framework. Otherwise the risk of arriving at erroneous conclusions is high. This risk can materialise in both ways: the assessment of the relevant facts with reference to an inadequate analytical framework may result in a failure to recognise differential treatment where such a finding is justified ("false negative"), or it may result in a finding of differential treatment in circumstances where such a finding is not well-founded ("false positive").

10. For this Court, the need to demonstrate analytical rigour when it comes to the question of comparability derives, firstly, from its own preference under Article 14 for the Aristotelian principle of treating like with like. The success of a discrimination complaint depends first and foremost on when persons are deemed to be in situations that are alike. The choice of comparator will often change the outcome of the case, and the judicial choice of comparators is sometimes criticised for being arbitrary or lacking in a consistent rationale. Well-founded criticism of this weakness should spur the Court to present clearly the objective basis on which it determines questions of comparability[14]. Secondly, the long and open-ended list of prohibited grounds in Article 14 means that a lack of rigour in cases where the comparator is central mean all "eggs" are placed in the justification and reasonableness basket. When that happens, as it did at Chamber level in the instant case, it may be all too easy for a lacklustre defence by a respondent Government on the question of objective and reasonable justification to lead to the finding of a violation. This may have far-reaching repercussions not only in the respondent State but also in numerous other States where similar social-security and pension reform is also being implemented[15].

11. As stated previously, the domestic courts may, depending on the circumstances of a given case, the prohibited ground involved, or the extent of the required judicial scrutiny of the justification advanced, prefer to assume comparability and transpose what would have been relevant factors

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14. See further M. Bell, "Direct Discrimination" in D. Schiek, L. Waddington and M. Bell, *Cases, Materials and Texts on National, Supranational and International Non-Discrimination Law*, Hart Publishing, 2007, pp. 205-215, or A. McColgan, "Cracking the Comparator Problem: Discrimination, 'Equal' Treatment and the Role of Comparisons" (2006) *E.H.R.L.R.* 650.

15. In the present case the Chamber (paragraphs 32-33) accepted the legitimate aim (which it identified as reduction in public spending) only to a limited extent. Since members of both groups earned salaries and the pensions paid out to those who continued to work in the private sector could also be regarded as redundant expenditure, the difference in treatment was not regarded by the Chamber as objectively and reasonably justified.

thereunder to their focus on justification and proportionality. However, a case like this, in which the applicant's administrative appeal was the only aborted occasion afforded a domestic authority to address the present complaints, demonstrates why the Court should not.

12. Thus the first, critical, question in an Article 14 analysis is whether two persons or groups of persons are in an analogous or relevantly similar situation. As indicated above, it is only where this condition is fulfilled that an issue arises under Article 14. The Court has often formulated the basic principle along the lines expressed in § 66 of *Clift* (cited above): "The applicant must demonstrate that, having regard to the particular nature of his complaint, he was in a relevantly similar situation to others treated differently." This line of authority cannot, in our view, be taken to mean that the comparator by reference to which an alleged differential treatment must be judged is that dictated exclusively by the applicant or the manner in which he or she has framed the complaint. The identification of the factors that characterise situations in a particular context is an issue that goes to the assessment of the merits of the case. The Court cannot, in answering this legal question, confine its analysis simply to the elements as they may have been relied on by the complainant in a discrimination case. Like can only be compared with like, but what is relevantly "like" or "unlike" must often, necessarily, depend heavily on the circumstances, both factual and legal, in any given case.

