



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

FIRST SECTION

CASE OF ROMEVA v. NORTH MACEDONIA

(Application no. 32141/10)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Applicant retroactively divested of retirement pension constituting her sole source of income and required to reimburse amounts paid for seven years • Correction of authorities' mistake in original assessment of applicant's eligibility for pension • No applicant's fault • Excessive individual burden

STRASBOURG

12 December 2019

FINAL

12/03/2020

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

In the case of Romeva v. North Macedonia,

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

Ksenija Turković, *President*,

Krzysztof Wojtyczek,

Aleš Pejchal,

Armen Harutyunyan,

Pauliine Koskelo,

Tim Eicke,

Jovan Ilievski, *judges*,

and Abel Campos, *Section Registrar*,

Having deliberated in private on 10 October 2017 and 12 November 2019,

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

PROCEDURE

1. The case originated in an application (no. 32141/10) against the Republic of North Macedonia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by Ms Olgica Romeva, a Macedonian/citizen of the Republic of North Macedonia.

2. The Government of North Macedonia (“the Government”) were represented by their Agent, Mr K. Bogdanov.

3. The applicant alleged that she had been deprived of her pension, in breach of the principle of legal certainty. She relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

4. On 8 September 2014 the above complaints were communicated to the Government and the remainder of the application was declared inadmissible, pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1947 and lives in Skopje.

A. Background to the case

6. The pension system in the respondent State primarily relies on employers to submit the requisite data about individuals' employment, especially regarding the beginning and end-dates of periods of employment, as well as any subsequent changes (see paragraph 33 below).

7. Prior to the events relating to her application for a pension the applicant was unemployed and was receiving financial aid via the unemployment benefits social scheme. During this period her health insurance was also covered through the unemployment benefits social scheme. Her entitlement to continue to receive such benefits would end at the moment that she found employment or met the criteria required to obtain a pension. In May 2000 the applicant was instructed by the Employment Bureau (*Агенција за вработување*) to lodge an application for a pension.

B. Retirement pension proceedings

8. On 22 May 2000 the applicant lodged an application for a retirement pension with the Pension and Disability Fund (*Фонд за пензиско и инвалидско осигурување* – “the Fund”). The application contained only basic information about the applicant, such as her home address and personal identification number. It did not contain any information regarding her past employment, and nor were any annexes attached.

9. On 23 May 2000 the Fund granted the applicant a retirement pension in the amount of 6,462 denars (MKD) per month. The Fund established that by having completed a service period of thirty-five years, ten months and twenty-four days, the applicant had satisfied the service period criterion to qualify for a pension, which was the sole precondition at the material time. The decision became final and the applicant started receiving monthly payments.

10. Between February and July 2007 the Fund conducted an internal audit of its records. A final report was drafted which found that the records of several pension recipients had been incomplete and that in some cases there were missing or insufficient data regarding past employment.

11. With regard to the applicant, the report established that, although the records showed that she had been employed for the requisite period, her “employment booklet” (*работна книшка*) was missing. It was therefore decided to consult the employer for whom the applicant had worked between 1963 and 1967 to verify this period of her employment. It appears that no further evidence was obtained with regard to the applicant's employment for the period mentioned.

12. Following the findings of the internal audit, a *proprio motu* review of the applicant's case was conducted. On 18 October 2007 the Fund annulled the decision of 23 May 2000 and refused the applicant's request

for a pension. In its decision the Fund ruled that the information in the Fund's possession regarding the applicant's employment had been incorrect for the period between 1963 and 1967 in that she had not in fact been employed during that period. As a consequence, she did not satisfy the statutory criterion to qualify for a pension – namely a minimum period of thirty-five years in employment. The Fund relied on section 258 of the Administrative Proceedings Act and section 145-A of the Act on Pensions and Disability Insurance (see paragraphs 32 and 30 below). Following this decision, payment of the applicant's pension was discontinued.

