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

FIRST SECTION

DECISION

Application no. 1464/14
Tomasz ŁUCZKIEWICZ
against Poland

The European Court of Human Rights (First Section), sitting on 5 December 2023 as a Chamber composed of:

Marko Bošnjak*, President*,
Alena Poláčková,
Krzysztof Wojtyczek,
Lətif Hüseynov,
Péter Paczolay,
Gilberto Felici,
Erik Wennerström*, judges*,

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to the above application lodged on 16 December 2013,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having regard to the comments submitted by the Helsinki Foundation for Human Rights which was granted leave to intervene by the President of the Section (Article 36 § 2 of the Convention and Rule 44 § 2 of the Rules of Court),

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Tomasz Łuczkiewicz, is a Polish national who was born in 1964 and lives in Starachowice. He was represented before the Court by Ms M. Gąsiorowska and Ms J. Metelska, lawyers practising in Warsaw.

2. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska and, subsequently, Mr J. Sobczak, both of the Ministry of Foreign Affairs.

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

4. On 21 September 2006 the Starachowice District Disability Assessment Board (*Powiatowy Zespół ds. Orzekania o Niepełnosprawności*) established that the applicant's mother, Ms U.S., who was born in 1940, was suffering from a significant degree of disability which was of a permanent nature and had arisen in March 2004. It also found that the applicant's mother required constant care by another person.

5. The Government submitted that the applicant's mother had been receiving her old-age pension since December 1991.

6. The applicant claimed that at some time in March 2011 he had given up his employment in order to provide care to his mother.

7. On 9 August 2011 the applicant filed an application for nursing allowance (*świadczenie pielęgnacyjne*) in respect of his mother pursuant to the Act of 28 November 2003 on Family Allowances (*ustawa o świadczeniach rodzinnych*; "the Family Allowances Act").

8. On 11 August 2011 the Mayor of Starachowice issued a decision granting the applicant nursing allowance in the monthly amount of 520 Polish zlotys (PLN), since he had given up his employment to care for his mother. The allowance was granted until 20 September 2029. Pursuant to the same decision, the mayor was to pay the applicant's contributions to the social security and health insurance funds. In giving his reasons for the decision, the Mayor stated that after examination of the applicant's application it had been established that he fulfilled the conditions specified in the Family Allowances Act.

9. On 7 December 2012 Parliament enacted the Act Amending the Act on Family Allowances and Certain Other Acts (*ustawa z dnia 7 grudnia 2012 o zmianie ustawy o świadczeniach rodzinnych oraz niektórych innych ustaw* – "the 2012 Amending Act"). The Act entered into force on 1 January 2013.

10. Section 11 of the 2012 Amending Act provided that all previous administrative decisions granting nursing allowance would expire by operation of law on 30 June 2013. On the basis of this provision, the applicant lost entitlement to nursing allowance from that date.

11. The 2012 Amending Act also added a new eligibility condition for the grant of nursing allowance at section 17(1b). This provided that the disability of the person being cared for had to have arisen no later than their eighteenth birthday or their twenty-fifth birthday if they had been attending school or university (see paragraph 34 below). It also created a new special carer's allowance (*specjalny zasiłek opiekuńczy*), which was means-tested (see paragraph 35 below).

12. On 9 July 2013 the applicant filed an application for the special carer's allowance in respect of his mother for the period between 1 July and 31 October 2013. On 6 August 2013 the Mayor of Starachowice refused the application. The Mayor found that prior to being granted nursing allowance on 9 August 2011 the applicant had not been employed, as his previous employment contract had been terminated on 30 April 2010 and he was then

registered as unemployed. Accordingly, the Mayor found that the applicant did not fulfil one of the conditions for the special carer's allowance as specified in section 16a(1) of the Family Allowances Act, namely the requirement to have given up one's employment in order to provide care.

13. The applicant lodged an appeal, which was dismissed by the Kielce Local Government Board of Appeal on 12 November 2013. Subsequently, the applicant lodged an appeal against that decision with the administrative court. On 19 May 2014 the Kielce Regional Administrative Court discontinued the proceedings since the applicant had withdrawn his appeal. The applicant referred to the entry into force of the Act of 4 April 2014 on the Establishment and Payment of Carer's Benefit (see paragraphs 43-44 below) which was applicable to his situation and submitted that he had decided to apply for the benefit brought in by that Act.

14. On 21 November 2013 the Mayor of Starachowice refused the applicant's request for special carer's allowance for the period between 1 November 2013 and 31 October 2014, giving the same reasons as those stated in the decision of 6 August 2013 (see paragraph 12 above). The applicant did not appeal against that decision.

