



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

1959 · 50 · 2009

FOURTH SECTION

CASE OF WIECZOREK v. POLAND

(Application no. 18176/05)

JUDGMENT

STRASBOURG

8 December 2009

FINAL

08/03/2010

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Wieczorek v. Poland,

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

Nicolas Bratza, *President*,

Lech Garlicki,

Ljiljana Mijović,

David Thór Björgvinsson,

Ján Šikuta,

Päivi Hirvelä,

Mihai Poalelungi, *judges*,

and Lawrence Early, *Section Registrar*,

Having deliberated in private on 17 November 2009,

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

PROCEDURE

1. The case originated in an application (no. 18176/05) 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 a Polish national, Ms Krzysztofa Wieczorek (“the applicant”), on 16 April 2005.

2. The applicant was represented by Mr Z. Cichoń, a lawyer practising in Cracow. The Polish Government (“the Government”) were represented by their Agent, Mr J. Wołosiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that she had been deprived of the right to a fair hearing because her request for legal aid for lodging a cassation appeal had been refused by the appellate court. She further complained that her right to the peaceful enjoyment of her possessions had been breached as she had been divested of her disability pension which she had been receiving for fifteen years.

4. On 14 November 2006 the Court (Fourth Section) decided to give notice of the application to the Government. It also decided to examine the merits of the application at the same time as its admissibility (Article 29 § 3).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Cracow.

6. In a letter of 18 September 2000 to the Social Insurance Authority (*Zakład Ubezpieczeń Społecznych*) in Cracow, the applicant's husband submitted that in his view the applicant, who had been receiving a disability pension since 1985, was in fact healthy and should no longer be receiving a pension. He suggested that she be re-examined by competent doctors. Apparently divorce proceedings involving the parties were pending at that time.

7. On 10 October 2000 the Social Insurance Authority, referring to the applicant's medical records, instituted proceedings in order to reassess the applicant's condition with a view to establishing whether she complied with the conditions governing entitlement to a disability pension.

8. In reply to a query from the applicant about the legal basis on which these proceedings were instituted, on 28 November 2000 the Social Insurance Authority informed her that the proceedings had been instituted under the provisions governing the internal supervision of physicians working for the Authority.

9. Eventually, on 4 December 2000 the Social Insurance Authority gave a decision by which the applicant's right to receive a disability pension was extinguished as she was no longer unfit to work.

10. On 12 January 2001 the applicant appealed, submitting that the Social Insurance Authority had failed to assess properly the medical evidence concerning her condition. She also submitted that her condition had been reassessed in 1994, 1995 and 1997. On each of these occasions decisions had been given confirming that she was permanently unfit to work.

11. In her pleadings submitted on 18 May and 3 December 2001 the applicant submitted that there was no legal basis for conducting medical examinations in order to reassess her condition. She referred to the 1983 Ordinance, which prohibited reassessment of the medical condition of persons who had been receiving a disability pension for longer than ten years (see paragraph 25 below). The Ordinance provided that no medical examination could be conducted in respect of such persons with a view to a reassessment of their condition. She further invoked the case-law of the Supreme Court which, in the applicant's submission, supported the conclusion that no medical reassessment of a condition which had served as the basis for granting a disability pension could be ordered once ten years had elapsed from the date on which the decision awarding the entitlement to a pension became final (II URN 8/94, see paragraph 28 below).

12. The Cracow Regional Court, by a judgment of 24 September 2002, partly amended the decision of the Social Insurance Authority by granting the applicant the disability pension for a fixed period, namely from 1 January 2001 until 1 January 2003.

13. The applicant appealed, claiming that in view of her condition she was entitled to a permanent disability pension. She complained about the

assessment of the medical evidence by the first-instance court. In her additional pleadings submitted to the Court of Appeal on 6 September 2004, she reiterated her arguments about the lack of legal basis for the reassessment of her condition and concluded that the first-instance judgment was therefore in breach of substantive law.