13. On 26 November 2007 the applicant appealed. She claimed that section 145-A of the Act on Pensions and Disability Insurance had been introduced after the date on which she had been granted a pension, so it should not have been applied retroactively in her case.

14. Not having received a decision on the appeal, on 28 February 2008, the applicant brought an administrative action in the Administrative Court (*Управен суд*). She argued that domestic law prescribed that information pertaining to employment be collected, kept and processed by the Fund and that she had never submitted any documents to it, apart from an application for a retirement pension, which had contained only her personal information. Furthermore, she argued that she was unable to contest the veracity of the data, because it had been collected, maintained and processed exclusively by the Fund.

15. On 17 April 2008 the appeal was dismissed by the Second-Instance Commission for Pension and Retirement-Related Issues (*Комисија на Влада на Република Македонија за решавање во втор степен по предметите од пензиско и инвалидско осигурување* – “the Second-Instance Commission”).

16. On 6 November 2008 the Administrative Court upheld the action and quashed the Second-Instance Commission's decision. The Administrative Court found that section 145-A of the Act on Pensions and Disability Insurance had indeed been applied retroactively in the applicant's case. The section in question had come into force on 14 June 2006, so it could not be applied to the decision concerning the applicant, which dated from 2000.

17. On 16 March 2009 the Second-Instance Commission issued a fresh decision dismissing the applicant's appeal. Referring to section 249 paragraph 2 of the Administrative Proceedings Act (see paragraph 31 below) it established that grounds for reopening final proceedings existed in the applicant's case, namely the finding that “erroneous documents had been used in the proceedings before the Fund, which the claimant endorsed by submitting her request for a pension” with regard to her employment for the period between 1963 and 1967. This finding was extrapolated from the Fund's records and held to be sufficient to justify re-examining her application for a pension and refusing it.

18. On 9 April 2009 the applicant brought an action in the Administrative Court. She reiterated that under domestic law the Fund was responsible for the accuracy of its records regarding employment and it was the employer's duty to submit the relevant documents. Moreover, she submitted that the decision of 22 May 2000 did not make reference to any specific periods of employment, so she could not have been aware of any inaccuracies. Therefore, any suggestion that she had endorsed erroneous data by lodging an application for a retirement pension with the Fund, or that she should be held responsible in any way, was unfounded.

19. On 15 October 2009 the Administrative Court dismissed her action, upholding the findings of the Second-Instance Commission in both fact and law. It held that the relevant form held by the Fund regarding the applicant's employment between 1963 and 1967 was illegible and contained insufficient data and therefore could not serve as relevant to calculate the applicant's employment.

20. On 30 November 2009 the applicant lodged an appeal with the Supreme Court (*Врховен суд*). She reiterated her earlier complaints about having had no influence on the data maintained by the Fund.

21. On 26 April 2010 the Supreme Court dismissed the applicant's appeal and held that the decision of the Fund to refuse the applicant's request for a pension had been lawful.

C. Other relevant facts

22. On 15 May 2012 the Fund lodged a criminal complaint against the applicant, stating that she had submitted falsified information to the Fund regarding her employment. The complaint was rejected by the Public Prosecution (*Основно јавно обвинителство*) on 25 May 2012 on the grounds that the statutory limitation period for the prosecution had expired.

23. In the meantime, specifically on 11 June 2008, the Fund brought a civil action in the Skopje Court of First Instance against the applicant seeking reimbursement of the full amount of the pension paid to her for the period between 5 May 2000 and 30 September 2007. The Fund submitted that the applicant owed it the amount of MKD 645,138 on the grounds of unjust enrichment (*стекнување без основ*). In support of its action the Fund referred to its own findings, in particular the decision of 18 October 2007 to discontinue the applicant's pension (see paragraph 12 above).