13. The clarification of the *Clift* formula in paragraph 121 of the majority judgment – so that comparability is to be assessed "taking into account the elements that characterise their circumstances in the particular context" and "in the light of the subject-matter and purpose of the measure which makes the distinction in question" – is therefore to be welcomed. It reflects the finer, more contextual analysis applied already in some Article 14 cases but not in all[16]. Incidentally, it also reflects the well-established language of the case-law of the Court of Justice of the European Union on the general principle of equality[17]. The characterising elements must be

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16. See, of particular interest for the present case, *Panfile v. Romania* (dec.), no. 13902/11, § 28, 20 March 2012: "… the two categories of persons can hardly be regarded as being in an analogous or relevantly similar situation within the meaning of Article 14, since the essential distinction, *relevant to the context in which the impugned measures were taken*, is that they draw their incomes from different sources, namely a private budget and the State budget respectively. It should also be noted in that connection that the Court has on a number of occasions countenanced the distinctions that some Contracting States draw, for pension purposes, between civil servants and private employees (see *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 117, 25 October 2011, and the citations therein)" (emphasis added).

17. See, for example, *Arcelor Atlantique*, EU:C:2008:728, paragraphs 25-26: "The elements which characterise different situations, and hence their comparability, must in particular be determined and assessed in the light of the subject-matter and purpose of the

considered by taking into account the subject-matter and purpose of the measure from which the alleged difference in treatment is said to derive[18].

Simplicity of the applicant's "but for" argument

14. The simplicity of the applicant's "but for" argument in the present case is a good example of the risks to which an approach which is too vague, general or unspecific may give rise. The applicant claimed that, as a recipient of a pension who continued to be employed in the civil service in return for a State salary, he was the subject of discrimination when compared with other pension recipients who continued to work in the private sector[19].

15. Formulated simply in this way, and given the suspension of pension entitlement for the first group as distinct from the latter, one could be inclined to agree with the applicant. His grievance, thus formulated was: but for my continued employment in the civil service, I would have continued to receive my pension just like those with post-retirement employment in the private sector. Persons who continue in post-retirement employment being in a relevantly similar situation, according to the applicant's "but for" argument, differential treatment would be established and the assessment under Article 14 would then proceed to an examination of any objective justification advanced by the respondent State and the proportionality of the impugned measure.

Factors absent from the analysis of the comparator in the majority judgment

16. In our view, it was vital that, unlike the Chamber, the majority rightly chose to examine in some more detail the question of the comparator. This led to the finding that, contrary to the applicant's

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Community act which makes the distinction in question. The principles and objectives of the field to which the act relates must also be taken into account …" See also, in a similar vein, in the specific field of gender equality, *Test-Achats*, EU:C:2011:100, paragraph 29: "In that regard, it should be pointed out that the comparability of situations must be assessed in the light of the subject-matter and purpose of the EU measure which makes the distinction in question."

18. For existing examples of this more nuanced/circumstantiated/detailed approach in the Court's own case-law see *Stummer v. Austria* [GC], no. 37452/02, §§ 90-95, ECHR 2011; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 83-90, ECHR 2010; *B. v. the United Kingdom*, no. 36571/06, 14 February 2012; *Giavi v. Greece,* no. 25816/09, §§ 50-53, 3 October 2013; *Valkov and Others*, cited above, § 117; and *Stubbings and Others v. the United Kingdom*, 22 October 1996, §§ 73-74, *Reports of Judgments and Decisions* 1996-IV.

19. See paragraph 103 of the majority judgment.

submissions, the two groups on which he sought to rely were deemed not to be in analogous or relevantly similar situations[20].

17. The analysis of the majority is limited, however, to the question whether the situations of persons with post-retirement employment in the civil service and in the private sector were comparable having regard to the impugned measure by which pension disbursements in parallel with salaries were suspended for the former but not for the latter. In other words, their assessment is undertaken solely by reference to the two categories of employees as they were or were not impacted by the impugned measure[21].

18. Concentrating on impact might, for the purposes of certain cases, be regarded as sufficient to support a finding that the applicant and his chosen comparators were not similarly situated. We nevertheless consider – especially with a view to the further refinement of the case-law in this area – that it may be, and in this case was, equally important for the purposes of comparability not to overlook the basis on which the pension entitlements accrued in the first place. In our view, elements of the dissent demonstrate further why the majority judgment is weaker on this point than it needed to be.

