



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

FOURTH SECTION

CASE OF IWASZKIEWICZ v. POLAND

(Application no. 30614/06)

JUDGMENT

STRASBOURG

26 July 2011

FINAL

26/10/2011

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Iwaszkiewicz v. Poland,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

Päivi Hirvelä,

Ledi Bianku,

Zdravka Kalaydjieva,

Nebojša Vučinić, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 5 July 2011,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 30614/06) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by two Polish nationals, Ms Klara Iwaszkiewicz and Ms Maria Iwaszkiewicz (“the applicants”), on 19 July 2006.

2. The applicants, who had been granted legal aid, were represented by Mr Z. Kozera, a lawyer practising in Zduńska Wola. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołásiewicz of the Ministry of Foreign Affairs.

3. The applicants alleged that the decisions given in their case breached their right to a fair hearing and their right to the peaceful enjoyment of their possessions.

4. On 4 December 2009 the President of the Fourth Section decided to give notice of the application to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicants were born in 1947 and 1987 respectively and live in Zapolice.

6. In 1990 the first applicant's husband and the second applicant's father, Mr Henryk Iwaszkiewicz, born in 1929, was granted a retirement pension under a regular retirement pension scheme and on the strength of premiums which he had been paying into the centralised social insurance fund. In 1997 he requested the Zduńska Wola Social Insurance Authority (*Zakład Ubezpieczeń Społecznych*) to grant him a disability pension, together with so-called "veteran status" ("*uprawnienia kombatanckie*" - see paragraphs 17 to 21 below) since from 1940 to 1946 he had been imprisoned, together with his parents, in a labour camp in Siberia in the Soviet Union. Subsequently, Mr Iwaszkiewicz underwent a medical examination.

7. On 17 December 1997 the Zduńska Wola Social Insurance Authority conferred veteran status on the applicant which entitled him to a veteran's disability pension. It found, on the basis of the results of his medical examination, that his ill-health had been caused by his deportation and imprisonment by the Soviet authorities in the 1940s.

8. Apparently in 2001 and 2002 doubts arose as to the accuracy of certain medical examinations, on the basis of which social insurance benefits had been granted by the Zduńska Wola Social Insurance Authority. By a letter of 24 October 2002 the Sieradz Regional Prosecutor requested that Authority to review, under section 114 of the Law of 17 December 1998 on retirement and disability pensions (*ustawa o emeryturach i rentach z systemu ubezpieczeń społecznych* - see paragraph 22 below), the final decisions issued in 115 disability pension cases. The request referred to a pending investigation in the case of a certain J.S. and other doctors who had been assessing claimants' health for the purposes of social insurance proceedings. The prosecutor submitted that it was highly likely that in those cases serious irregularities concerning the assessment of the claimants' eligibility for social insurance benefits had occurred. The list of cases attached to that request included Mr Iwaszkiewicz's case. No allegation was ever made that the 1997 decision had been obtained by Mr Iwaszkiewicz in a fraudulent manner.

9. In December 2002 Mr Iwaszkiewicz was invited to undergo a fresh medical examination. After that examination the Zduńska Wola Social Insurance Authority, by a decision of 5 March 2003, withdrew his veteran's disability pension, referring to the doctors' conclusions. They found that there had been no causal link between his deportation by the Soviet authorities and the health problems from which he suffered. From that date onwards his status was again covered by the regular social insurance scheme and he was entitled to an ordinary disability pension.

He appealed against that decision to the Łódź Regional Court.

10. During the ensuing judicial proceedings, Mr Iwaszkiewicz was examined on 10 June 2003 by a cardiologist and on 24 June 2003 by a psychiatrist. According to their opinions, he suffered from numerous serious

ailments and he was completely unable to work. However, they concurred that his ailments had been caused by his age and not by his earlier deportation and imprisonment.

11. On 27 November 2003 Mr Iwaszkiewicz died. The applicants joined the proceedings as his legal successors under the provisions of domestic law which expressly allowed them to seek payment of his pension covering the period from the date of the contested decision until the plaintiff's death, and which gave them *locus standi* in the proceedings (see paragraph 26 below). The applicants sought payment of Mr Iwaszkiewicz's veteran's disability pension from 5 March 2003 until his death on 27 November 2003 and challenged the decision divesting him of his veteran's status and of his veteran's disability pension.