14. On 8 September 2004 the Cracow Court of Appeal dismissed the appeal. The court examined the complaint concerning the allegedly incorrect assessment of the evidence and concluded that the first-instance court had been thorough in the assessment it had carried out. It also noted that during the appellate proceedings and in view of doubts the appellate court had harboured as to the applicant's condition, it had ordered that, in addition to the evidence available in the applicant's medical records, a medical opinion should be obtained from the local centre for occupational medicine and further examinations should be carried out by specialists in cardiology, nephrology, endocrinology and gynaecology. The applicant had refused to undergo these examinations.

15. The court further observed that the first-instance judgment had maintained the applicant's pension for the period from 1 January 2001 until 1 January 2003. When that period expired, the applicant had failed to submit to the Social Insurance Authority a request to have her entitlement to the pension prolonged.

16. In response to the applicant's argument based on the 1983 Ordinance and the prohibition it imposed on the medical re-examination of persons in receipt of a disability pension for longer than ten years, the court observed:

“It should be borne in mind that the proceedings concerning the applicant's case had been instituted [by the Social Insurance Authority] under the legal provisions governing the internal supervision by the principal physician of doctors working for that Authority and assessing the medical condition of persons seeking a disability pension (see Article 11 of the 1997 Ordinance of the Minister of Labour and Social Policy). Accordingly, it was of no legal relevance to the applicant's case that she had been declared permanently unfit to work in 1985. Neither was the length of time for which she had been receiving her pension of any significance for the present case.”

17. On 13 October 2004 the Cracow Court of Appeal refused to grant the applicant legal aid to lodge a cassation appeal. The written grounds for the refusal read as follows:

“Under Article 117 § 1 of the Code of Civil Procedure a party to proceedings who has been exempted, fully or in part, from the obligation to pay court fees can request that a legal-aid lawyer be assigned to represent him or her in the case. The court shall allow such a request if it decides that the participation of a lawyer in the case is necessary. A legal-aid lawyer shall be so assigned where the party is unable to argue the case competently or the case is complex as to the facts or law.

The crucial issue in the present case was the assessment of the [applicant's] condition and, consequently, it cannot be regarded as so complex as to warrant legal assistance. The court therefore considers that legal assistance would be unnecessary and, accordingly, dismisses the applicant's request.

The mere fact that a party cannot afford to pay legal fees does not justify the granting of legal assistance; this also applies to cases where legal representation is mandatory for the preparation of the cassation appeal.”

II. RELEVANT DOMESTIC LAW AND PRACTICE

1. Legal aid

18. At the material time Article 113 § 1 of the Code of Civil Procedure provided that parties to proceedings could ask the court competent to deal with the case to grant them an exemption from court fees provided that they submitted a declaration to the effect that the fees required would entail a substantial reduction in their standard of living and that of their family.

19. Parties to proceedings concerning social insurance allowances and pensions were exempted, under Article 463 § 1 of the Code of Civil Procedure, from the obligation to pay court fees.

20. Under Article 117 of the Code, persons exempted from court fees could request that legal aid be granted to them. This provision, in so far as relevant, provided:

“1. A party [to the proceedings] exempted partly or entirely from court fees may request that an advocate or a legal adviser be appointed for him or her. ... The court shall grant that request if it considers that the participation of an advocate or a legal adviser in the case is necessary. ...

2. The provisions of the preceding paragraph are also applicable to parties who benefit from a statutory exemption from court fees, provided that they demonstrate, by way of the declaration referred to in Article 113 § 1, that the fees of the advocate or legal adviser would entail a reduction in their standard of living and that of their family. The court shall refuse to assign a lawyer to the case if it considers that the party's action or appeal is manifestly ill-founded.”

2. Cassation appeals

21. At the material time a party to civil proceedings could lodge a cassation appeal with the Supreme Court against a final judicial decision of a second-instance court terminating the proceedings. Under Article 393 ⁴ § 1 of the Code of Civil Procedure a cassation appeal had to be lodged with the court that had given the relevant decision within one month from the date on which the decision with its written grounds was served on the party concerned. Cassation appeals which were not lodged by an advocate or a legal adviser were to be dismissed.

22. Article 393 ¹ of the Code listed the grounds on which a cassation appeal could be lodged. It read as follows:

“The cassation appeal may be based on the following grounds:

(1) a breach of substantive law on account of its erroneous interpretation or wrongful application;

(2) a breach of procedural provisions if the defect in question could significantly affect the outcome of the case.”