19. In a case such as the present one, which concerns measures taken in the field of pensions and social-security benefits, the factors that characterise the situations of persons affected by such measures must, in principle, include not only the beneficiaries' circumstances at the point in time where the impugned measures took effect and the impact of those measures but also the factors that determine the nature of the entitlements or benefits at the outset, the basis on which those entitlements have accrued and the State guarantee which supports them. More specifically, as like must be compared with like, entitlement to or eligibility for different types of pension benefits, such as old-age pension, disability pension or early-retirement pension cannot, at least not automatically, be considered as giving rise to relevantly similar situations, given their distinct purposes, the conditions to which they are subject and the distinct rights to which they give rise. Even where the pension entitlements are covered by the same general pension scheme[22], a situation of early retirement at an active age and while the person remains fit to work cannot be assimilated with the situation of persons receiving pensions under different circumstances, subject to different conditions and at a different age. The Court has, on previous

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20. See paragraphs 130-32 of the majority judgment.

21. It is of course the discriminatory *effect* of any impugned measure which must be justified, rather than the measure itself, but that is an assessment which follows after the establishment of differential treatment.

22. The applicant's pension fund was, as he and the dissenting opinions indicate, common to both him and his comparator group. See below, paragraph 23, however, for an important qualification relating to the State's liability for that fund.

occasions, stressed the artificiality of emphasising the similarities between different groups on which an applicant relies while ignoring the distinctions between them for the purposes of Article 14[23].

20. Interestingly, when excluding a violation of Article 1 of Protocol No. 1 standing alone the Grand Chamber does mention a number of points which highlight relevant distinctions between the various types of pensions involved. Thus, in paragraph 70 of the majority judgment, it emphasises that there may be differences amongst those who are in receipt of a pension (sometimes referred to as an old-age pension, sometimes referenced more generally). Persons, like the applicant, who have not reached the statutory retirement age continue to be in a position to work and have an earning capacity. Furthermore, in paragraph 71 of the majority judgment, an important consequence of early retirement is referred to. Those who receive early-retirement pensions do so on the basis of a far shorter contribution period – both by them and their (State) employer − than those who continue to work until the statutory retirement age. In our view, these factors considered relevant to the analysis under Article 1 of Protocol No. 1 are also relevant to the subsequent analysis of comparability under that provision in conjunction with Article 14.

21. In the present context, however, the majority appear to consider that since the applicant's early-retirement pension ("service pension") had been converted into an old-age pension in 2012[24], this was sufficient to remove the need for any further consideration of whether the original basis and terms of the pension entitlement were also relevant to the analysis of comparability. The trouble is, however, that the Grand Chamber has not been provided with any specific information as to the concrete effect, in legal and financial terms, of the "conversion" that took place in 2012. In our view, the majority dispensed with this issue too easily.

22. One of the key factors in the present case is that the applicant became eligible for early retirement at the age of 47 and chose to avail of it. In this context, we note the Government's observation according to which employees of the armed forces (including the police) had become, by way of a derogation from general pension rules, entitled to their pension decades earlier than at the applicable statutory retirement age. Those pensions were not meant to secure the beneficiaries' livelihood in their old age but to provide them with an opportunity to retire at an active age[25].

23. In this context, it is also relevant to note that although all employees were covered within the framework of a single Pension Fund, into which the contributions levied on them were paid, the reality of the Hungarian "pay as

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23. See, for example, *Stubbings*, cited above, § 73. In our view, respectfully, this is the trap into which the joint dissenting opinion falls.
24. See paragraph 12 of the majority judgment.
25. See paragraph 20 of the Chamber judgment.

you go" system, as stated by the Government, was that the system was underfunded and its deficits had to be covered by the central State budget[26]. It is obvious that entitlements to early retirement, whereby contributions stop as early as the disbursement of benefits begins, cause relatively larger deficits and, conversely, draw more on the supplementary funding from the State budget than pension entitlements based on longer contribution periods and later commencement of benefit disbursements. Thus, by virtue of and since his early retirement, the applicant had in fact enjoyed benefits subsidised from State funds over a longer period of time than persons in receipt of entitlements from other schemes. This is another reason why, in the context of measures designed to address such imbalances and resulting expenditures from the State budget, it is problematic in a comparability analysis to overlook differences in the various pension entitlement schemes and the financial in- and outflows arising from them.