12. On 6 August 2004 the Łódź Regional Court dismissed their appeal against the decision of 5 March 2003. The court had regard to the medical experts' opinions and findings. It held that in the absence of a causal link between Mr Iwaszkiewicz's deportation in the 1940s and his medical condition in 2002, he did not meet the requirements for veteran's status laid down in section 12 (3) of the Law of 24 January 1991 on Veterans and Victims of War and Post-War Persecutions (*Ustawa o kombatantach oraz niektórych osobach będących ofiarami represji wojennych i okresu powojennego* - the ("the 1991 Law," see paragraph 18 below).

13. The applicants appealed. They submitted that the first-instance judgment was in breach of the applicable laws, in that the court had wrongly and illogically accepted that a medical assessment finding a causal link between the claimant's health and his or her suffering in the past, on the strength of which veteran's status and a veteran's disability pension had been granted, could later be reversed. The existence of a causal link was not something that could reasonably change over time.

14. Furthermore, Mr Iwaszkiewicz had considerably aged between 1997 and 2002 and his health had seriously deteriorated throughout that time. The medical examination carried out in 2002 could not therefore assess the link between the deportation and his health at the time when he applied for veteran's status, the existence of such a link being decisive for entitlement to that status to arise. The applicants argued that there was no legal basis on which to challenge the medical assessment made during the examination of Mr Iwaszkiewicz's original request for a veteran's pension in 1997, as this pension had been granted by way of a final decision of the Social Insurance Authority. The contested decision of 5 March 2003 had also violated the principle that acquired rights should not be taken away.

15. On 10 May 2005 the Łódź Court of Appeal dismissed the applicants' appeal, sharing the conclusions of the lower court.

16. On 28 March 2006 the Supreme Court refused to entertain the applicants' cassation appeal. On 10 April 2006 the applicants requested the court to serve on them the written grounds for that refusal, to no avail.

II. RELEVANT DOMESTIC LAW

A. The Constitution

17. Article 2 of the Constitution of Poland, which entered into force on 17 October 1997, reads:

“The Republic of Poland shall be a democratic State ruled by law and implementing the principles of social justice.”

B. Veteran status of persons deported to the Soviet Union during the Second World War and afterwards

18. Under the provisions of the Law of 24 January 1991 on Veterans and Victims of War and Post-War Persecutions (*Ustawa o kombatanach oraz niektórych osobach będących ofiarami represji wojennych i okresu powojennego* - “the 1991 Law”), veterans are entitled to privileged status in comparison with other employees or retired persons. This status includes, for example, a lower age of retirement and various financial benefits paid in addition to the normal pension calculated in accordance with the rules of the general social insurance system. In particular, an especially favourable method for calculating periods of employment is used in respect of veterans.

19. At the time when the applicant was divested of his “veteran status”, a retired veteran was, *inter alia*, entitled to a “veteran’s benefit” equal to 10% of the average monthly salary in the public sector; a fare discount of 50% on travel by municipal transport, rail and public long-distance buses; a special allowance covering 50% of such household expenses as electricity, gas and heating; and a discount of 50% on motor-vehicle insurance.

20. Section 4 (3) (b) of the 1991 Law provides that its provisions also apply to persons who have been subjected to forced deportation to the Soviet Union during the Second World War and afterwards.

21. Under section 12 (1) of the 1991 Law, veterans who have acquired the status of war or military invalids (that is to say, who have been declared unfit for work and whose ailments have been caused by, *inter alia*, deportation in conditions provided for by section 4 (3) (b) of the 1991 Law) are entitled to receive benefits defined in the 1974 Law on War and Military Invalids (*ustawa o zaopatrzeniu inwalidów wojennych lub wojskowych* – “the 1974 Law”) including, in particular, veteran’s disability pension (*renta inwalidy wojennego*). Pursuant to section 12 (2) of the 1991 Law, certain family members, including widows and widowers aged over fifty, those who are invalids themselves and those who raise children under sixteen years of age, and also certain categories of children, are entitled to certain benefits provided for by the 1974 Law. In particular, the 1974 Law provides

that they are entitled to family benefit (*renta rodzinna*). At the material time, if there were two family members eligible for that benefit, it was to be paid to them in the amount of 80% of a basic amount of 1,175 Polish złotych (PLN).