3. Appeals against interlocutory decisions

23. Article 394 of the Code of Civil Procedure guarantees the parties to proceedings the right to appeal against a decision of the first-instance court terminating the proceedings. An interlocutory appeal (*zażalenie*) of this kind is also available against certain interlocutory decisions specified in this provision. An appeal lies against a refusal of exemption from court fees and likewise against a refusal of legal aid, where such decisions have been given by a first-instance court.

24. No appeal lies where such decisions are given by an appellate court.

4. Relevant provisions of social insurance law

25. Section 29(1)(a) of the 1983 Ordinance of the Minister of Labour and Social Policy of 5 August 1983 (Journal of Laws No. 47, item 214), as amended in 1990, provided that no medical examination could be organised with a view to reassessing the medical condition of persons who had been declared unfit to work and who had been in receipt of a disability pension for longer than ten years.

This Ordinance was repealed with effect from 1 September 1997.

26. Since 1 January 1999 the system of social insurance has been regulated by the Social Insurance System Act of 13 October 1998 (*Ustawa o systemie ubezpieczeń społecznych*) and a number of other acts applying to specific occupational groups or types of benefits. Social insurance benefits are essentially paid from a single fund financed by various compulsory contributions from employees and employers and managed by the Social Insurance Authority. Entitlement to a disability pension is based on the claimant's inability to continue paid employment on grounds of ill-health, confirmed by a medical certificate by doctors working for the Authority.

5. Case-law of the domestic courts

27. In a number of judgments the Courts of Appeal and the Supreme Court examined whether entitlement to a disability pension which had been paid to the insured person for longer than ten years could be redetermined following a fresh medical examination and reassessment of the person's condition.

28. In its judgment of 7 April 1994 the Supreme Court (II URN 8/94) quashed a judgment of the Cracow Court of Appeal in which the latter had accepted that a fresh medical examination could be ordered in respect of the

appellant, who had been in receipt of a disability pension for nineteen years. The Supreme Court found that, despite the fact that it was contained in the Ordinance, the prohibition should be regarded as being of a statutory nature. In a judgment of 21 September 1995 (II URN 28/95) the Supreme Court reached the same conclusion and quashed a judgment of the appellate court. It observed that the decision that the appellant should undergo a medical examination to reassess his condition lacked any legal basis and that, accordingly, the result was of no legal relevance to the appellant's entitlement to a disability pension. In both judgments the Supreme Court referred to its judgment of 23 November 1987 (II URN 259/87). In a judgment of 17 July 1996 (II URN 13/96) the Supreme Court allowed an extraordinary appeal brought by the Ombudsman in the case of an appellant who had been in receipt of a disability pension for nineteen years. It reiterated the conclusions previously reached by the Supreme Court and held that the medical reassessment of a person's condition after that time had no legal basis as it was contrary to section 27 of the Ordinance 1983. It would have been possible only if, prior to issuing such an order, the Social Insurance Authority had obtained evidence showing that the person's condition no longer made him or her unfit to work. In the absence of such evidence, medical reassessment breached the principle of vested rights. On 26 May 1999 (II URN 13/96) the Supreme Court reiterated its previous conclusions as to the prohibition of medical reassessment after longer than ten years. In its judgment of 27 January 2000 the Gdańsk Court of Appeal shared the view of the Supreme Court and held that in such cases the disability should be presumed to be permanent.

In its judgment of 22 January 2002 (II UKN 747/00) the Supreme Court held:

“The Social Insurance Authority cannot challenge the assessment that a person entitled to a disability pension is unfit to work if that person has been recognised as disabled for a period of over ten years. The change of legal situation in 1997 [when the 1983 Ordinance was repealed] is irrelevant in this respect.”

29. In a judgment of 5 September 2000 (II UKN 696/99) the Supreme Court held that the legal changes made to the social insurance system in 1998 did not affect existing disability entitlements in so far as the applicable provisions guaranteed the permanence of entitlements which had been paid for a period exceeding ten years.