24. The Skopje Court of First Instance upheld the action; after an appeal by the applicant was dismissed by the Skopje Court of Appeal, on 8 January 2014 the judgment became final. The judgment was submitted to a bailiff, who started enforcement proceedings against the applicant on behalf of the Fund.

25. The applicant lodged an appeal on points of law with the Supreme Court, which was dismissed on 28 January 2015.

26. According to a document from the Public Revenues Office (*Управа за јавни приходи*) issued on 29 October 2008, the applicant's sole source of income since 2006 had been her pension.

27. While the applicant's pension proceedings were still pending, changes were introduced in the domestic legislation regarding the necessary criteria to qualify for a retirement pension. Following those changes, the applicant lodged a fresh request with the Fund, and on 3 November 2009 she was granted a retirement pension under the new criteria in the amount of MKD 10,384.50 per month. The Fund found that she met the newly introduced "age criterion" for a pension (at the time she was sixty-two years old, as required). It appears that since that date she has been regularly receiving her pension.

II. RELEVANT DOMESTIC LAW

A. Act on Pensions and Disability Insurance (*Закон за пензиското и инвалидското осигурување*, Official Gazette Nos. 80/1993, 14/1995, 71/96, 32/97, 24/2000, 96/2000, 5/2001, 50/2001, 85/2003, 50/04, 4/05, 84/05, 101/05, 70/06)

28. Under section 6 paragraph 3, the rights acquired under this Act can be divested or limited only in accordance with and subject to the conditions stipulated in this Act.

29. Section 143 provides for review of a decision which became final under conditions provided in the Administrative Proceedings Act. The review can be initiated *proprio motu* or following a request.

30. Section 145-A was introduced by a change made to the Act during June 2006 that came into force on 14 June 2006. It allows for a final decision granting a right (including a pension) to a person to be annulled by means of a fresh *proprio motu* decision of the Fund. The only condition stipulated is that the person in question "should not have been entitled to such a right". Such an annulment can be partial or in full.

B. Administrative Proceedings Act (*Закон за општа управна постапка*, Official Gazette No. 38/2005)

31. Section 249 stipulates the conditions subject to which a review can be allowed of a decision that has become final in administrative proceedings. Paragraph 2 provides for a review of a final decision if it is established that the final decision was based on erroneous documentation,

an erroneous statement by a witness or expert, or as a result of a criminal act.

32. Under section 258, when deciding whether to reopen a final case (decision), the administrative organ issues a decision whereby it can overturn or confirm the earlier decision. If it overturns the decision, it is up to the organ to decide whether this new decision will come into force *ex tunc* or *ex nunc*.

C. Act Regulating Records of Pensions and Disability Insurance Beneficiaries (Закон за матичната евиденција на осигурениците и корисниците на правата од пензиско и инвалидско осигурување, Official Gazette No. 16/2004 – as applicable at the time)

33. Under section 7 of the Act, the responsibility for providing relevant data concerning employees falls to the employer. Under section 8 that data includes, in particular, information regarding the beginning and the end of each period of employment.

34. Section 19 stipulates that the records regarding employment be kept by the Fund and its branch offices.

35. Section 24 stipulates that in the event that the information submitted to the Fund is found to be erroneous, the Fund will request the person who submitted it to correct it within a period of no more than thirty days from the date on which that person received that request.

THE LAW

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

36. The applicant complained that she had been deprived of her pension, in breach of the principle of legal certainty. She relied on 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. Admissibility

37. The Court notes that the Government did not raise any objections as to the admissibility of the case. However, noting that the issue of compatibility *ratione materiae* is a question that falls under the Court's jurisdiction, the Court finds it necessary to examine the matter of its own motion (see *Tănase v. Moldova* [GC], no. 7/08, § 131, ECHR 2010, and *Blečić v. Croatia* [GC], no. 59532/00, § 67, ECHR 2006-III).