24. Although it appears from the materials before the Court that some forms of early retirement had also been available in other sectors, we note that the applicant in his submissions made no reference to any early-retirement arrangements in the private sector similar to the one from which he benefited. In this context we recall that under the Court's established case-law, it is for the applicant to demonstrate that he was in a relevantly similar situation to others treated differently[27]. We therefore conclude that the applicant has failed to demonstrate that, as regards his initial entitlement to receipt of pension benefits, his situation as a beneficiary of disbursements following early retirement was relevantly similar to persons employed in the private sector and in receipt of a pension on the basis of that employment.

E. Concluding remarks

25. As regards the analysis of whether, in the context of the present case, persons with post-retirement employment in the civil service and those with post-retirement employment in the private sector can be regarded as being in relevantly similar situations, we should stress that we are broadly in agreement with the analysis presented in the majority judgment[28]. We think, however, that it would have been preferable for the Grand Chamber to address the question of comparability in greater detail and with reference to all the differences, past and present, which characterise the situation of the applicant and those who belong to his chosen comparator group. By encouraging more rigour, when necessary, in the approach to comparability,

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26. See paragraph 21 of the majority judgment.
27. See the case-law cited in paragraph 116 of the majority judgment.
28. See paragraphs 118-34 of the majority judgment.

we are not suggesting either that that test be used to shut down, prematurely, viable claims or shift the burden of proof unduly to complainants. However, where the generously interpreted "other status" category is involved and perhaps in particular where complex issues of social security, pensions and employment are at stake, glossing over comparability and examining only proportionality is a risky way for this Court to proceed.

26. In addition, we consider it important to underline that a finding of no comparability in the instant case should not be understood as implying, in general, that employment in the civil service and employment in the private sector cannot, under any circumstances, be considered to give rise to relevantly similar situations. Such a wide-ranging conclusion would be wrong. As we have underlined above, the question of whether or not two persons or groups are in a comparable situation for the purposes of an analysis of differential treatment and discrimination must be analysed in the light of the elements that characterise their circumstances in a given context, taking into account the subject-matter and purpose of the norms that give rise to the alleged difference in treatment. In other words, the analysis is both specific and contextual. There may well be circumstances where employment in the civil service and in the private sector would have to be regarded as comparable.

CONCURRING OPINION OF JUDGE RANZONI

1. I voted with the majority in finding no violation of Article 1 of Protocol No. 1 and of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1. However, concerning the latter point, my reasoning differs from that of the majority.

2. In assessing the Article 14 complaint, four main questions are to be answered: (1) Was there a difference in treatment between the applicant, an old-age pensioner working in the public sector, and old-age pensioners working in the private sector? (2) Were these two groups of pensioners in an analogous, or relevantly similar, situation? (3) Was the difference in treatment based on an identifiable characteristic, or "status", within the meaning of Article 14 of the Convention? (4) Was there an objective and reasonable justification for the different treatment of both categories?

3. It is not in dispute that the applicant was treated differently from old-age pensioners working in the private sector because his pension payment was suspended for the continued duration of his employment in the civil service (see paragraph 100 of the judgment). Therefore, the first question has to be answered in the affirmative.

4. The majority answer the second question in the negative, finding that the applicant, as a member of the civil service whose employment, remuneration and social benefits were dependent on the State budget, was not in a relevantly similar situation to pensioners employed in the private sector (see paragraphs 121-133 of the judgment). I disagree with this assessment. The decisive factor in this context is not the source of the salary, be it from a private budget or the State budget, but rather the source of the pension and its contributory system. In that regard, I agree with the arguments and conclusions in the joint dissenting opinion of my colleagues Judges Sajó, Vehabović, Turković, Lubarda, Grozev and Mourou-Vikström (see paragraphs 2-9 of their opinion), to which I subscribe and have nothing further to add.