22. Under section 26 of the 1991 Law, a person divested of veteran's status retains an entitlement to his or her pension calculated under the rules applicable to the general social insurance scheme.

C. Limitations on the reopening of proceedings concerning final decisions on social insurance benefits

23. Section 114 of the Law of 17 December 1998 on retirement and disability pensions paid from the Social Insurance Fund (*ustawa o emeryturach i rentach z systemu ubezpieczeń społecznych* – “the 1998 Law”), applicable from 1 January 1999 until 1 July 2004, read:

“The right to benefits or the amount of benefits will be reassessed upon application by the person concerned, or *ex officio*, if, after the validation of the decision concerning benefits, new evidence is submitted or circumstances which had existed before issuing the decision and which have an impact on the right to benefits or on their amount are discovered.”

24. The Katowice Court of Appeal, in a judgment of 30 May 2001 (II AUa 2508/00), held that the provisions of the social insurance legislation, in particular section 114 of the 1998 Law, allowed for the reopening of proceedings terminated by a final decision awarding a benefit only where new evidence or circumstances pre-existing prior to that decision came to light after that decision had become final.

25. The same court, in a judgment of 10 July 2003 (III AUa 1512/03), held that the legal impossibility of applying section 114 in situations where benefits had been awarded, despite the eligibility conditions not having been satisfied, would have been tantamount to endorsing decisions issued in manifest breach of substantive law.

26. The Supreme Court held on 8 July 2005 (I UK 11/05) that in the context of social insurance proceedings the principle of *res judicata* operated differently than in the context of judicial decisions in civil cases, in a manner which limited its practical significance. Judicial decisions given in such proceedings established legal relationships between the insured person and the insurance system on the basis of the situation existing when such decisions were given. New developments, relevant to the question of compliance with the eligibility requirements, could justify changes in these legal relationships.

D. Status of next-of-kin in proceedings concerning social insurance benefits after a claimant's death

27. The Law of 13 October 1998 on the social insurance system (*Ustawa o systemie ubezpieczeń społecznych*), in its section 136, provides that if a person entitled to receive social insurance benefits provided for by that law dies, the benefits due until the date of his or her death are to be paid to his or her spouse and children living in the same household.

28. It further provides that the affected spouse and children have a right to participate in the proceedings concerning eligibility for social insurance benefits if the claimant died whilst they are pending.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

29. The applicants complained that their respective husband and father had been divested of his veteran's disability pension. They relied on Article 1 of Protocol No. 1, 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. Admissibility

30. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' arguments

31. The applicants submitted that the impugned decisions had breached Mr Iwaszkiewicz and their own rights guaranteed by Article 1 of Protocol No. 1 in that his entitlement to his veteran's disability pension had been discontinued. This breached the principle that acquired rights should not be taken away.

32. The applicants argued that their legal predecessor had been deprived of the rights originating in a final decision of the Social Security Board which granted him the veteran's status. This reversal had been effected not because any circumstances had come to light, pre-existing that decision, given in 1997, which might have justified the taking away of his special rights. It had been done merely because the authorities found it expedient to re-examine the issue of the causal link between his health and his deportation to the Soviet labour camp. The applicants submitted that the 1997 decision had been final and should therefore have remained intact. Furthermore, the existence of the causal link was of an objective character. If it was found to exist in 1997, there were no reasonable grounds on which to consider that it had ceased to exist in 2002, when the applicant was examined by the doctors again and when his condition had considerably deteriorated since 1997.

33. The Government argued that in the Polish legal system the principle of a citizen's confidence in the State was based on the principle of legal certainty enshrined, according to the case-law of the Constitutional Court, in Article 2 of the Constitution. The principle of legal certainty presupposed that legal rules had to be clear and precise so as to make it possible for citizens to understand what their rights and obligations were and to foresee the legal consequences of their conduct. They had to have certainty that the legislature would not change the existing regulations in an arbitrary manner. However, legal security and certainty were not absolute values.