38. Article 1 of Protocol No. 1 places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social security or pension scheme, or to choose the type or amount of benefits to provide under any such scheme. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit or pension – whether or not such benefit is conditional on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1, but it does so only for persons satisfying the requirements thereof (see, for example, *Bélané Nagy v. Hungary* [GC], no. 53080/13, § 82, 13 December 2016, ECHR 2016, and cases cited therein).

39. In a number of cases the Court has accepted that the grant of a pension benefit of which the applicant was subsequently divested on the grounds that the legal conditions for such a grant had not been fulfilled initially, could give rise to a “possession” for the purposes of Article 1 of Protocol No. 1 (see *Bélané Nagy* cited above, § 87). In such cases the Court has considered that a property right was generated by a favourable evaluation of pension request that was lodged by an applicant in good faith (see for example, *Moskal v. Poland*, no. 10373/05, § 45, 15 September 2009, and *Antoni Lewandowski v. Poland*, no. 38459/03, §§ 78 and 82, 2 October 2012).

40. The Court notes, in the instant case, that the applicant's right to receive a pension was generated by the favourable evaluation of her pension application by the Fund. In particular, on the basis of the applicant's request and the information available to the Fund, on 23 May 2000 the Fund recognised the applicant's right to a pension. She was therefore provided with an enforceable right to receive the pension in a particular amount. On the basis of that decision, the applicant was in receipt of a pension until 18 October 2007.

41. The Court furthermore notes that the applicant lodged her initial request for a pension following an instruction to do so issued by the Employment Bureau. At that point she did not specify anything regarding her periods of employment, and did not provide any annexes or evidence to that end (see paragraphs 8 and 14 above), and nor was it established that at any point in the past the applicant had personally supplied the Fund with any information regarding her past employment. Indeed, under sections 7

and 8 of the Act Regulating Records of Pensions and Disability Insurance Beneficiaries (see paragraph 33 above), it was incumbent on the employer, and not the employee, to supply the Fund with all the relevant information regarding the period of employment in question. Furthermore, under section 19 of the same Act, it is the responsibility of the Fund and its branch offices to create and maintain individual records of employment (see paragraph 34 above).

42. Accordingly, no reason not to rely on the instruction of the Employment Bureau to submit a pension request was apparent to the applicant (see paragraphs 7 and 8 above). From that point on it fell to the relevant authorities to check whether she met the necessary requirements to be granted a pension. In fact, such an assessment was indeed made and the applicant was granted a pension.

43. Moreover, it cannot be inferred from the facts of the case that the applicant took any action with the intention of misleading the Fund or that she otherwise acted in bad faith when submitting her request for a pension or at any point in her communication with the Fund. Such a conclusion also follows from the findings of the Second-Instance Commission, which - although it established the existence of erroneous data with regard to the period of the applicant's employment - failed to establish any liability on the part of the applicant for providing such data. It rather held that the applicant had endorsed the use of the incorrect data on which the Fund had relied when granting her request. However, the Court notes that it failed to explain the manner in which the applicant had allegedly endorsed the incorrect provision of data (see paragraph 17 above). In this connection, it should be noted that the Fund itself established the relevant facts when granting the applicant's request for a pension, without any involvement on the part of the applicant through which she could have consented to the provision of incorrect information.

44. Taking account of those circumstances, there is nothing that persuades the Court to conclude that the applicant's pension request was not submitted in good faith (contrast *Kusina v. Poland* (dec.), no. 28589/05, § 35, 9 April 2013). The outcome of the criminal proceedings lodged against the applicant in this regard also cannot lead to a different conclusion (see paragraph 22 above). Accordingly, the Court finds that the favourable evaluation of the applicant's pension request generated for the applicant a property right protected by Article 1 of Protocol No. 1 (see, among other authorities, *Fábián v. Hungary* [GC], no. 78117/13, §§ 61-62, 5 September 2017; *Moskal*, cited above, § 45; and *Plączkowska v. Poland*, no. 15435/04, § 63, 2 October 2012).