15. The Government submitted that from 1 October 2013 to 30 June 2014 the applicant received the following benefits in accordance with the Act of 12 March 2004 on Social Assistance: a periodical benefit, financial aid for school meals and a special-purpose benefit in order to buy meals or food.

16. On 24 June 2013 the Polish Commissioner for Human Rights (*Rzecznik Praw Obywatelskich*) lodged an application with the Constitutional Court alleging that subsections (1) and (3) of section 11 of the 2012 Amending Act (see paragraph 36 below) were incompatible with the requirements of maintaining citizens' confidence in the State and the law made by it, as well as respecting properly acquired rights, all of which were components of the principle of the rule of law enshrined in Article 2 of the Constitution.

17. In judgment no. K 27/13 of 5 December 2013, the Constitutional Court held that the contested provisions were incompatible with Article 2 of the Constitution (see the reasons for the judgment in paragraphs 38-42 below).

18. On 4 April 2014 Parliament passed the Act on the Establishment and Payment of Carer's Benefit (*ustawa z dnia 4 kwietnia 2014 o ustaleniu i wypłacie zasiłków dla opiekunów* – "the 2014 Act"; see paragraphs 43-46 below). The Act entered into force on 15 May 2014.

19. On 15 May 2014 the applicant filed an application for carer's benefit under the 2014 Act.

20. On 13 June 2014 the Mayor of Starachowice issued a decision granting the applicant the benefit sought at PLN 520 per month from 1 November 2013 to 14 May 2014, plus statutory interest of PLN 99.09, and then at PLN 520 per month from 15 May 2014 onwards until further notice.

The Mayor found that the applicant fulfilled the relevant eligibility criteria. Pursuant to section 9 of the 2014 Act, the Mayor was to pay contributions to the social security and health insurance funds in respect of the applicant.

21. On 24 July 2014 the Mayor granted the applicant carer's benefit, also at PLN 520, for the period from 1 July to 31 October 2013, plus statutory interest of PLN 178.54.

22. In the meantime, in July 2013, a group of deputies of the *Sejm* challenged the constitutionality of section 17(1b) added to the Family Allowances Act by the 2012 Amending Act in that it unjustifiably deprived carers of disabled persons whose disability had arisen after attaining the age of eighteen, or twenty-five in the case of attending school or university, of entitlement to the nursing allowance.

23. In its judgment of 21 October 2014, no. K 38/13, the Constitutional Court held that the contested provision was incompatible with Article 32 § 1 of the Constitution (the right to equal treatment) in so far as it made the right for carers of a disabled person to receive nursing allowance dependent on the time when the disability had arisen (see paragraph 34 below).

24. The Constitutional Court found that section 17(1b) led to a situation where a person who gave up or did not take up gainful employment in order to care for a disabled family member over the age of eighteen or twenty-five could be treated differently – from the point of view of entitlement to the benefit – depending on the point in time when the disability of the person concerned had arisen.

25. In its view, the application of section 17(1b) of the Family Allowances Act as a criterion for identifying the beneficiaries of nursing allowance had led to a difference in treatment when conferring entitlement to that benefit for the carers of disabled adults that could not be justified under the Constitution. The carers of those who attained the age limit laid down in section 17(1b) became – from that point in time – part of a group of similar subjects, namely the carers of disabled adults. The Constitutional Court found that there was no constitutional justification for a difference in treatment among persons belonging to that category. In view of the above, the Constitutional Court concluded that, in so far as section 17(1b) differentiated the entitlement to nursing allowance to carers of disabled adults depending on when the disability in question had arisen, it was incompatible with Article 32 § 1 of the Constitution.

26. On 28 October 2016 the applicant filed an application for nursing allowance.

27. On 13 December 2016 the Mayor of Starachowice granted the applicant nursing allowance at PLN 1,300 per month from 1 December 2016 for an indefinite period, on the basis that he had given up his employment to care for his mother. Pursuant to the same decision, the Mayor was to pay the applicant's social security and health insurance contributions. In giving reasons for the decision, the Mayor found that the applicant had fulfilled the

criteria for nursing allowance as specified in the Family Allowances Act. The decision meant that the applicant would cease to receive carer's benefit under the 2014 Act.

28. On 5 January 2017 the Mayor of Starachowice increased the amount of the nursing allowance to PLN 1,406 per month from 1 January 2017; on 9 January 2018 it was increased to PLN 1,477 per month.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Constitutional provisions

29. The relevant provisions of the Constitution read as follows:

Article 2

"The Republic of Poland shall be a democratic State governed by the rule of law and implementing the principles of social justice."