5. Concerning the third question, I again agree with the dissenting judges that there is no dispute between the parties that the different treatment of the applicant was based on "other status" within the meaning of Article 14 (see paragraph 10, first sentence of the dissenting opinion).

6. Where I differ from the dissenters, and what eventually led me to join the majority in finding no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1, is regarding the answer to the fourth question, namely whether there was an objective and reasonable justification for the difference in treatment.

7. The relevant principles in this context are set out in the judgment (see, in particular, paragraphs 113-117). Applying these principles, my starting point would be the wide margin of appreciation afforded to the State in respect of general measures in the economic and social sphere (see

paragraph 115). Such policy decisions are, in principle, reserved for the national authorities, which have direct democratic legitimation and direct knowledge of their society and are better placed than an international court to evaluate local needs and conditions. The Court will therefore generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see, *inter alia*, *Stec and Others v. the United Kingdom* [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006-VI, and *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, § 62, 15 September 2016); that is not the case here.

8. In parts, I would adopt the arguments the majority invoked in examining the question whether the two groups of pensioners were in a relevantly similar situation, in particular regarding the State's role when acting in its capacity as employer (see paragraphs 127 and 131-132). To my mind, these arguments in fact pertain to the justification analysis. Whereas the similarity of situations should be seen and assessed from the perspective of the persons affected, the justification for a different treatment, in contrast, is an element to be assessed based on the State's situation.

9. The elimination of "double income" from the same State budget and the reduction of public debt, as argued by the Government, are valid reasons for treating differently pensioners in the public sector and those in the private sector; the latter receive their "double income" from different budgets. Furthermore, even if at the relevant time the EU deficit procedure was already closed and even if an exceptional financial crisis might no longer have existed in Hungary, the reduction of expenditures and a balanced budget, as well as balanced and well-funded pension schemes, remained important policy aims of the Hungarian Government, as for all responsible Governments.

10. The small number of persons affected by the impugned measure (see, in this respect, paragraphs 13-15 of the dissenting opinion) is not a weighty argument. National authorities often have to introduce a variety of different policy measures, as mentioned by the Government in their submissions; these measures, taken separately, may affect only a limited group. However, such measures have to be looked at as a whole and cannot be dissected in all their particulars. That is one of the reasons for affording the States a wide margin of appreciation when determining general measures of economic or social strategy.

11. The fact that a majority of the member States of the Council of Europe do not make a distinction between public and private-sector employees regarding whether pension payments may be reduced or suspended (see the comparative study, paragraphs 31-43 of the judgment) does not seem a valid argument to me. There exists a wide range of different social-security schemes throughout Europe, and several States actually make distinctions, in particular in situations of retirement before the legal age of retirement.

12. As the dissenting judges concede (see paragraph 14 of their opinion), the applicant was not left without any means of subsistence. He continued to receive his salary, which was presumably higher than the amount of his pension and corresponded approximately to the average salary in Hungary. He did not argue that he risked falling below the subsistence threshold (see, in this respect, paragraphs 79-82 of the judgment). Furthermore, the suspension of his pension entitlements was only of a temporary nature. No doubt the impugned measure affected the applicant's life. However, that does not suffice for finding that he had to bear an excessive or disproportionate burden.

13. These are the main reasons for me to find that the difference in treatment between the applicant, an old-age pensioner working in the public sector, and old-age pensioners working in the private sector had an objective and reasonable justification and that the means employed were proportionate to the aim sought to be achieved. The respondent State did not overstep its wide margin of appreciation. If a State is afforded such a wide margin as in the economic and social sphere, the Court should respect it; otherwise it is just paying lip service to this principle. Besides, taking into account this wide margin of appreciation, it is not the Court's task to look for alternative measures which the State could have adopted (see, *mutatis mutandis*, *Markovics and Others v. Hungary* (dec.), nos. 77575/11 and 2 others, § 39, 24 June 2014).