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

B. Merits

1. The parties' submissions

(a) The applicant

46. The applicant submitted that between 1963 and 1967 she had worked for several different employers. The nature of those assignments had been determined by and organised through “youth groups” (*младински организации*). She submitted that, to her knowledge, at the time such assignments had been considered to constitute employment, which is why the records of the Fund had initially shown that she had been employed.

47. She furthermore submitted that, given the circumstances of her particular case, divesting her of her acquired right to a retirement pension had amounted to an unjustified deprivation of property. She had acted in good faith, but had now had to bear the consequences of mistakes committed by the State administration (the Fund employees). The upshot had been that she had been deprived of her sole source of income.

48. She maintained that she had been the victim of a “revisionist campaign” led by the Government that had had to succeed at any cost. The blame for any mistakes in the records of the Fund had therefore had to be shifted from the actual wrongdoers (the Fund employees) to ordinary citizens like her.

49. She considered that there had been a conflict between section 6 of the Pensions and Disability Insurance Act and the Administrative Proceedings Act in that the former – which should have been applied as a *lex specialis* – had not provided for any review of a final decision, whereas the latter did.

50. Lastly, no reasonable relationship of proportionality could be said to have existed between the interference with her property rights and the public interest, especially considering that she had been part of a small group of people who had been deprived of their pensions, there had been no significant impact on the overall welfare system. Furthermore, considering that prior to 23 May 2000 she had been dependent on the financial and healthcare benefits forming part of the unemployment benefits social scheme, the loss of her pension had amounted to a deprivation of both her sole source of income and her health insurance.

(b) The Government

51. The Government stated that the revision of the decision to grant the applicant a pension had been part of a large-scale campaign to filter out pensions that had been erroneously granted in the past and that the applicant was part of a group of eighty-five people who had been deprived of pensions as a consequence of that campaign. They maintained that in the case of the applicant the measure had been taken in good faith, especially

given that at the time when she lodged the request for a pension she had knowingly concealed the fact that she fell short of the relevant criteria. This meant that she had acted in bad faith. Therefore, divesting the applicant of her right to a retirement pension had been an action that had been provided for by law and had been in the general and public interest, with the aim of preventing abuse of public funds.

52. The Government furthermore argued that the applicant had been deprived of her pension because she had supplied the Fund with erroneous information regarding her past employment. The applicant had acted in bad faith because she had known that the information was erroneous. That being so, divesting the applicant of her pension had been a proportionate measure. To this end, the Fund had even initiated criminal proceedings against the applicant, which were had been terminated only owing to the fact that the statutory period for prosecution had expired (see paragraph 22 above).

53. Lastly, as of 3 November 2009 – at which point she had satisfied the relevant criteria following the above mentioned legislative change (see paragraph 27 above) – the applicant had been granted a retirement pension. The Government also referred to the findings of the civil courts in the proceedings that the Fund had initiated against the applicant for the return of the pension sums already paid to her (see paragraphs 23-25 above).

2. The Court's assessment

(a) General principles

54. As it has stated on several occasions, the Court reiterates that Article 1 of Protocol No. 1 comprises three distinct rules: “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, among 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” (see, among many authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99 and 2 others, § 78, ECHR 2005-VI and cases cited therein).

55. The general principles relating to the scope of the application of Article 1 of Protocol No. 1 are equally relevant when it comes to cases concerning social security and welfare benefits (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX).

56. The Court reiterates that as a general rule, the first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises deprivation of possessions only “subject to the conditions provided for by law” and the second paragraph recognises that States have the right to control the use of property by enforcing “laws” (see, among many other authorities, *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V).

57. Article 1 of Protocol No. 1 also requires that any interference be reasonably proportionate to the aim pursued. Consequently, any 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, among others authorities, *Béláné Nagy*, cited above, § 115, and *Iwaszkiewicz v. Poland*, no. 30614/06, § 44, 26 July 2011).