Article 32

"1. All persons shall be equal before the law. All persons shall have the right to equal treatment by public authorities.

2. No one shall be discriminated against in political, social or economic life for any reason whatsoever."

Article 69

"Public authorities shall provide assistance in accordance with statute to disabled persons to ensure their subsistence, adaptation to work and social communication."

B. Initial regulation of nursing allowance

30. The Family Allowances Act, which entered into force on 1 May 2004, regulated eligibility for a range of family allowances, among them a nursing allowance. Nursing allowance could be granted for not taking up or giving up employment or other gainful work on account of the need to care permanently for a family member in reception of the requisite disability certificate. The nursing allowance was initially conceived for parents of disabled children and was subject to a means test.

31. The eligibility conditions for the allowance were extended over time as a result of judgments by the Constitutional Court and legislative amendments. The range of its beneficiaries was extended following a judgment of 18 July 2008 (no. P 27/07), in which the Constitutional Court held that the allowance at issue should also be granted where care was provided to persons other than disabled children who were members of the carer's family. In addition, as of 1 January 2010 the law abolished the means test as one of the eligibility criteria. Until the entry into force of the 2012

Amending Act (see paragraph 33 below), nursing allowance could then be granted to parents, other persons with a statutory maintenance obligation or the *de facto* carers of children.

C. The 2012 Amending Act

32. In September 2012 the Government introduced a bill into the *Sejm* to amend the Family Allowances Act. According to the explanatory notes, there was a need to rationalise the rules for the allocation of the nursing allowance in the light of, among other things, the State's family policies and its financial capacity. It was also noted that from 1 January 2010 the number of persons seeking nursing allowance had been rapidly increasing due to the abolition of the income criterion (in 2011 the number of beneficiaries increased by 100%). In the same period, 83% of the beneficiaries were persons other than parents of disabled children.

33. The 2012 Amending Act entered into force on 1 January 2013.

34. It introduced a new eligibility condition for nursing allowance, namely that it could be granted only to carers of persons whose disability had arisen before they had attained the age of eighteen, or twenty-five in the case of those who were attending school or university. New section 17(1b) read as follows:

> "Nursing allowance shall be granted if the disability of the person in need of care arose:
>
> 1) no later than [at] attaining the age of eighteen or
>
> 2) while attending school or university, but no later than when he or she reaches the age of twenty-five."

Before the entry into force of the 2012 Amending Act, the allowance could be granted without a means test.

35. The 2012 Amending Act also established a new allowance, namely a special carer's allowance (*specjalny zasiłek opiekuńczy*) under a new section 16a of the Family Allowance Act. This allowance could be granted to persons with a statutory maintenance obligation who gave up their employment or other paid work owing to the need to provide permanent care for a family member in receipt of the requisite disability certificate. It was subject to a means test assessed on the joint income of the family of the carer and that of the disabled person; the date at which the disability arose was not relevant. The special carer's allowance was intended for persons who did not fulfill the new eligibility conditions for the nursing allowance. Unlike nursing allowance, special carer's allowance was a temporary allowance that could be granted only for a limited period.

36. Section 11(1), (3) and (4) of the 2012 Amending Act, which dealt with the transitional arrangements for nursing allowance granted before 31 December 2012, read as follows:

"1. Persons who were granted nursing allowance under the previous provisions retain the right to that allowance in the previous amount until 30 June 2013 if they fulfil the conditions set out in the previous provisions.

...

3. Decisions granting nursing allowance taken on the basis of the previous provisions shall expire by operation of law on expiry of the time-limit referred to in subsection 1.

4. The appropriate authority ... shall, within two months from the date of entry into force of this Act, inform persons receiving a nursing allowance under the previous provisions of the expiry by operation of law of the decision granting nursing allowance and the conditions for obtaining special carer's allowance and nursing allowance that will be effective from the date of entry into force of this Act."

D. The Constitutional Court's judgment of 5 December 2013, no. K 27/13

37. In judgment no. K 27/13 of 5 December 2013 the Constitutional Court held that subsections (1) and (3) of section 11 of the 2012 Amending Act were incompatible with Article 2 of the Constitution.

38. The Constitutional Court found that the entitlement to nursing allowance as granted by an administrative decision on the basis of the previous provisions of the Family Allowances Act was a subjective and constitutionally protected right. It held that the disputed transitional regulation at subsections (1) and (3) of section 11 amounted to an interference with the properly acquired rights of some of the previous recipients of nursing allowance. The expiry by operation of law of nursing allowance that had been granted by administrative decision meant that the State's obligation to pay this allowance in the future ceased while, at the same time, there was no other substitute benefit that would adequately compensate for the loss of the previous entitlement. The provisions in question had had adverse consequences for persons who had acquired the right to a nursing allowance, but who, as a result of the 2012 Amending Act, did not fulfil the criteria for the new nursing allowance or the special carer's allowance.