14. In the light of the foregoing observations, and in contrast to the dissenting judges, I came to the conclusion that there had been no violation of Article 14 in conjunction with Article 1 Protocol No. 1.

JOINT DISSENTING OPINION OF JUDGES SAJÓ, VEHABOVIĆ, TURKOVIĆ, LUBARDA, GROZEV AND MOUROU-VIKSTRÖM

1. While we voted with the majority for a finding of no violation of Article 1 of Protocol No. 1, we were unable to subscribe to their conclusion that there had been no violation of Article 14 read in conjunction with Article 1 of Protocol No. 1. Two distinct issues needed to be addressed in the analysis under Article 14. The first one was whether the applicant was in an analogous situation to the suggested comparator group. If this was indeed the case, the second issue to be addressed was whether the difference in treatment was justified. The majority rejected the applicant's complaint already in answering the first question. They held that the applicant was not in an analogous situation compared with individuals who, like him, were in receipt of an old-age pension but who, unlike him, were in private employment (see paragraphs 121-33 of the judgment). We respectfully disagree. Consequently, in our view, an analysis was required as to the necessity of the different treatment, namely whether it was objectively and reasonably justified. As the respondent Government did not present sufficiently strong arguments to justify the different treatment, we voted for a finding of a violation of Article 14.

2. We turn first to the question whether the applicant was in an analogous or relevantly similar situation to individuals in receipt of an old-age pension, but who were employed in the private sector. It was not in dispute between the parties that the applicant was treated differently from such individuals and that the different treatment was based precisely on the post-retirement employment of those individuals, and specifically whether they were employed in the public or private sector. The difference in treatment consisted in the fact that the applicant had his pension payments suspended whereas those working in the private sector did not. Thus the pertinent question is whether the two groups, the one to which the applicant belonged comprising individuals in receipt of an old-age pension and working for the public sector, and the comparator group comprising individuals in receipt of an old-age pension and working for the private sector, were in an analogous or relevantly similar situation.

3. The majority took the view that the fact that one group was employed after retirement in the private sector and the other in the public sector was a sufficient ground for finding that the two groups were not comparable. We find that approach inconsistent with the Court's case-law, as it confuses the analysis of the difference in treatment, in the form of suspension of the old-age pensions of those in public employment, with the factors which were decisive for entitlement to an old-age pension. Only the latter, in our view, should have been taken into account in establishing whether the applicant was in an analogous or relevantly similar situation to the

comparator group. The fact that the applicant was in public employment and not in private employment after becoming entitled to an old-age pension was irrelevant for the purposes of his entitlement to such a pension. The public versus private-employment distinction thus constituted the different treatment in the otherwise identical entitlement to an old-age pension of the two groups that had to be compared. The measure contested by the applicant was precisely the suspension of his entitlement to an old-age pension, and the analysis of comparability of the two groups should have been based only on the factors giving rise to such entitlement. The difference between individuals in public and private-sector employment is certainly not irrelevant, but it should have been taken into account only in the analysis of whether this difference in treatment was justified or not.