30. In its judgments of 5 and 11 May 2005 (III UK 9/05 and II UK 29/05 respectively) the Supreme Court noted that the Ordinance had been repealed with effect from 1 September 1997. It further referred to the views expressed by the Supreme Court in the judgments referred to above and disagreed with them. It was of the opinion that section 29 of the 1983 Ordinance did not create a presumption of permanent entitlement to a disability pension which had been paid for longer than ten years. It observed that the temporal scope of the application of that Ordinance and the

principle stated in section 29 thereof were unclear; in particular, it was not clear whether after the entry into force of the 1998 Act the prohibition on medical re-assessment remained valid. The court took the view that this was not the case and that the right to social insurance entitlements, including disability pensions, could not be seen as being irrevocable under all circumstances.

31. On 26 January 2005 (III UZP 2/05) the Supreme Court examined a request brought by the Ombudsman for a resolution by seven judges as to whether the Social Insurance Authority could challenge the entitlement to a disability pension of persons who prior to 1 September 1997, the date on which the 1983 Ordinance was repealed, had been receiving the pension for longer than ten years. The Ombudsman pointed to discrepancies in the case-law of the various appellate courts and in the Supreme Court's case-law. In its resolution the Court retraced the history of the relevant case-law and acknowledged that diverging views had been expressed by different benches of that court. It ultimately expressed the view that the prohibition on medical reassessment contained in the 1983 Ordinance was merely of a procedural nature and as such could not be applied after the Ordinance had been repealed. In consequence, nothing prevented the Social Insurance Authority from ordering a fresh medical examination with a view to reassessing whether the person concerned continued to be unfit for work.

THE LAW

I. THE CONTINUED EXAMINATION OF THE APPLICATION

32. On 3 October 2008 the Government submitted a unilateral declaration similar to that in the case of *Tahsin Acar v. Turkey* (preliminary objection) [GC], no. 26307/95, ECHR 2003-VI) and acknowledged that there had been a breach of the applicant's rights under Article 6 § 1 of the Convention as a result of the refusal of legal aid. They further submitted that the complaint under Article 1 of Protocol No. 1 to the Convention did not raise an issue under the Convention. In respect of non-pecuniary damage, the Government proposed a payment to the applicant of EUR 2,000. They invited the Court to strike out the application in accordance with Article 37 of the Convention.

33. The applicant considered that the amount proposed did not constitute sufficient just satisfaction for the damage she had sustained. She further requested the Court to continue its examination of the application.

34. The Court takes note of the complex nature of the complaint made in the present case regarding the alleged interference with the applicant's right

to the peaceful enjoyment of her possessions. It is further of the view that this part of the case raises an important issue of general interest in connection with the legal review of entitlement to disability pensions. Accordingly, the Court does not find it appropriate to strike the application out of its list of cases. It considers that there are special circumstances regarding respect for human rights as defined in the Convention and its Protocols which require the further examination of the application on its merits (Articles 37 § 1 *in fine* and 38 § 1(b) of the Convention).

II. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION CONCERNING THE REFUSAL OF LEGAL AID

35. The applicant complained that the refusal to grant her legal assistance in connection with the cassation proceedings had infringed her right to a fair hearing guaranteed by Article 6 § 1 of the Convention which, in so far as relevant, reads:

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

A. Admissibility

36. 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

37. The Court points out at the outset that there is no obligation under the Convention to make legal aid available for disputes (*contestations*) in civil proceedings, as there is a clear distinction between the wording of Article 6 § 3 (c), which guarantees the right to free legal assistance under certain conditions in criminal proceedings, and of Article 6 § 1, which makes no reference to legal assistance (see *Del Sol v. France*, no. 46800/99, § 20, ECHR 2002-II, and *Essaadi v. France*, no. 49384/99, § 30, 26 February 2002). It may therefore be acceptable to impose conditions on the grant of legal aid based, *inter alia*, on the financial situation of the litigant or his or her prospects of success in the proceedings (see *Steel and Morris v. the United Kingdom*, no. 68416/01, § 62, ECHR 2005-II).