39. The Constitutional Court found that the 2012 Amending Act was primarily aimed at ensuring rational management of public funds, so that where there were financial shortages those funds could be directed to the people most in need. The amendments limited the number of persons eligible for nursing allowance and thus indirectly limited the increasing burden on the State budget.

40. The Constitutional Court noted that assessing the constitutionality of exceptions to the principle of protecting properly acquired rights required it to ascertain whether the individual's expectation that subjective rights granted by the State would be continuously enjoyed was justified. The Constitutional Court held that, in the circumstances of this case, there had been a violation of the principle of properly acquired rights (*prawa słusznie nabyte*) and of maintaining citizens' confidence in the State and the

law made by it, as regards those persons who had been receiving nursing allowance on the basis of the previous version of the Family Allowances Act and who had not fulfilled the conditions for being granted nursing allowance or special carer's allowance on the basis of the same Act as amended by the 2012 Amending Act.

41. In this regard, the Constitutional Court found that the legislature's declared need to rationalise the system of benefits for carers in order to eliminate abuse did not in itself justify the abolition of properly acquired rights. As regards the transitional provisions in the 2012 Amending Act, the Constitutional Court noted that they should have created appropriate conditions to enable recipients of nursing allowance to adapt to the new legislation. However, the transitional provisions in the present case were flawed since they were unduly limited in time. Furthermore, in the Constitutional Court's view, there were no constitutional grounds for ending all grants of nursing allowance by operation of law irrespective of whether this was justified by the circumstances of individual beneficiaries. In doing so, the legislature was not furthering any constitutional norms which, in such a scenario, should take precedence over the protection of properly acquired rights and the principle of the State's loyalty to the citizen.

42. Finally, the Constitutional Court found that the implementation of its judgment would require amending the law.

E. The 2014 Act on the Establishment and Payment of Carer's Benefit ("the 2014 Act")

43. The 2014 Act entered into force on 15 May 2014.

44. The relevant provisions of the 2014 Act read as follows:

> "1. The Act specifies the conditions for entitlement to, and the rules for the determination and payment of, benefits to carers of persons who have lost their right to nursing allowance as of 1 July 2013 because of the expiry by operation of law of a grant of nursing allowance.
>
> 2(1). Carer's benefit shall be granted to a person if a decision granting him or her the right to nursing allowance has expired by operation of law pursuant to section 11(3) of the Act of 7 December 2012 Amending the Act on Family Allowances and Certain Other Acts ... as of 1 July 2013.
>
> 2(2). Carer's benefit shall be granted:
>
> (1) for periods from 1 July 2013 to the day preceding the date of entry into force of the [present] Act during which a person fulfilled the conditions for receiving nursing allowance specified in the Act of 28 November 2003 on Family Allowances ... in the wording in force on 31 December 2012.
>
> (2) from the date of entry into force of the [present] Act, if the person fulfils the conditions for receiving nursing allowance specified in the Act of 28 November 2003 on Family Allowances in the wording in force on 31 December 2012.
>
> 2(3). Carer's benefit for the periods referred to in subsection (2)(1) shall be paid with interest at the statutory interest rate prescribed by the provisions of civil law.

2(4). The interest referred to in subsection (3) shall accrue until the date of entry into force of the [present] Act.

2(5). Carer's benefit shall not be paid for periods in which:

(1) the person applying for carer's benefit was entitled to a special carer's benefit or nursing allowance, ...

4. Carer's benefit is fixed at PLN 520 per month.

...

9. Carer's benefits and the related administrative costs, pension contributions, disability insurance payments into the social security system and contributions to health insurance shall be financed from the State budget ..."

45. Under section 5(1) of the Act, proceedings for the determination of the right to carer's benefit were to be initiated by the relevant authority at the request of the person concerned, to be made no later than four months from the date of entry into force of the Act. Persons eligible for carer's benefit under section 2(1) of the Act would be informed by the relevant authority that they could apply for the benefit and told about the relevant conditions (section 8). Carer's benefit is granted for an indefinite period unless the disability certificate has been issued for a fixed period (section 6(1)).

46. The 2014 Act amended section 16a of the Family Allowances Act, which now provides that special carer's allowance can also be granted to persons who have not taken up employment or other paid work.