4. In arriving at its conclusion that the applicant was not in an analogous or relevantly similar situation to the suggested comparator, the majority drew on a distinction between civil servants and employees in the private sector made by the Court in judgments such as *Valkov and Others v. Bulgaria* (nos. 2033/04 and 8 others, §§ 92 and 98, 25 October 2011); *Heinisch v. Germany* (no. 28274/08, § 64, ECHR 2011, (extracts)); and *Vilho Eskelinen and Others v. Finland* ([GC], no. 63235/00, § 62, ECHR 2007-II). It is true that the Court held in those cases that the different treatment of private and public-sector employees in the enjoyment of their rights under the Convention was justified under certain circumstances. We do not believe, however, that this acceptable differentiation of the Convention rights of private and public-sector employees can justify the conclusion that the two categories in the present case were not in an analogous or relevantly similar situation. While the judgments of the Court that were cited undoubtedly drew a distinction between the Convention rights of public and private-sector employees, the reliance on such a distinction in the present case reveals confusion as to the relevant circumstances required for the comparison. This approach fails to recognise that in the cases relied on by the majority the distinction between public and private-sector employees was a pre-existing feature which defined the very content of the right at issue. Whether pension rights, the right to free speech or the right of access to court were at stake, the very essence of the rights at issue in those cases emanated from the specific characteristics of the public service, and as a result the very essence of the right was defined differently, precisely because of the inherent differences between public and private-sector employment. This was the case even in *Panfile*, albeit that the Court did not rely on this in reaching its decision. The applicant's right to an old-age pension in that case stemmed from special legislation on military personnel (see *Panfile v. Romania* (dec.), no. 13902/11, § 3, 20 March 2012). In the present case, however, the underlying right, the applicant's entitlement to an old-age pension, was in no way affected by the difference

between public and private-sector employment. On the contrary, that right was identical for both groups.

5. The Court has established in its case-law that in order for an issue to arise under Article 14, an applicant must demonstrate that he or she was in a relevantly similar situation to others treated differently, having regard to the particular nature of his or her complaint (see *Clift v. the United Kingdom*, no. 7205/07, § 66, 13 July 2010). Whether we take this as the applicable standard under Article 14, or the reformulated standard set out in paragraph 121 of the present judgment, namely "elements that characterise their circumstances in the particular context", what should have been compared in the present case was the position of the applicant and the members of the comparator group prior to the impugned measure, namely suspension of the old-age pension on the basis of the distinction between public and private-sector employment.

6. Taking this approach, we cannot help but notice that the applicant's entitlement to an old-age pension in the instant case sprang from exactly the same State old-age pension scheme as that of the comparator group. Both categories had contributed to the scheme in exactly the same manner. As described in paragraph 21 of the judgment, the Hungarian social-security pension scheme is a compulsory, contributory system. Every employee, no matter whether in the public or the private sector, contributes in the same way to the system, which is funded by means of a certain percentage withdrawn from the employee's monthly income and an employer's contribution of 27% of the amount of the employee's salary.

7. The fact that the applicant took early retirement, before later becoming entitled to an old-age pension, was likewise of no significance for his entitlement to such a pension. He continued to work after his early retirement, and he continued to contribute to the old-age pension scheme in exactly the same manner as any other employee (see paragraph 27 of the judgment). Similarly, the fact that he had contributed to the scheme prior to his early retirement whilst in State employment was of no significance, as he would have found himself in exactly the same position had he previously been employed in the private sector.

8. Thus, the starting position of the applicant and of individuals in the comparator group was, prior to the suspension of the applicant's pension payments, exactly the same. This situation has a clear parallel with the facts in the case of *Andrejeva v. Latvia* ([GC], no. 55707/00, § 91, ECHR 2009), in which the Court found a violation of Article 14. In that case the Court held that the prohibition of discrimination enshrined in Article 14 of the Convention was meaningful only if, in each particular case, the applicant's personal situation in relation to the criteria listed in that provision was taken into account exactly as it stood. To hold that the applicant's employment in the public sector while he was in receipt of an old-age pension was decisive for defining whether he was in an analogous situation to the comparator

group also runs counter to other decisions of this Court. If this approach had been taken in *Gaygusuz v. Austria* (16 September 1996, *Reports of Judgments and Decisions* 1996-IV), the conclusion would have had to be that the applicant was not in a relevantly similar situation to other persons entitled to emergency assistance in Austria, because, unlike those other persons, he was not an Austrian national.

9. In the absence of any structural differences between private and public-sector employees in the national pension system, and taking into account the fact that it applied to both categories alike and that the entitlement of the applicant to an old-age pension was based on the same rules and contributions to the system, we conclude that he was in an analogous situation to individuals in the comparator group.