34. Under the case-law of the Polish courts, the principle of legal certainty did not apply with the same force to decisions given by the Social Insurance Authority as to final judicial decisions. The final character of the former had been described by some courts as "relative validity". Furthermore, section 114 of the Law on retirement and disability pensions (see paragraph 23 above) allowed for final decisions conferring social insurance entitlements to be verified, in proceedings instituted by the authorities of their own motion, in certain narrowly defined situations. Such re-examination could, in some instances, be to the benefit of persons who had been wrongly refused certain entitlements.

35. In the present case the medical condition of the applicants' respective husband and father had been reassessed at the request of the

prosecuting authorities, with reference being made to certain decisions that had been obtained in a fraudulent manner. Neither the recipient of the pension nor the applicants had challenged this request.

36. Under the Polish system, claimants seeking the payment of social insurance benefits had to meet the applicable conditions. The Court had accepted in its case-law that in certain circumstances social insurance benefits could be reduced. It was therefore permissible to take measures in order to reassess the medical condition of persons in receipt of disability pensions, provided that such reassessment was in conformity with the law and attended by sufficient procedural guarantees. In the applicants' case the decision of the Social Insurance Authority had been reviewed by the courts. There was no indication that any procedural irregularities had occurred during these proceedings.

37. The Government submitted that the judgments of the domestic courts given in the applicants' case were based on well-established and extensive case-law. The courts had conducted an extensive examination of the evidence in the case and had explained in detail their decisions to uphold the assessment of the Social Insurance Authority. It was not the task of the Court to take the place of the domestic courts, as it was in the first place for them to interpret domestic law (*Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII). Accordingly, the interference with the applicants' right to the peaceful enjoyment of their possessions complained of in the present case was prescribed by law.

38. They further submitted that it was natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and that the Court should respect the legislature's judgment as to what was "in the public interest" unless that judgment was manifestly without reasonable foundation (they referred to *mutatis mutandis, The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII).

39. In the present case the interference complained of had the aim of protecting the financial stability of the social insurance system and ensuring that it was not threatened by subsidising pensions that were not legitimate or that had been obtained as a result of errors, negligence or other irregular situations. If as a result of such errors, committed by the social insurance authorities, a person was allowed to continue receiving benefits to which he or she was not eligible as a matter of law, that person could not validly invoke the rule of citizens' confidence in the State referred to above (see paragraph 32 above). The protection of acquired rights did not include rights acquired in an unfair manner.

2. *The Court's assessment*

(a) General principles

40. The Court first reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described as follows (see *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98, and also *Belvedere Alberghiera S.r.l. v. Italy*, no. 31524/96, § 51, ECHR 2000-VI):

“The first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the 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 ... The three rules are not, however, ‘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.”

41. Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, any right to a pension of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX, and *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X). Where an individual has an assertable right under domestic law to a contributory social insurance pension, such a benefit should be regarded as a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, ECHR 2005-X). Where the amount of a benefit is reduced or discontinued, this may constitute an interference with possessions which requires justification (see *Kjartan Ásmundsson*, cited above, § 40, and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009).

42. An essential condition for an interference to be deemed compatible with Article 1 of Protocol No. 1 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 v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

43. A lawful 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 (see, among many other authorities, *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 52). 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*, cited above, § 87 and *Wieczorek v. Poland*, no. 18176/05, § 59, 8 December 2009).

44. Article 1 of Protocol No. 1 also 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). Consequently, an interference must achieve 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. 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).

(b) Application of the above principles in the present case

45. In the present case Mr Iwaszkiewicz was entitled, on the basis of the decision of the Social Insurance Authority given on 17 December 1997, to a veteran’s disability pension, with special privileges attached to it. Pursuant to the decision of the same Authority given on 5 March 2003, he was divested of that status and of the benefits linked thereto. After Mr Iwaszkiewicz’s death on 27 November 2003, the applicants were entitled as a matter of law to pursue the proceedings on their own behalf and to seek payment of the pension due for the period between the date of the contested decision and his death.