F. Amount of nursing allowance

47. The Act of 24 April 2014 Amending the Act on Family Allowances fixed the amount of the nursing allowance at PLN 800 per month for the period from 1 May to 31 December 2014; PLN 1,200 per month for the year 2015 and PLN 1,300 per month from 1 January 2016. This Act, which entered into force on 1 May 2014, also stipulated that nursing allowance would be subject to annual indexation from 2017.

G. Interpretation of section 17(1b) of the Act on Family Allowances in the case-law of the administrative courts following the Constitutional Court's judgment no. K 38/13 of 21 October 2014

48. In judgment no. II SA/Go 818/14 of 10 December 2014, the Gorzów Wielkopolski Regional Administrative Court held as follows:

"Under Article 190 §§ 3 and 4 of the Constitution, a judgment of the Constitutional Court declaring a specific provision of a statute unconstitutional means that as of the date of delivery of that judgment, pursuant to Article 190 § 2 of the Constitution, the unconstitutional statutory provision must not be applied in administrative court proceedings which have commenced and have not been finally determined before the delivery of that judgment.

> The wording of the operative part of point two of the [Constitutional] Court's judgment means that the 'effect' of the [Constitutional] Court's judgment in fact requires the exclusion of the criterion in section 17 of the Act on Family Allowances which makes the right to this [nursing] allowance for those providing care to disabled persons dependent on the time when the disability arose. It is clear that the declaration of unconstitutionality by the [Constitutional] Court affects all cases in which a refusal of nursing allowance ... is justified by the fact that the disability of the person requiring care arose after they had attained the age of eighteen, or twenty-five in the event of [continuing] education."

49. In judgment no. I OSK 1668/14 of 18 November 2015, the Supreme Administrative Court ruled as follows:

> "The substantive basis for refusing to grant the complainant nursing allowance as her husband's carer ... was section 17(1b) of the Family Allowances Act. This provision was not referred to in the grounds for the cassation appeal. However, it is necessary to consider the legitimacy of applying the rule contained in this provision. Where a party has lodged a cassation appeal and the Constitutional Court later rules that the provision on which the decision being appealed against was based on is unconstitutional, and the unconstitutional provision has not been referred to in the grounds of cassation appeal, the Supreme Administrative Court must apply the provisions of Article 190 §§ 1 and 4 of the Constitution directly, taking into account the Constitutional Court's judgment ... Such was the situation in the present case ... Taking into account the Constitutional Court's judgment leads not only to the quashing of the contested judgment [by the regional administrative court] ... It also makes it possible to set aside the contested [administrative] decision and the preceding unfavourable decision by the first-instance [administrative] authority."

50. In its judgment of 14 December 2016 no. I OSK 1614/16 the Supreme Administrative Court held as follows:

> "As regards carers for disabled adults whose disability arose no later than at the age of eighteen or twenty-five in the event of attending school or university, section 17(1b) is compatible with the Constitution and there are no legal obstacles to its application. On the other hand, as regards carers of persons requiring care whose disability arose later than that age, it is no longer constitutional for the criterion of the point in time when the disability arose to be used to prevent nursing allowance from being granted. In consequence, with regard to such persons the assessment of whether they fulfil the conditions for nursing allowance should be made without this criterion.
>
> The bench of the Supreme Administrative Court in the present case fully supports the view presented in the case-law that it is not permissible to base a[n administrative] decision refusing to grant nursing allowance or a court decision in such a case on that part of section 17(1b) of the Family Allowances Act which has been found to be incompatible with Article 32 § 1 of the Constitution ..."

COMPLAINTS

51. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention about having been divested – by operation of the 2012 Amending Act – of his acquired right to the nursing allowance. He alleged that from 1 July 2013 he had lost entitlement to any benefit and the accompanying contributions to the social security and health

insurance funds, although he continued to provide care to his mother. In his view, the transitional period prescribed in the 2012 Amending Act was too short. The applicant claimed that he would not be eligible for the special carer's allowance introduced by the 2012 Amending Act since it was means-tested.

52. The applicant also complained about the new eligibility condition for nursing allowance added in section 17(1b) of the Family Allowances Act by the 2012 Amending Act, namely that the disability of the person being cared for had to have arisen before he or she had attained the age of eighteen or twenty-five.

THE LAW

53. The applicant complained under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 to the Convention that he had lost his acquired right to nursing allowance by operation of the 2012 Amending Act and that from 1 July 2013 he had not been entitled to receive any benefit.

54. The Court considers that this complaint falls to be examined solely under Article 1 of Protocol No. 1 to the Convention which reads, in so far as relevant:

> "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."