38. A requirement that an appellant be represented by a qualified lawyer before the court of cassation, as in the present case, cannot in itself be seen as contrary to Article 6. This requirement is clearly compatible with the characteristics of the Supreme Court as the highest court examining appeals

on points of law and it is a common feature of the legal systems in several member States of the Council of Europe (see *Gillow v. the United Kingdom*, 24 November 1986, § 69, Series A no. 109; *Vacher v. France*, 17 December 1996, §§ 24 and 28, *Reports of Judgments and Decisions* 1996-VI; *Tabor v. Poland*, no. 12825/02, § 42, 27 June 2006; *Staroszczyk v. Poland*, no. 59519/00, § 129, 22 March 2007; and *Siałkowska v. Poland*, no. 8932/05, § 106, 22 March 2007). It is for the Contracting States to decide how they should comply with the fair hearing obligations arising under the Convention. The Court must satisfy itself that the method chosen by the domestic authorities in a particular case is compatible with the Convention. In discharging its obligation to provide parties to proceedings with legal aid, where so provided by domestic law, the State must, moreover, display diligence so as to secure to those persons the genuine and effective enjoyment of the rights guaranteed under Article 6 (see *Del Sol*, cited above, § 21; *Staroszczyk v. Poland*, cited above, § 30; *Siałkowska v. Poland*, cited above, § 107; and, *mutatis mutandis*, *R.D. v. Poland*, nos. 29692/96 and 34612/97, § 44, 18 December 2001).

39. The key principle governing the application of Article 6 is fairness. It is important to ensure the appearance of the fair administration of justice and a party in civil proceedings must be able to participate effectively, *inter alia*, by being able to put forward matters in support of his or her claims (see *Laskowska v. Poland*, no. 77765/01, § 54, 13 March 2007).

40. Against this background, the Court will examine whether the applicant's right of access to a court was observed in connection with the refusal to provide her with legal assistance in cassation proceedings before the Supreme Court.

The Court first notes that in the instant case the provisions of the Code of Civil Procedure made it possible for the applicant to apply for legal aid. The relevant decision was dependent on the court's assessment as to whether in the circumstances of the case legal representation was necessary (see paragraph 20 above). When examining whether the decisions on legal aid, seen as a whole, were in compliance with the fair hearing standards of the Convention, it is not the Court's task to take the place of the Polish courts, but to review whether those courts, when exercising their power of appreciation in respect of the assessment of evidence, acted in accordance with Article 6 § 1 (see, *mutatis mutandis*, *Kreuz v. Poland*, no. 28249/95, § 64, ECHR 2001-VI).

41. The Court notes that in her application for legal aid the applicant duly substantiated her assertion that in her financial situation she could not afford professional legal assistance, by submitting a number of various official documents as required by law. In its refusal the court did not challenge the authenticity of the documents and did not contest the applicant's financial situation in any way.

42. The Court further observes that in its refusal the Court of Appeal briefly referred to the nature of the issues involved in the case. It stated that the crucial issues in the case concerned the assessment of the applicant's condition and whether it justified maintaining her entitlement to the disability pension. It was of the view that the case did not warrant professional legal assistance for the purposes of further appeal.

43. However, the Court observes that the applicant, as far back as her appeal against the first-instance decision given by the Social Insurance Authority, submitted two strands of argument. It is true that the first strand, as correctly noted by the Court of Appeal, was essentially concerned with the assessment of the medical evidence and the determination of her condition, on which her entitlement to the disability pension hinged. Nonetheless, the Court stresses that she also repeatedly submitted legal arguments based on the 1983 Ordinance. She stated, time after time, that under this Ordinance the reassessment of her condition lacked any legal basis.

44. The applicant also referred to the case-law of the Supreme Court which, in her view, supported the conclusion that no such reassessment was legally possible in her case. Her legal arguments were subsequently examined by the Court of Appeal. In its judgment of 8 September 2004 that court limited its reasoning to holding that the 1983 Ordinance was “of no relevance” to the applicant's case.

45. The Court observes that it was open to the applicant to lodge a cassation appeal against that judgment, based on an alleged breach of substantive law on account of its erroneous interpretation or wrongful application (see paragraph 22 above). The applicant therefore had the possibility of challenging, by way of a cassation appeal, the manner in which the appellate court interpreted the provisions of the Ordinance in her case and their significance for the maintenance of her disability benefits.