58. Moreover, the principle of “good governance” requires that where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with utmost consistency (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I).

59. The requisite “fair balance” will not be struck where the person concerned bears an individual and excessive burden (see, for example, *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52, and *Brumărescu v. Romania* [GC], no. 28342/95, § 78, ECHR 1999-VII).

(b) Application of the Convention principles to the instant case

(i) Whether there has been an interference with the applicant’s possessions

60. It is not disputed between the parties that the Fund’s decision of 18 October 2007, which retroactively divested the applicant of the retirement pension that she had been receiving since May 2000, amounted to an interference with her possessions within the meaning of Article 1 of Protocol No. 1. The Court sees no reason to hold otherwise (see, among other authorities, *Fábián*, cited above, § 62, and *B. v. the United Kingdom*, no. 36571/06, §§ 36 and 41, 14 February 2012). The Fund’s civil claim against the applicant (see paragraphs 23-25 above) for reimbursement of amounts paid to her between 2000 and 2007 is a consequence of the original interference with the applicant’s possessions, and as such, it will be examined by the Court in its assessment of the proportionality of the interference.

61. In the circumstances of the present case, the Court considers that the applicant’s complaint should be examined under the general rule enunciated in the first sentence of the first paragraph of Article 1 of Protocol No. 1,

especially as the situations envisaged in the second sentence of the first paragraph and in the second paragraph are only particular instances of interference with the right to peaceful enjoyment of property as guaranteed by the general rule set forth in the first sentence (see *Beyeler*, cited above, § 106, and *Perdigão v. Portugal* [GC], no. 24768/06, § 62, 16 November 2010). The Court will now assess whether that interference was prescribed by law, whether it pursued a legitimate aim, and whether there was a reasonable relationship of proportionality between the means employed and the aim pursued (see, among many others, *Broniowski*, cited above, §§ 147-51).

(ii) *Lawfulness of the interference*

62. The Court finds that a *proprio motu* review of a final decision granting a pension is provided for in section 143 of the Pensions and Disability Insurance Act (see paragraph 29 above). Furthermore, the decision that deprived the applicant of her pension was based on section 258 of the Administrative Proceedings Act, which permitted a *proprio motu* review of a final decision in administrative proceedings, including proceedings relating to pensions (see paragraph 32 above).

63. Noting that its power to review compliance with domestic law is limited (see, among other authorities, *Kudrevičius and Others v. Lithuania* [GC], no. 37553/05, § 110, ECHR 2015), the Court accepts that the proceedings in the applicant's case were reopened as a consequence of the discovery of a mistake made by the Fund in its original assessment of the applicant's eligibility for a pension. The procedure for a *proprio motu* review that caused the applicant to be divested of the right to a pension was thus used to correct that error.

64. The foregoing considerations are sufficient to enable the Court to conclude that the interference with the applicant's property rights was provided for by law, as required by Article 1 of Protocol No. 1 to the Convention.

(iii) *Legitimate aim*

65. The Court considers that depriving the applicant of her retirement pension pursued a legitimate aim – namely to ensure that the public purse was not called upon to subsidise for an indefinite period of time undeserving beneficiaries (see, for example, *N.K.M. v. Hungary*, no. 66529/11, § 59, 14 May 2013).

(iv) *Proportionality*

66. The Court must next examine whether the interference with the peaceful enjoyment of possessions struck a fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, or whether it imposed a

disproportionate and excessive burden on the applicant (see, among other authorities, *Bélané Nagy*, cited above, § 115).

67. The Court notes that prior to the internal audit, the Fund's records showed that the applicant had been employed during the period 1963-1967. It was only after the internal audit in the case of the applicant that irregularities appeared, in so far as the applicant's employment booklet was found to be missing from the records, necessitating a request to the applicant's former employer for data to confirm the accuracy of the Fund's records, which were incomplete. In the absence of any information from that employer that the applicant had indeed been employed between 1963 and 1967, the Fund concluded that the data regarding her employment for the above-mentioned period had been erroneously entered in its records.