55. The applicant also complained about the new eligibility condition for nursing allowance, namely that the disability of the person being cared for had to have arisen before he or she had attained the age of eighteen or twenty-five. The Court decided to give notice to the Government of this complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 and will examine it accordingly. Article 14 of the Convention reads as follows:

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

A. The parties' submissions

1. The Government

56. The Government first argued that the applicant had lost his victim status following the coming into force of the 2014 Act. As regards the acknowledgment of the violation, the Government referred to the Constitutional Court's judgments of 5 December 2013, no. K 27/13 and 21 October 2014, no. K 38/13 (see paragraphs 37-42 and 23-25 above respectively). They maintained that the above-mentioned judgments of the

Constitutional Court could be regarded as acknowledging in substance the violation of the applicant's right to property.

57. As regards the question of redress, the Government submitted that the Constitutional Court's judgment of 5 December 2013 was executed through the adoption of the Act on the Establishment and Payment of Carer's Benefit. This Act granted the right to carer's benefit on the same grounds and in the same amount as the right to nursing allowance which had expired by operation of law on 30 June 2013.

58. The interval between the expiry of the former entitlement to nursing allowance and the decision granting the new carer's benefit was not significant (approximately 11 months). In addition, the new benefit was paid with statutory interest.

59. The Government further noted that until 30 June 2013 the applicant had been receiving nursing allowance in the amount of PLN 520 per month. From the date of entry into force of the 2014 Act on 15 May 2014 he became entitled to apply for the new carer's benefit in exactly the same amount, and he was granted it by a decision of 13 June 2014. Furthermore, the new benefit was granted retrospectively with effect from 1 July 2013 and paid with statutory interest.

60. The Government further submitted that after the Constitutional Court's judgment of 21 October 2014 had been delivered, numerous individuals applied for the new nursing allowance. Where that allowance was refused on the basis of section 17(1b) of the Family Allowances Act, a complaint could be lodged with the administrative court.

61. The question of the interpretation of this provision had been the subject-matter of some four hundred and fifty judgments by the regional administrative courts and forty judgments by the Supreme Administrative Court, all of which ruled in favour of claimants and quashed the unfavourable decisions of the administrative authorities.

62. The Government cited in this regard some fourteen judgments by various regional administrative courts given on various dates between 23 October 2014 and 11 January 2018. They referred in particular to the Gorzów Wielkopolski Regional Administrative Court's judgment of 10 December 2014, no. II SA/Go 818/14 (see paragraph 48 above). They also cited eleven rulings given by the Supreme Administrative Court between 18 November 2015 and 5 December 2017.

63. The Government submitted that the above-mentioned practice was applied in the applicant's case, as he had been granted the nursing allowance by the Mayor of Starachowice's decision of 13 December 2016 (see paragraph 27 above).

64. In conclusion, the Government maintained that the applicant could no longer claim to be the victim of the alleged violation of Article 1 of Protocol No. 1 to the Convention and of Article 14 in conjunction with Article 1 of Protocol No. 1.

65. The Government raised other preliminary objections on the grounds of incompatibility *ratione materiae*, non-exhaustion of domestic remedies and abuse of rights of individual petition.

2. The applicant

66. In reply to the Government's objection as to the lack of victim status, the applicant claimed that he had victim status within the meaning of Article 34 of the Convention since the situation he had complained about had remained unchanged to date. In his view, the fact of being granted carer's benefit under the 2014 Act could not be regarded as appropriate and sufficient redress. Being eligible for this benefit was a subsidiary matter and did not restore the rights he had lost.

67. Referring to the Constitutional Court's judgment of 21 October 2014, the applicant submitted that the authorities had not implemented it. In his view, decisions of administrative authorities and courts issued in individual cases did not solve the systemic problem of different treatment in granting nursing allowance to carers of disabled adults. He also stressed that the Ministry of Family, Labour and Social Policy had confirmed that the administrative authorities were required to apply section 17(1b) of the Family Allowances Act, notwithstanding the Constitutional Court's judgment of 21 October 2014.

68. The applicant stressed that nursing allowance was subject to indexation, unlike carer's benefit. The difference between the amount of the nursing allowance and the amount of other benefits was not compensated for over time, which – in the applicant's view – confirmed his victim status.

69. On 13 December 2016 the applicant had been granted the right to nursing allowance but had not been compensated for the lack of indexation for the period after 30 June 2013. Moreover, carer's benefit was less advantageous because the authorities were not required to make pension contributions for its recipients.

70. The applicant also commented on the remaining preliminary objections raised by the Government (see paragraph 65 above).