46. The Court further notes that the outcome of the proceedings referred to above had a bearing on the applicants’ own situation as it was decisive for the existence of their own claim to benefits due to families of persons who had acquired the status of war invalids within the meaning of the 1974 Law on War and Military Invalids and the 1991 Law on Veterans and Victims of War (see paragraph 22 above). It follows that in the circumstances of the case considered as a whole, the Court finds that the applicants may be regarded as having a substantive interest protected by Article 1 of Protocol No. 1 to the Convention.

As a result of the decisions complained of the applicants were divested of their social insurance entitlements. Hence, the decisions given in the judicial proceedings, taken together, amounted to an interference with the applicants’ right to the peaceful enjoyment of their possessions within the

meaning of Article 1 of Protocol No. 1 to the Convention (see *Wieczorek v. Poland*, cited above, § 61).

47. The Court must next determine whether the interference was lawful. The measure complained of was based on section 114 of the 1998 Law, which at the relevant time provided that the right to benefits awarded by final decisions could in certain circumstances be reassessed by the authorities of their own motion (see paragraph 23 above). The Court, in deference to the findings of the domestic courts, has already accepted that the reopening of proceedings on the basis of that provision, following the discovery of the welfare authority's own mistake in its original assessment of the eligibility for a benefit, was provided for by law (see *Moskal v. Poland*, no. 10373/05, §§ 55-56, 15 September 2009). It sees no grounds on which to reach a different conclusion in the present case.

48. The Court must next determine whether the interference pursued a legitimate aim, that is, whether it was "in the public interest". The Court considers that its aim was to protect the financial stability of the social insurance system and to ensure that it was not threatened by the subsidising of pensions of recipients who had acquired them on the basis of superficial, erroneous or fraudulently obtained medical assessments (see *Moskal v. Poland*, cited above, §§ 61-63 and *Wieczorek v. Poland*, cited above, § 63).

49. Lastly, the Court is called upon to ascertain whether the interference imposed an excessive individual burden on the applicants. In considering whether this is the case, the Court must have regard to the particular context in which the issue arises in the present case, namely that of a social security scheme. Such schemes are an expression of a society's solidarity with its vulnerable members (see *Goudswaard-Van der Lans v. the Netherlands* (dec.), no. 75255/01, ECHR 2005-XI). The Court's approach to Article 1 of Protocol No. 1 should reflect the reality of the way in which welfare provision is currently organised within the member States of the Council of Europe. It is clear that within those States, and within most individual States, there exists a wide range of social security benefits designed to confer entitlements which arise as of right. Benefits are funded in a large variety of ways: some are paid for by contributions to a specific fund; some depend on a claimant's contribution record; many are paid for out of general taxation on the basis of a statutorily defined status. In the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits. Many domestic legal systems recognise that such individuals require a degree of certainty and security, and provide for benefits to be paid - subject to the fulfilment of the conditions of eligibility - as of right (see *Stec and Others*, cited above). Article 1 of Protocol No. 1 places no restriction on the Contracting Parties' freedom to choose the type or amount of benefits to provide under social security schemes (see *Stec and Others*, cited above).

50. The Court observes that entitlement to a veteran's disability pension is based essentially on the claimant's inability to continue paid employment on the grounds of ill-health caused by his or her imprisonment or persecution in the past by the communist, Soviet or Nazi authorities in conditions defined in the 1991 Law (see paragraph 21 above). It is paid from a single social insurance fund financed by various compulsory contributions from employees and employers and managed by the Social Insurance Authority. It operates on a pay-as-you-go basis. Having regard to the fact that that fund is based on the principle of solidarity, the Court cannot accept that such a pension should at all times remain unaltered once it has been granted by way of a final decision given by the Social Insurance Authority.

51. There is no authority in the Court's case-law for so categorical a statement; in actual fact, the Court has accepted the possibility of reductions in social security entitlements in certain circumstances (see, as a recent authority, *Kjartan Ásmundsson*, cited above, § 45, with further case-law references; see also *Hoogendijk v. the Netherlands*, (dec.), no. 58641/00, 6 January 2005; *Wieczorek v. Poland*, cited above, § 67; and *Rasmussen v. Poland*, cited above, § 71). It is permissible for States to take measures to reassess the medical condition of persons receiving disability pensions with a view to verifying whether they continue to meet the relevant eligibility requirements, provided that such reassessment is in conformity with the law and attended by sufficient procedural guarantees. Indeed, had entitlements to disability pensions been maintained regardless of recipients' eligibility, it would have been unfair on persons contributing to the social insurance system, in particular those denied benefits as they did not meet the relevant requirements. In more general terms, it would also sanction an improper allocation of public funds, in disregard of the objectives that disability pensions were intended to meet and in breach of the principle of solidarity.