68. In this connection, the Court notes that it has already found that there is nothing to suggest that the applicant was responsible for the incorrect assessment by the Fund of her pension request (see paragraphs 41-44 above; also contrast *Kusina*, cited above; and *Zahi v. Croatia* (dec.), no. 24546/09, §§ 63-67, 18 March 2014). On the contrary, it was the Fund's lack of diligence in properly gathering and maintaining the relevant data in respect of the applicant and in processing her initial claim for a pension that led to the erroneous decision, which the Fund later sought to correct at the applicant's expense (contrast *B. v. the United Kingdom*, cited above, § 39). The Government's argument that the applicant had supplied the Fund with erroneous information regarding her past employment should therefore be dismissed (see paragraphs 51 and 52 above).

69. Further to this point, the Court observes that the applicant's claim that she had worked for various employers through "youth groups" between 1963 and 1967 was not contested by the Government.

70. Being mindful of the importance of social justice, the Court would reiterate in this regard that, as a general principle, public authorities should not be prevented from correcting their mistakes – even those resulting from their own negligence. Holding otherwise would be contrary to the doctrine of unjust enrichment. It would also be unfair to other individuals contributing to social security funds – in particular those denied a benefit because they failed to meet the statutory requirements. Lastly, it would amount to sanctioning an inappropriate allocation of scarce public resources, which in itself would be contrary to the public interest (see, for example, *Čakarević v. Croatia*, no. 48921/13, § 79, 26 April 2018).

71. Notwithstanding those important considerations, the Court nonetheless notes that the aforementioned general principle cannot prevail in a situation where the individual concerned is required to bear an excessive burden as a result of a measure divesting him or her of a benefit (see *B. v. the United Kingdom*, cited above, § 60). If a mistake has been caused by the authorities themselves, without any fault on the part of a third

party, a different proportionality approach must be taken in determining whether the burden borne by an applicant was excessive.

72. In assessing compliance with Article 1 of Protocol No. 1, the Court must carry out an overall examination of the various interests in issue (see *Perdigão*, cited above, § 68), bearing in mind that the Convention is intended to safeguard rights that are “practical and effective” (see, for example, *Chassagnou and Others v. France* [GC], nos. 25088/94 and 2 others, § 100, ECHR 1999-III). It must look behind appearances and investigate the realities of the situation complained of (see *Broniowski*, cited above, § 151; *Hutten-Czapska v. Poland* [GC], no. 35014/97, § 168, ECHR 2006-VIII; and *Zammit and Attard Cassar v. Malta*, no. 1046/12, § 57, 30 July 2015). That assessment may involve the conduct of the parties, including the means employed by the State and their implementation. In that context, it should be stressed that uncertainty – be it legislative, administrative or arising from practices applied by the authorities – is a factor to be taken into account in assessing the State’s conduct. Indeed, where an issue in the general interest is at stake, it is incumbent on the public authorities to act in good time, in an appropriate and consistent manner (see *Tunnel Report Limited v. France*, no. 27940/07, § 39, 18 November 2010, and *Zolotas v. Greece (no. 2)*, no. 66610/09, § 42, ECHR 2013 (extracts)).

73. In this regard the Court attaches particular importance to the fact that the revocation of the decision to grant a pension to the applicant was not based upon any new evidence but only upon a reassessment of the same evidence which was at the basis of the administrative decision, which became final as it had not been contested before the courts. In the Court’s view such a reassessment of evidence *ex proprio motu* – outside the system of extraordinary remedies for quashing final administrative decisions – brings into question legal certainty in the area of social security.