3. Third-party intervener

71. In its third-party observations of 7 September 2018, the Helsinki Foundation for Human Rights submitted that to date the authorities had not implemented the Constitutional Court's judgment of 21 October 2014 and had not taken measures to ensure equal treatment of all carers of disabled persons.

72. The third-party intervener examined the practice of the administrative authorities and courts in cases concerning the grant of nursing allowance to carers of persons whose disability had arisen during their adult life. According to the data obtained for the years 2013-2018, practice had varied.

In general, the administrative authorities still tended to apply section 17(1b) of the Family Allowances Act, which had been held to be unconstitutional, and refused nursing allowance to carers of persons whose disability had arisen later than the date specified in that provision.

73. As regards the case-law of the Supreme Administrative Court, the intervener noted that that court had initially not applied the Constitutional Court's judgment of 21 October 2014 to carers of disabled adults in a consistent manner. The intervener's analysis of the decisions of the administrative authorities and courts concerning the grant of nursing allowance demonstrated that the individual decisions that were favourable to carers of disabled adults had failed to produce a consistent practice. For that reason, those individual decisions did not resolve the systemic problem at issue and the only solution was an appropriate legislative change.

74. The intervener submitted that the Ministry of Labour and Social Policy had categorically excluded the possibility of granting nursing allowance to carers of persons whose disability had arisen during their adult life. Furthermore, the opinion of the Ministry was that any administrative decisions that were favourable to carers belonging to that group were legally unfounded. In its view, section 17(1b) of the Family Allowances Act could not be excluded from an assessment of eligibility for nursing allowance.

B. The Court's assessment

75. In the present case, the Court does not consider it necessary to reach a conclusion on the objections raised by the Government; in particular, on the question whether the applicant can still claim to be "victim" of a violation of Article 1 of Protocol No. 1 and Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention (see paragraphs 56 and 65 above). In the light of the parties' submissions, the Court considers that, for the reasons set out below, there is no objective justification for continuing to examine the application.

76. The Court reiterates that, under Article 37 § 1 (b) of the Convention, it may "... at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that ... the matter has been resolved ...". In order to ascertain whether that provision applies to the present case, the Court must examine, firstly, whether the circumstances complained of directly by an applicant still obtain and, secondly, whether the effects of a possible violation of the Convention on account of those circumstances have also been redressed (see *Pisano v. Italy* (striking out) [GC], no. 36732/97, § 42, 24 October 2002; *Sisojeva and Others v. Latvia* (striking out) [GC], no. 60654/00, §§ 96-97, ECHR 2007-I; *El Majjaoui and Stichting Touba Moskee v. the Netherlands* (striking out) [GC], no. 25525/03, §§ 29-30, 20 December 2007; and, most recently, *Vadalà v. Italy* (dec.), no. 14656/15, § 37, 7 November 2023).

77. In the instant case, as regards the applicant's complaint about being divested of entitlement to nursing allowance by operation of the 2012 Amending Act the Court notes the following. The Constitutional Court in judgment no. K 27/13 of 5 December 2013 found that the entitlement to nursing allowance granted by an administrative decision under the previous provisions of the Family Allowances Act amounted to a subjective and constitutionally protected right (see paragraphs 37-42 above). Section 11(1) and (3) of the 2012 Amending Act, which automatically set aside all administrative decisions granting the above mentioned right, amounted – according to the Constitutional Court – to an interference with the properly acquired rights of those persons who, like the applicant, did not fulfil the conditions for the new nursing allowance or special carer's allowance under the amended Family Allowances Act (see paragraph 38 above). Furthermore, the Constitutional Court held that there was no constitutional justification for quashing, by operation of law, all administrative decisions granting nursing allowance regardless of the individual circumstances of the persons concerned (see paragraph 41 above).

78. Secondly, the Court notes that the Constitutional Court's judgment no. K 27/13 of 5 December 2013 was implemented through the adoption of the 2014 Act. This Act, which entered into force on 15 May 2014, expressly stated in section 2(1) that carer's benefit was available to those persons who had been divested, by operation of law, of their right to nursing allowance granted previously by administrative decision. The Court notes that the applicant was granted carer's benefit under the 2014 Act in the same amount (PLN 520 per month) as his previous nursing allowance and for an indefinite period. Furthermore, the carer's benefit was paid to the applicant retrospectively, that is, as from 1 July 2013 and with statutory interest (see paragraphs 20-21 above). As regards the interval of nearly twelve months between the expiry by operation of law of the right to nursing allowance and the decision granting the right to the new benefit, the Court considers that the applicant's situation is to be distinguished from that of the applicant in *Moskal v. Poland* (no. 10373/15, 15 September 2009). In that case, the applicant, having lost her entitlement to an early-retirement pension, had to wait three years for the recognition of her right to another benefit, which was about 50% lower (ibid., § 75). In addition, contrary to the applicant's assertion, the 2014 Act specifically provided in section 9 that contributions to the social security and health insurance funds for recipients of carer's benefit would be financed from the State budget (see paragraph 44 above).