52. The Court notes that the applicants' respective husband and father was found in 1997 to meet the legal requirements for veteran status on the basis of his general medical condition, and was declared to satisfy the conditions required for disability status. It was also established at that time that his condition had been caused by his six-year period of imprisonment in a Soviet labour camp. Subsequently, in 2002, he was examined again because the Social Insurance Authority had been informed by the local prosecutors that investigations had given rise to suspicions that certain medical certificates issued in the region serving as the basis for the acquisition of disability pensions had been issued fraudulently. Mr Iwaszkiewicz's condition was consequently re-examined. It was found, contrary to the original medical assessment, that there had been no causal link between his imprisonment in the 1940s by the Soviet authorities and his medical condition.

53. The Court does not consider that such a decision aimed at the re-examination of persons who had been examined in the past for the purposes of granting social insurance benefits, by doctors in respect of whom there was a suspicion of a lack of diligence was arbitrary or otherwise unreasonable. It notes that the prosecuting authorities expressed suspicions of large-scale fraud in the context of the investigation into many cases decided by the Zduńska Wola Social Insurance Authority. Hence, the decision to re-assess certain benefits cannot be said to be without a reasonable foundation.

54. The Court further notes that the veteran's disability pension was not granted to the applicant by a final judicial decision, but by a decision given by the Social Insurance Authority. The Court has already held that the principle of legal certainty applies to a final legal situation, irrespective of whether it was brought about by a judicial act or an administrative act or, as in the instant case, a social insurance decision which, on the face of it, is final in its effects (see *Moskal v. Poland*, cited above, § 82). However, in its assessment of the case the Court cannot overlook the position of the Polish Supreme Court, which held that in the context of social insurance proceedings, the principle of *res judicata* operated differently from in the context of final judicial decisions in civil cases. The Court considers this position to be compatible with the character and purposes of social insurance proceedings and substantive law, which is intended to be sufficiently flexible to address genuine needs of insured persons, needs which can evolve and change over time.

55. The Court is furthermore of the view that it would upset any fair balance if, having discovered their mistake, the authorities were precluded from ever redressing its effects and were required to perpetuate the error by continuing to pay a pension which had been granted on the basis of erroneous grounds.

56. The Court further observes that the Social Insurance Authority invited Mr Iwaszkiewicz to undergo a fresh medical examination for the purpose of re-assessment of his situation (see paragraph 9 above). Subsequently, in the context of judicial proceedings he was examined by two doctors (see paragraph 10 above). Hence, in the present case the challenged decision to take away his veteran's status was not based merely on a new assessment of the evidence accompanying the original application for a pension, but on updated medical evidence taken specifically for the purposes of the re-examination of the applicant's entitlement to the veteran's status.

57. Furthermore, in the present case it has not been argued or shown that the applicants' means of subsistence were at stake. The circumstances of the case therefore fundamentally differ from those examined by the Court in another case against Poland where the applicant was, as a result of the discontinuance of her benefit, faced practically from one day to the next

with the total loss of her early retirement pension, which constituted her sole source of income (compare and contrast *Moskal*, cited above, § 74). In the present case it has not been argued, let alone shown, that the amounts and benefits concerned in the proceedings were the applicants' sole source of income. Moreover, the Court attaches importance to the fact that the social insurance benefits enjoyed by Mr Iwaszkiewicz originated from a privileged status which has been, and still is, perceived as a special honour (see *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V and *Skórkiewicz v. Poland* (dec.), no. 39860/98, 1 June 1999). Hence, it cannot be said that in the circumstances of this case the applicants were totally divested of their only means of subsistence (compare and contrast *Kjartan Ásmundsson*, cited above, § 44, and the case-law cited therein).

58. The Court considers that in its assessment of the proportionality of the interference complained of it cannot be overlooked that the applicants were not the original recipients of the veteran's pension.