74. In addition, the Court notes that the case at hand does not concern a suspension of the applicant’s pension, but the complete loss of her pension entitlements (see *Apostolakis v. Greece*, no. 39574/07, § 39, 22 October 2009; also contrast *Fábián*, cited above, § 74, and cases cited therein). The fact that she obtained a new pension entitlement as of 3 November 2009 on the basis of a subsequent legislative change is of no relevance in respect of the deprivation itself (see paragraph 27 above).

75. The Court observes that prior to obtaining a pension the applicant had been dependent on the State’s social benefits scheme and had been in receipt of unemployment benefit (see paragraph 7 above). Owing to the applicant’s specific circumstances, the retirement pension had constituted her sole source of income for a period of over nine years. For more than two years of that period, being deprived of her pension, she had had no income whatsoever (see paragraph 26 above).

76. Moreover, the Court surmises that the civil claim against the applicant and the enforcement proceedings aimed at claiming the reimbursement of the pension benefits paid to her (see paragraphs 23-25 above) are capable of further aggravating her already difficult financial situation (see *Čakarević*, cited above, § 89).

77. Given the circumstances described above, it must be observed that - as a result of the impugned measure - the applicant was faced, practically from one day to the next, with the total loss of her retirement pension, which constituted her sole source of income (see, among others, *Moskal*, cited above, § 74).

78. In view of the above considerations, the Court finds that a fair balance has not been struck between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights and that the burden placed on the applicant was excessive.

79. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

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

80. The applicant complained that the *proprio motu* reopening of the social security proceedings, which resulted in the quashing of the final decision granting her a right to a pension, had been in breach of Article 6 § 1 of the Convention. Article 6 § 1 of the Convention in its relevant part reads as follows:

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

81. The Government contested that argument.

82. The Court considers that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention or inadmissible on any other grounds. It must therefore be declared admissible.

83. However, having regard to the reasons that led the Court to find a violation of Article 1 of Protocol No. 1 to the Convention, the Court finds that the applicant's complaint under Article 6 regarding the principle of legal certainty of the Convention does not require a separate examination (see *East West Alliance Limited v. Ukraine*, no. 19336/04, § 222, 23 January 2014; *Krstić v. Serbia*, no. 45394/06, § 88, 10 December 2013; and *Moskal*, cited above, § 83).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

85. The applicant claimed 3,086 euros (EUR), which represented the amount she would have received between October 2007 and November 2009 had she continuously received a pension. She also claimed EUR 16,903 in respect of pecuniary damage suffered, as a consequence of a payment order issued by a bailiff as part of the enforcement proceedings initiated against the applicant (see paragraph 24 above) stating that amount. The total amount claimed by the applicant under the head of pecuniary damage, including interest, was set at EUR 24,142.

86. The applicant also claimed EUR 25,850 in respect of non-pecuniary damage.

87. The Government contested both amounts, stating that there was no causal link between the damages claimed and any violation that may be found by the Court. Furthermore, the claim regarding non-pecuniary damage was unsubstantiated.

88. The Court finds that the applicant was deprived of her income in connection with the violation found and must take into account the fact that she undoubtedly suffered some pecuniary and non-pecuniary damage (see *Moskal*, cited above, § 105). Making an assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards the applicant EUR 6,000 for both non-pecuniary damage and prospective pecuniary damage. Given the nature of the violation found, the Court further requests the Government to ensure that any payment order issued against the applicant following the proceedings initiated against her (see paragraph 24 above) is not enforced.

B. Costs and expenses

89. The applicant did not make a claim for any costs and expenses incurred. The Court therefore sees no reason to award her any sum in this respect.

C. Default interest

90. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;
2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;
3. *Holds* that there is no need to examine separately the complaint under Article 6 of the Convention concerning the principle of legal certainty;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final, in accordance with Article 44 § 2 of the Convention, EUR 6,000 (six thousand euros), in respect of non-pecuniary damage and prospective pecuniary damage, to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period, plus three percentage points;
5. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 12 December 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos
Registrar

Ksenija Turković
President