46. In that connection the Court notes that the issues related to the application of the 1983 Ordinance gave rise to a considerable body of case-law by the domestic courts. The Supreme Court, in a number of decisions given following cassation appeals against judgments of various appellate courts, examined whether the provisions of that Ordinance prohibited the Social Insurance Authority from divesting individuals of disability pensions they had been receiving for longer than ten years. Furthermore, the domestic courts, some of them assuming that such a prohibition existed, were not in agreement as to its nature, namely whether it was substantive or merely procedural. Importantly, it was unclear whether the entry into force of the Act of 13 October 1998 affected the applicability of the Ordinance to the situation of persons who had acquired rights to a disability pension prior to the Act's entry into force on 1 January 1999. It was only in 2005, after the applicant's case had already been decided, that the Supreme Court ultimately adopted a resolution designed to clarify the case-law and resolve

the discrepancies which had arisen in the interpretation of whether the right to a disability pension was revocable or not.

47. The Court observes that the Court of Appeal in its refusal failed to make any reference to the legal arguments advanced by the applicant based on the 1983 Ordinance.

48. The Court is of the view that if legal representation was mandatory, the Court of Appeal's conclusion that legal assistance would be unnecessary, in particular in the absence of any analysis of whether in the circumstances of the case the cassation appeal offered reasonable prospects of success, does not seem to be justified.

49. The Court is therefore of the view that the court failed in its duty to give proper examination to the applicant's request for legal assistance (see *Tabor v. Poland*, no. 12825/02, § 46, 27 June 2006, *mutatis mutandis*).

50. Accordingly, having regard to the circumstances of the case seen as a whole, the Court is of the view that there has been a breach of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

51. The applicant further complained that she had been deprived of a disability pension after fifteen years of receiving such a pension. She 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

52. 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

53. The applicant argued that the judicial decisions concerned had been in breach of a 1983 Ordinance and of the case-law of the Supreme Court. That court had consistently held that after ten years of receiving a disability pension the person concerned could not have his or her entitlement to such a pension reviewed and taken away. It was clear that the 1983 Ordinance prohibited the physicians working for the Social Insurance Authority from examining persons so entitled with a view to reassessing their medical condition and, ultimately, divesting them of their disability pension.

54. The applicant further submitted that the fact that in 1998 a reform of the social insurance system had been carried out had not removed this prohibition. This was highlighted by a number of judgments to that effect given by various courts, including the Supreme Court. As a result of the decisions given in her case, the applicant had been deprived, after nineteen years, of her only income, despite the fact that the applicable provisions had created a legitimate expectation that her entitlement to the pension would not be challenged by the Social Insurance Authority. In view of the circumstances of the case, the decisions given by the Authority and by the courts had been unjustified, breached the principle of legal certainty and imposed an excessive burden on the applicant.

55. The Government did not submit any observations in this regard.

2. The Court's assessment

(a) General principles

56. The Court first reiterates that Article 1 of Protocol No. 1 contains three distinct rules. They have been described as follows (in *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; see 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.”

57. 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). However, 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 interference with possessions which requires to be justified (see *Kjartan Ásmundsson*, cited above, § 40, and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009). An important consideration in the assessment of such interference under this provision 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 pension rights (see *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V).

58. The Court reiterates that an essential condition for 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).

59. 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 (see *Terazzi S.r.l. v. Italy*, no. 27265/95, § 85, 17 October 2002, and *Elia S.r.l. v. Italy*, no. 37710/97, § 77, ECHR 2001-IX). 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).

60. 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). 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

61. The Court notes that the applicant was divested of her entitlement to the disability pension which she had been receiving since 1985. It is of the view that this amounted to interference with her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Styk v. Poland* (dec.), no. 28356/95, 16 April 1998; *Szumilas v. Poland* (dec.), no 35187/97, 1 July 1998; *Bieńkowski v. Poland* (dec.), no. 33889/97, 9 September 1998; and, *mutatis mutandis*, *Domalewski*, cited above).

