

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

FIRST SECTION

CASE OF KOVÁCS v. HUNGARY

(Application no. 25294/15)

JUDGMENT

STRASBOURG

7 October 2021

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



In the case of Kovács v. Hungary,

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

Alena Poláčková, *President,*
Péter Paczolay,
Gilberto Felici, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 25294/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Hungarian national, Ms Endréné Kovács ("the applicant"), on 13 March 2013;

the decision to give notice of the application to the Hungarian Government ("the Government");

the parties' observations;

Having deliberated in private on 14 September 2021,

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

INTRODUCTION

1. The application concerns a substantial reduction of the applicant's disability benefit.

THE FACTS

2. The applicant was born in 1958 and lives in Szeged. She was represented by Mr D.A. Karsai, a lawyer practising in Budapest.

3. The Government were represented by their Agent, Mr Z. Tallódi, of the Ministry of Justice.

4. The facts of the case, as submitted by the parties, may be summarised as follows.

5. The applicant was continuously entitled to various disability benefits from 2005 onwards. On 1 January 2012 she was in receipt of a rehabilitation allowance (*rehabilitációs járadék*), in application of section 10(1)-(2) of Act no. LXXXIV of 2007. Its monthly amount was 165,515 Hungarian forints (HUF) (approximately 550 euros (EUR)). Under the law as it stood then, this benefit was available for a maximum of three years which in the applicant's case expired in July 2012.

6. The applicant filed an application for a benefit for persons with reduced work capacity, which request was determined under Act no. CXCI of 2011 (in force as of 1 January 2012 - "the Reduced Work Capacity Act"). In the ensuing procedure, the applicant's health status was medically assessed at 47% with no recommendation of rehabilitation. As of 1 August 2012, disability allowance (*rokkantsági ellátás*) in the monthly amount of

HUF 55,800 (EUR 190) was put in place, in application of the then relevant calculation rules.

7. In pursuit of intervening amendments to the Reduced Work Capacity Act, the applicant's monthly allowance was increased, as of 1 January 2014, to HUF 159,100 (EUR 530). This benefit appears to have been in place ever since.

THE LAW

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

8. The applicant complained of the substantial reduction of her benefit, in particular in the period August 2012 to January 2014. She relied on Article 1 of Protocol No. 1 and Articles 6, 8, 13 and 14 of the Convention. The Court, being the master of the characterisation to be given in law to the facts of a case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), considers that this complaint falls to be examined under Article 1 of Protocol No. 1 alone, 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

9. The Government argued that the applicant had not exhausted domestic remedies because she had not pursued the case (in which the 47% score had been established, see paragraph 6 above) in court; a court action would have been adequate to challenge the medical assessment underlying the score. Moreover, the applicant's complaint is, in their view, incompatible *ratione materiae* with the provisions of the Convention because, once the three-year fix-term period of rehabilitation allowance had expired, the applicant had no legitimate expectation of continued payment of an allowance of comparable amount. Lastly, for the Government, the applicant had lost her victim status, because the law had remedied her situation as of 1 January 2014.

10. The applicant disagreed, emphasising in particular that a court action would have been futile, since her complaint concerned the legal context rather than the medical assessment.

11. The Court notes that there is no indication in the case file – or submission from any of the parties – to the effect that the applicant's health status changed in the material period. In these circumstances, it accepts the applicant's argument according to which the crux of the matter is the legal context itself, which is why a court action challenging merely the medical assessment score was not an adequate remedy. The Government's objection of domestic remedies must therefore be rejected.

12. Furthermore, as regards the victim status, the Court notes that the legislative developments solved the applicant's problem only as of 1 January 2014. In these circumstances, it cannot be said that she has no victim status in regard to the period 1 August 2012 to 1 January 2014. This objection must therefore likewise be rejected.

13. The Government also argued that the application was incompatible *ratione materiae* with the provisions of the Convention. They emphasised that the application concerned the discontinuation of a fixed-term benefit which, on its expiry, did not create any "assertable right" or "legitimate expectation" enabling the applicant to avail himself of Article 1 of Protocol No. 1 in order to challenge the reduced benefit granted to the applicant in the period complained of.

14. The Court considers that this objection of the Government is so closely linked to the substance of the applicant's complaint that it should be joined to the merits (compare *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 71, 13 December 2016). It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

15. As to the applicability of Article 1 of Protocol No. 1, the applicant submitted that, given that her state of health was permanently impaired, she legitimately expected to receive, continuously, an adequate benefit from the State, notwithstanding the fact that the statutory time-frame for rehabilitation was a fixed-term one.

16. As to compliance with Article 1 of Protocol No. 1, the applicant was of the view that the interference she had suffered was disproportionate in that about two-thirds of her benefit had been removed for a period of nearly one and a half years, notably from 1 August 2012 until 1 January 2014.

17. The Government submitted that even if Article 1 of Protocol No. 1 were applicable, the applicant had not sustained any interference with her rights under that provision, since there was no basis in domestic law for her to claim the continuous payment of an unchanged benefit no matter how the circumstances evolved. Moreover, even assuming the existence of an interference, the measures applied in the applicant's case pursued the general interest of rationalising the system of disability benefits and were

not disproportionate, having been in place for only a limited period in time and followed by a compensatory increase of the benefit.

2. The Court's assessment

18. The Court has summarised its position on the applicability of Article 1 of Protocol No. 1 in cases similar to the present one in paragraphs 72 to 110 of the *Béláné Nagy* judgment (cited above). It sees no reason to depart from those considerations.

19. In particular, the Court reiterates that, in the field of social-security benefits, "for the recognition of a possession consisting in a legitimate expectation, the applicant must have an assertable right which ... may not fall short of a sufficiently established, substantive proprietary interest under the national law" (see *Béláné Nagy*, cited above, § 79).