79. Against this background, the Court considers that, following the enactment of the 2014 Act and the grant of carer's benefit to the applicant in the same amount, paid retrospectively with statutory interest, the circumstances complained of by the applicant no longer obtain and the effects of a possible violation of the Convention on account of those circumstances

have been redressed. The Court finds therefore that both conditions for the application of Article 37 § 1 (b) of the Convention are met (see *El Majjaoui and Stichting Touba Moskee*, cited above, §§ 30-34, and *Vadalà*, cited above, § 35).

80. The applicant further complained under Article 14 in conjunction with Article 1 of Protocol No. 1 to the Convention about the new eligibility condition for nursing allowance set out in section 17(1b) of the Family Allowances Act, as amended by the 2012 Amending Act, which provided that the disability of the person being cared for had to have arisen before he or she had attained the age of eighteen or twenty-five.

81. As regards this complaint, the Court notes that in judgment no. K 38/13 of 21 October 2014 the Constitutional Court had held that section 17(1b) of the Family Allowance Act was incompatible with Article 32 § 1 of the Constitution, which protects the right to equal treatment, in so far as it differentiated the right to nursing allowance for carers of a disabled person depending on the time when the disability of the person being cared for had arisen (see paragraphs 23-24 above). The Constitutional Court had found that the criterion set out in section 17(1b) of the Family Allowances Act amounted to discrimination with regard to the right to nursing allowance that had no constitutional justification (see paragraph 25 above).

82. The Court further takes note of the argument of the applicant and the third-party intervener that the authorities had failed to adopt a legislative amendment with a view to implementing the relevant judgment of the Constitutional Court. However, the Court reiterates that its task is not normally to review the relevant law and practice *in abstracto*, but to determine whether the manner in which they were applied to, or affected, the applicant gave rise to a violation of the Convention (see, among other authorities, *Centre for Legal Resources on behalf* of *Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 101, ECHR 2014, and *Roman Zakharov v. Russia* [GC], no. 47143/06, § 164, ECHR 2015). Accordingly, the Court will limit its examination to the specific situation of the applicant.

83. It notes in this context the practice of the administrative courts relating to the interpretation of section 17(1b) of the Family Allowances Act as established after the Constitutional Court had delivered its judgment of 21 October 2014 (no. K 38/13). In accordance with that practice, a decision refusing to grant nursing allowance could not be based on the part of the impugned provision that had been declared unconstitutional (see paragraphs 48-50 above). According to the Government, this was the established practice of both the regional administrative courts and the Supreme Administrative Courts. They referred to 450 judgments of the regional administrative courts (citing fourteen specific rulings) and forty judgments of the Supreme Administrative Courts (citing eleven specific rulings) which confirmed that practice.

84. In the present case, the applicant applied for the new nursing allowance on 28 October 2016 and obtained a favourable decision on 13 December 2016 (see paragraph 27 above). That decision was taken in compliance with the above-mentioned practice relating to the interpretation of section 17(1b) of the Family Allowance Act, since the applicant's mother's disability had arisen after she had attained the age specified in this provision.

85. Consequently, the Court finds that the circumstances also under this complaint no longer obtain and the effects of a possible violation of the Convention on account of those circumstances have likewise been redressed.

86. Accordingly, the matter giving rise to the application, under of Article 1 of Protocol No. 1 and Article 14 in conjunction with Article 1 of Protocol No. 1, can be considered to have been "resolved" within the meaning of Article 37 § 1 (b) of the Convention. The Court also reiterates that it is not required, for the purposes of Article 37 § 1 (b) of the Convention, that the national authorities acknowledge a violation of the Convention or that the applicant, in addition to having obtained a resolution of the matter, is also granted compensation (see *H.P. v. Denmark* (dec.), no. 55607/09, § 78, 13 December 2016). Finally, no particular reason relating to respect for human rights as defined in the Convention requires the Court to continue the examination of the complaints at issue under Article 37 § 1 *in fine*.

87. Accordingly, the application should be struck out of the Court's list of cases

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 11 January 2024.

Liv Tigerstedt Deputy Registrar	Marko Bošnjak President