62. The Court must next determine whether the interference was lawful. The measure complained of was based on section 27(1) (a) of the 1983 Ordinance. The Court notes that the interpretation of this provision gave rise to serious difficulties and discrepancies between judgments given by various appellate courts and by different benches of the Supreme Court. These difficulties were acknowledged by the Supreme Court which ultimately, in 2005, issued a resolution designed to eliminate these divergences. In this respect, however, the Court reiterates that divergences in case-law are an inherent consequence of any judicial system which is based on a network of trial and appeal courts with authority over the area of their territorial jurisdiction, and that the role of a supreme court is precisely to resolve conflicts between decisions of the courts below (see *Zielinski and Pradal and Gonzalez and Others v. France* [GC], nos. 24846/94 and 34165/96 to 34173/96, § 59, ECHR 1999-VII). It further affirms that its task is not to take the place of the domestic courts. It is in the first place for them to interpret domestic law (see, among other authorities, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports* 1997-VIII). Accordingly, it considers that the interference was prescribed by law.

63. 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 it was intended to protect the financial stability of the social insurance system and ensure that it was not threatened by subsidising, without any temporal limitations, the pensions of recipients who with the passage of time had ceased to meet the relevant statutory requirements. The Court is satisfied that the interference pursued a legitimate aim in the general interest of the community

64. Lastly, the Court is called upon to determine whether the interference imposed an excessive individual burden on the applicant. 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).

65. 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).

66. 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). The Court observes that the basic level of social insurance benefits in Poland, including disability pensions, is paid from a single fund financed by various compulsory contributions from employees and employers and managed by the Social Insurance Authority. It is based on the principle of solidarity and operates on a pay-as-you-go basis. Individual entitlement to a disability pension has been based, both before 1998 and since, on the statutory provisions specifying the particular conditions which must be met by claimants. The decisions of the Social Insurance Authority must comply with the applicable statutes.

67. Entitlement to a disability pension is based essentially on the claimant's inability to continue paid employment on grounds of ill-health. It is in the nature of things that various conditions which initially make it impossible for persons afflicted with them to work can evolve over time, leading to either deterioration or improvement of the person's health. The Court cannot accept the suggestion made by the applicant that her pension entitlements, based as they were on contributions to the general fund from which all social insurance benefits are paid, should remain unaltered once they had been granted, regardless of any changes in her condition. There is no authority in its 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). In particular, the Court has noted the significance which the passage of time can have for the legal existence and character of social insurance benefits

(see, *mutatis mutandis*, *Goudswaard-Van der Lans*, cited above). This applies both to amendments to legislation which may be adopted in response to societal changes and evolving views on the categories of persons who need social assistance, and also to the evolution of individual situations. The Court considers that it is permissible for States to take measures to reassess the medical condition of persons receiving disability pensions with a view to establishing whether they continue to be unfit to work, provided that such reassessment is in conformity with the law and attended by sufficient procedural guarantees.

Indeed, had entitlements to disability pensions been maintained in situations where their recipients ceased over time to comply with the applicable legal requirements, it would result in their unjust enrichment. Moreover, 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; an allocation in disregard of the objectives that disability pensions were purported to meet.

68. The Court notes that the applicant had been receiving her disability pension since 1985, on the basis of a decision by the Social Insurance Authority. The applicable legislation, both before the reform of the social insurance system in 1998 and afterwards, made the granting of a disability pension dependent, *inter alia*, on the condition of being unfit to work on health grounds and this fact being officially recognised by a competent medical panel.

69. In 1985 the applicant was found to satisfy that requirement. Subsequently, her condition was reassessed in 1994, 1995 and 1997. On each of these occasions the fact that she continued to be unfit to work was confirmed and her entitlement to the pension was maintained. The Court notes that it has not been argued or shown that on any of these occasions the applicant challenged the lawfulness of the reassessment of her condition, despite the fact that the 1983 Ordinance remained in force until 1 September 1997. It was only in the proceedings instituted in 2000 that she raised doubts as to the existence of a legal basis for such reassessment.

It is further noted that during the proceedings conducted before the appellate court that court ordered that the evidence on the basis of which the first-instance court had given its judgment of 24 September 2002 be supplemented by medical examinations by various specialists (see paragraph 14 above). However, the applicant refused to comply with that order.