59. The Court further notes that the social insurance authorities, when delivering their decision of 5 March 2003, divested Mr Iwaszkiewicz of his veteran status, but held that from that date on he was entitled to an ordinary disability pension. Thus, in so far as the applicants complained about his situation resulting from this decision, at no time was he left without provision from the social insurance system (compare and contrast *Moskal*, cited above, § 75, where the applicant's right to a new benefit was recognised only after three years). Nor was it argued that the applicants themselves were, as a result of the contested decisions, left without provision.

60. The Court observes that at no time was Mr Iwaszkiewicz obliged to pay back any amounts which he had received prior to the date when he was found to no longer meet the applicable legal requirements. Nor were the applicants required to pay back any amounts which their respective late husband and father had received (see *Chroust v. the Czech Republic* (dec.), no. 4295/03, 20 November 2006). Moreover, the domestic law did not create any assumption that persons who had been found, after a certain lapse of time, not to satisfy the requirements for veteran's disability pension had in fact acquired such by acting fraudulently or in a manner open to criticism, despite the fact that the prosecuting authorities had instituted an investigation in respect of charges of bribery concerning certain doctors working for the Social Insurance Authority. Nor was such a suggestion made in the proceedings in relation to the applicants themselves, or to their respective late husband and father.

61. The Court observes that the decisions of the Social Insurance Authority were subject to judicial review before the special social insurance courts at two levels, attended by full procedural guarantees. There is no indication that during the proceedings Mr Iwaszkiewicz or the applicants themselves were unable to present their arguments to the courts.

62. Having regard to the circumstances of the case seen as a whole, the Court concludes that a fair balance was struck between the demands of the general interest of the public and the requirements of the protection of the individuals' fundamental rights and that the burden on the applicants was neither disproportionate nor excessive.

63. There has therefore been no violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

64. The applicants also complained that the *ex-officio* re-opening of the social security proceedings, which had resulted in the quashing of the final decision granting their legal predecessor a right to a pension, was in breach of Article 6 § 1 of the Convention.

65. Article 6 § 1 of the Convention reads, as relevant, as follows:

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

66. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

67. The Government submitted that the legal character of decisions delivered by the Social Insurance Authority had been analysed in detail by the Polish courts. The Supreme Court had held that the principle of *res judicata* in the sphere of social insurance had a special quality (see paragraph 26 above).

68. Consequently, the Government argued, the social insurance authorities had to have the possibility of challenging final decisions, provided by section 114 of the 1998 Law (see paragraph 23 above). This provision carefully circumscribed the situations in which the re-examination of previously issued decisions would be possible. Hence, the margin of appreciation of the administrative authorities in regard to the reopening of proceedings aimed at the verification of certain decisions was limited in two ways: firstly, by the existence of provisions which offered very limited scope for the reopening of proceedings, and secondly, by the fact that an appeal to a court was available to the concerned parties.

69. The Court is of the opinion that this complaint is essentially a restatement of the complaint examined above under Article 1 of Protocol No. 1.

70. Having regard to its finding in relation to that provision, in particular that it was open to the authorities to reassess Mr Iwaszkiewicz's entitlement to a veteran's pension and that such reassessment was not precluded by the principle of legal certainty (see paragraphs 53-59 above), the Court

considers that the applicants' complaint under Article 6 § 1 does not require a separate examination on the merits.

III. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

71. Lastly, the applicants complained under Article 3 of the Convention that Mr Iwaszkiewicz, had been subjected to inhuman treatment since the domestic authorities had deprived him of his veteran's pension. They further complained that the domestic courts had delivered a decision concerning another person in a comparable situation, whose special rights under the veteran status provisions, by contrast, had ultimately been upheld. The applicants complained under Article 13 of the Convention that they had been deprived of an effective remedy in that the domestic courts had dismissed all their appeals. They further complained under Article 2 of Protocol No. 1 that the courts had infringed the second applicant's right to education by depriving her of an additional source of income.

72. In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

73. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Declares* the complaint concerning the decisions pertaining to Mr Iwaszkiewicz's veteran's disability status admissible and the remainder of the application inadmissible;
2. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine the complaint under Article 6 § 1 to the Convention.

Done in English, and notified in writing on 26 July 2011, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President