20. It transpires from the facts of the present application that, since 2005, the applicant has been continuously entitled, under one legal regime or another, to receive disability benefits from the State. It has not been argued that her health status changed significantly during that time. For the Court, these elements gain particular significance when dealing with the Government's argument pointing to the fixed-term character of the rehabilitation allowance.

21. The Court is therefore satisfied that the applicant's claim for disability benefit during the seventeen-month period in issue (from 1 August 2012 until 1 January 2014) constituted a "sufficiently established, substantive proprietary interest under the national law", just as it had in the preceding or subsequent periods. This holds true irrespective of whether the benefit in a given period was granted for a definite or an indefinite duration, since the underlying medical condition remained constant.

22. It follows that Article 1 of Protocol No. 1 is applicable and the Government's preliminary objection of incompatibility *ratione materiae* must be dismissed (see *Baczúr v. Hungary*, no. 8263/15, § 25, 7 March 2017).

23. Moreover, the Court cannot but emphasise that, as of 1 August 2012, the applicant's benefit had been reduced to approximately one-third of its previous value – a situation which lasted seventeen months. It must therefore be concluded that her right to receive social-security benefits on account of her ailments was interfered with. It remains to be ascertained whether the interference was justified.

24. A synopsis of the Court's position on compliance with Article 1 of Protocol No. 1 in this field can be found in paragraphs 112 to 118 of the *Béláné Nagy* judgment (cited above). Those considerations are also valid in the present case.

25. The Court notes at the outset that the measure complained of had undisputedly a basis in national law; and it accepts that it corresponded to the general interest attached to the rationalisation of the social-security

system. At this juncture, the Court reiterates that "the fact that a person has entered into and forms part of a State social-security system (even if a compulsory one, as in the instant case) does not necessarily mean that that system cannot be changed, either as to the conditions of eligibility of payment or as to the quantum of the benefit or pension (see, *mutatis mutandis*, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 85-89, ECHR 2010, and *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012). Indeed, the Court has accepted the possibility of amendments to social-security 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 (see *Wieczorek v. Poland*, no. 18176/05, § 67, 8 December 2009, and *Béláné Nagy*, cited above, § 88). The Court would stress that, in present-day conditions, these considerations play a primordial role in assessing complaints going to the impairment of social welfare rights; and they undoubtedly provide the State with a wide margin of appreciation in rationalising their social-security systems. Nevertheless, the examination of proportionality of such measures cannot be dispensed with.

26. In addressing the proportionality of the measure, that is, in considering whether the interference imposed an excessive individual burden on the applicant, the Court will have regard to the particular context in which the issue arose, namely that of a social-security scheme. Such schemes are an expression of a society's solidarity with its vulnerable members (see *Béláné Nagy*, cited above, § 116). An important consideration is whether the applicant's right to derive benefits from the social-insurance scheme in question has been infringed in a manner resulting in the impairment of the essence of her pension rights (see *Béláné Nagy*, cited above, § 118).

For the Court, a two-thirds reduction, as in the present case, falls into this latter category.

27. The Court notes that although the applicant – unlike Mrs Nagy – was not completely deprived of all entitlements, her income was nevertheless abruptly reduced to EUR 190 per month. This element is aggravated by the fact that the applicant apparently had no other significant income on which to subsist and that she belonged to a vulnerable group of disabled persons (see *Béláné Nagy*, cited above, § 123).

28. The Court thus considers that in the present case the application of the impugned legislation resulted in a situation in which a fair balance was not struck between the interests at stake – even if that legislation was aimed at protecting the public purse by rationalising the scheme of disability benefits, a matter of legitimate general interest in whose pursuit the State enjoys a wide margin of appreciation. Once again, it must be stressed that the applicant suffered the removal of two-thirds of her benefit, whereas there was no indication that she had failed to act in good faith at all times, to

co-operate with the authorities or to make any relevant claims or representations (see *Béláné Nagy*, cited above, §§ 121, 125 and 126).

29. The Court thus considers that there was no reasonable relation of proportionality between the aim pursued and the restrictions applied to the applicant's allowance in the period from 1 August 2012 to 1 January 2014. It therefore finds that, notwithstanding the State's wide margin of appreciation in this field, the applicant had to bear, in the period at issue, an excessive individual burden (see *Baczúr*, cited above, §§ 27-32). Even though the applicant later benefitted from a further legislative amendment, which resulted in an increase of her disability allowance, that measure only applied from 1 January 2014 onwards.

30. It follows that there has been a violation of her rights under Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

31. 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."

32. The applicant claimed EUR 6,700 in respect of pecuniary damage (17 months of accrued loss in the monthly allowance in the material period), EUR 10,000 in respect of non-pecuniary damage and EUR 12,192 in respect of costs and expenses incurred before the Court.

33. The Government contested these claims.

34. The Court cannot speculate on the amount of disability benefit which would have been disbursed to the applicant had the violation not occurred. It therefore awards her a lump sum of EUR 5,000 in respect of the pecuniary damage sustained (see *Béláné Nagy*, cited above, § 131). Moreover, it considers that she must have suffered some non-pecuniary damage on account of the distress suffered and awards her, on the basis of equity, EUR 5,000 under this head. Lastly, 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 are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 3,000 covering costs under all heads.

35. 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. *Decides* to join to the merits the Government's objection concerning incompatibility *ratione materiae* and *dismisses* it;

2. *Declares* the application admissible;

3. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,000 (three thousand euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts 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 7 October 2021, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

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Liv Tigerstedt
Deputy Registrar

Alena Poláčková
President