70. The Court observes that the decisions of the Social Insurance Authority were subject to judicial review before two instances of the special social insurance courts, assisted by full procedural guarantees. The applicant had recourse to that procedure. There is no indication that during the proceedings she was unable to present her arguments to the courts.

71. It is also of relevance for the assessment of the case that the applicant was not completely divested of her entitlement to the disability pension. Indeed, the Regional Court granted the applicant the pension for a fixed period of two years (see paragraph 12 above). Moreover, it has not been shown or argued that the amount of that temporary pension was lower than that which the applicant had been receiving before. It cannot therefore be said that the applicant was totally divested of her only means of subsistence (compare and contrast *Kjartan Ásmundsson*, cited above, § 44, and the case-law cited therein).

72. The Court further notes that the applicant was not obliged to pay back any amounts which she had been receiving prior to the date when she was found to no longer meet the applicable legal requirements (see *Chroust v. the Czech Republic* (dec.), no. 4295/03, 20 November 2006). Moreover, the domestic law did not create any assumption that persons found to no longer satisfy the requirements for disability pensions had been acting fraudulently or in a manner open to criticism. Nor was such a suggestion made in the proceedings in relation to the applicant.

73. 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 individual's fundamental rights and that the burden on the applicant was neither disproportionate nor excessive.

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

IV. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

75. The applicant complained under Article 6 § 1 of the Convention about the outcome and unfairness of the proceedings. She submitted that the proceedings had lasted too long and that the court had not shown the necessary expedition in taking the evidence and had refused to hear evidence from witnesses. She maintained that the court had wrongly assessed the evidence, reached untenable conclusions as to the facts and, as a result, had given erroneous decisions.

76. In so far as the applicant complained about the establishment of the facts by the domestic courts, the Court reiterates that, in accordance with Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national

law and the national courts (see *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I, with further references). In the present case, apart from her complaint examined above, the applicant did not allege any particular failure on the part of the relevant courts to respect her right to a fair hearing. Assessing the circumstances of the case as a whole, the Court finds no indication that the impugned proceedings were conducted unfairly.

77. As regards the applicant's complaint about the unreasonable length of the impugned proceedings, the Court notes that the applicant did not lodge a complaint with the relevant domestic court under the 2004 Act, thus failing to avail herself of the available domestic remedy. The Court has already examined that remedy for the purposes of Article 35 § 1 of the Convention and found it effective in respect of complaints about the excessive length of judicial proceedings in Poland. In particular, the Court considered that the remedy was capable both of preventing the alleged violation of the right to a hearing within a reasonable time or its continuation, and of providing adequate redress for any violation that had already occurred (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-42).

78. It follows that this part of the application must be declared inadmissible in accordance with Article 35 §§ 1 and 4 of the Convention.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

79. 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

80. The applicant claimed PLN 51,000 in respect of the non-pecuniary damage she had suffered in connection with the case and PLN 32,965 for the pecuniary damage resulting from the loss of her disability pension. The applicant, who was granted legal aid for the purposes of the proceedings before the Court, further claimed EUR 3,500 for the costs incurred in connection with the domestic proceedings and the proceedings before the Court.

81. The Government contested the applicant's submissions.

82. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. On the other hand, it awards the applicant EUR 2,000 in respect of non-pecuniary damage.

B. Costs and expenses

83. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court rejects the claim for costs and expenses.

C. Default interest

84. The Court considers it appropriate that the default interest 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 applicant's complaint concerning the examination of her request for legal assistance and the taking away of her disability pension admissible;
2. *Declares* the remainder of the application inadmissible;
3. *Holds* that there has been a violation of Article 6 § 1 of the Convention in that the Court of Appeal failed to give proper examination to the applicant's request for legal assistance;
4. *Holds* that there has been no violation of Article 1 of Protocol No. 1 to the Convention;
5. *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 2,000 (two thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage, to be converted into Polish zlotys at the rate applicable at the date of settlement;
 - (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;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 December 2009, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Lawrence Early
Registrar

Nicolas Bratza
President