10. As the parties agreed that the different treatment of the applicant was based on "other status" within the meaning of Article 14, the next relevant question is whether this different treatment was objectively and reasonably justified. The burden of proof, as the Court has held on many occasions, is on the respondent Government, who have to demonstrate that the difference in treatment was justified (see *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 65, ECHR 2017; *Vallianatos and Others v. Greece* [GC], nos. 29381/09 and 32684/09, § 85, ECHR 2013 (extracts); and *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV). While in their oral pleadings the Government expanded on the justification for the different treatment, their written submissions focused on the need to make savings in a time of financial deficit. The Government's main argument was that section 83/C(1) of the 1997 Pensions Act had been introduced in order to eliminate the simultaneous receipt of pensions and salaries in the public sector, as part of the measures aimed at reducing public debt and securing the closure of the EU excessive deficit procedure. The Government presented statistics about the overall number of individuals affected by the impugned measure and its financial impact. In their oral pleadings, the Government also suggested that the measure was justified as part of efforts to regulate the labour market and create opportunities for young unemployed persons. However, with respect to this argument the Government did not provide any assessment of the expected effect or statistics on the actual impact of the measure.

11. It is well-established case-law of this Court that a difference in treatment is discriminatory if it has no objective and reasonable justification, in other words, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. It can be accepted in the present case that the impugned measure pursued a legitimate aim, for the same reasons for which it was accepted that it was in accordance with the general interest for the purposes of Article 1 of Protocol No. 1. Even if the EU excessive deficit procedure was already closed at the time of the

adoption of the measure, as the applicant argued, the measure was still aimed at protecting the public purse. This is a legitimate aim, irrespective of the actual financial situation of the country, and one that falls within the economic sphere, where States have a wide margin of appreciation.

12. Still, when considering the proportionality of the measure some account may be taken, despite the wide margin of appreciation, of the fact that Hungary was at the material time no longer facing a financial crisis. Moreover, the respondent Government presented no evidence that the national Pension Fund, in particular, had been experiencing any financial difficulties. Looking at the measure from this perspective, the number of persons affected and the extent of deprivation become even more important in the proportionality analysis.

13. Starting with the number of persons affected, the small number of those affected is in fact striking. At any given time between 2013 and 2016, the years for which official figures were provided by the respondent Government, the overall number of individuals affected was between 776 and 1,376. It was 1,376 at the beginning of the period, going down to 776 in the year 2016. Although the overall number of individuals affected by section 83/C(1) of the 1997 Pensions Act was higher – between 4,545 and 3,945 – 3,169 of them were medical workers who were fully compensated for the loss of their old-age retirement pension (see paragraph 28 of the judgment). Thus, the number of individuals who were affected by the contested measure was indeed very small in proportion to the overall number of individuals entitled to an old-age pension. The overall number of individuals entitled to an old-age pension at the time was slightly more than two million.

14. At the same time, this small number of individuals, between 776 and 1,376, was forced to bear a clearly disproportionate burden, namely the loss of their entire monthly pension. They lost their entire monthly pension, irrespective of the salary they were receiving. Although no exact numbers were provided by the parties, the Government did not dispute the applicant's claim that the suspension of his pension had entailed the loss of roughly half of his income. And while it is true that the applicant was not left without any means of subsistence and there seemed to be no risk of him falling below the subsistence threshold, there can be little doubt that the impugned measure seriously affected his and his family's way of life.

15. The respondent Government failed to address and justify the fact that this rather small number of persons had to bear such a heavy burden. Particularly as the clearly modest savings to the public purse achieved through that measure might easily have been achieved by a more equal redistribution of the financial burden. The Court is thus faced with a situation which is remarkably similar to the one in *Kjartan Ásmundsson v. Iceland* (no. 60669/00, ECHR 2004-IX). Accordingly, like in that case we have come to the conclusion that no reasonable relationship of

proportionality existed between the means employed and the aim sought to be realised, that the applicant was made to bear an excessive burden and that there has therefore been a violation of Article 14 in conjunction with Article 1 of Protocol No. 1.