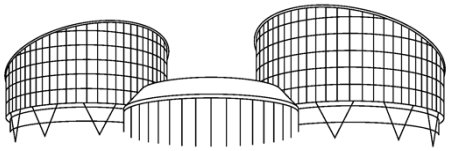

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF GROBELNY v. POLAND

(Application no. 60477/12)

JUDGMENT

Art 1 P1 • Peaceful enjoyment of possessions • Discontinuation of disability pension as a result of incorrect assessment of applicant's fitness for work • Compensation refused on ground of res judicata principle despite existence of relevant and sufficient reasons to depart from it in order to secure respect for social justice and fairness • Disproportionate burden on applicant who was made to bear consequences of mistake attributable to authorities • Particular importance of the principle of good governance in this context • Authorities' failure to provide legal solution allowing applicant to receive compensation

STRASBOURG

5 March 2020

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 Grobelny v. Poland,

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

Ksenija Turković, *President,*
Krzysztof Wojtyczek,
Aleš Pejchal,
Armen Harutyunyan,
Pere Pastor Vilanova,
Pauliine Koskelo,
Tim Eicke, *judges,*

and Abel Campos, *Section Registrar,*

Having deliberated in private on 11 February 2020,

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

PROCEDURE

1. The case originated in an application (no. 60477/12) 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, Mr Mieczysław Grobelny ("the applicant"), on 11 September 2012.

2. The applicant was represented by Ms K. Janik, a lawyer practising in Bielsko-Biała. The Polish Government ("the Government") were represented by their Agent, Ms J. Chrzanowska, and subsequently by Mr J. Sobczak, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the refusal to grant him compensation for a period of twenty-one months – during which time, in spite of his recognised incapacity to perform farm work, he had remained without any financial support from the State – had violated his Convention rights.

4. On 5 January 2015 notice of the application was given to the Government under Article 1 of Protocol No. 1 to the Convention.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1953 and lives in Lubniewice.

6. He is a farmer insured by the Farmers' Social Security Fund (*Kasa Rolniczego Ubezpieczenia Społecznego*) ("the Fund"), to which he has been paying his social security contributions.

A. The discontinuation of the applicant's disability pension

7. From 1994 until 31 March 2008 the applicant received a disability pension because he was completely unfit for farm work.

8. On 16 May 2008 the Zielona Góra Farmers' Social Security Fund, having had the applicant examined first on 7 April 2008 by its medical expert (*lekarz rzeczoznawca Kasy Rolniczego Ubezpieczenia Społecznego*) and again on 15 May 2008 by its medical board (*komisja lekarska Kasy Rolniczego Ubezpieczenia Społecznego*), issued a decision finding that he was not completely unfit for farm work. He was consequently refused further payments of his disability pension with effect from 1 April 2008.

9. The applicant appealed, submitting that his state of health had not changed or improved.

10. On 9 July 2009 the Gorzów Wielkopolski Regional Court (*Sąd Okręgowy*) dismissed his appeal. The court ordered a number of medical reports from experts in internal medicine, orthopaedics, gastroenterology, neurology, psychiatry, diabetology and vascular surgery. Having examined the applicant and his medical documentation, the experts found that he was not completely unfit for farm work. Relying on the above-mentioned expert reports, the Regional Court reached a concurring conclusion, moreover holding that the applicant's "subjective feelings" with respect to his health were irrelevant as evidence.

11. The applicant appealed against the first-instance judgment, challenging in particular the expert report in neurology and orthopaedics.

12. On 26 November 2009 the Szczecin Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal. The appellate court fully concurred with the factual findings and legal assessment of the court of first instance, holding that the experts had correctly assessed the applicant's state of health.

13. In December 2009 the applicant underwent surgical treatment for an L5 disc herniation in the Szczecin Neurosurgical Clinic.

14. On 31 December 2009 the applicant was served with a copy of the judgment of the Szczecin Court of Appeal of 26 November 2009, together with information about the right to lodge a cassation appeal with the Supreme Court.

B. The reinstatement of the applicant's disability pension

15. On 19 January 2010 the applicant again lodged a request with the Zielona Góra Farmers' Social Security Fund to grant him a disability pension on account of his being completely unfit for farm work.

16. On 26 March 2010, in the course of the proceedings conducted by the Farmers' Social Security Fund, the Fund's medical board declared the applicant temporarily completely unfit for farm work from 17 December

2009 until 28 February 2011. However, on 6 April 2010, the Fund refused the applicant's request for a disability pension, finding that he had not fulfilled one of the conditions for being granted that benefit – namely, he had not paid social insurance contributions for the required period of time.

17. On 27 April 2010 the applicant lodged an appeal against the aforementioned decision with the Regional Court.

18. On 24 September 2010 the Gorzów Wielkopolski Regional Court found the appeal well-founded and, referring to section 22(2) of the Farmers' Social Security Act of 20 December 1990 (*Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników*) ("the 1990 Act"), reinstated the applicant's right to a disability pension, with effect from 19 January 2010 – that is to say the day on which the request had been lodged. The Regional Court found that the fact that the applicant had been fully unfit for farm work was undisputed and acknowledged by the defendant (the Fund). Moreover, referring to the medical report dated 18 June 2010 ordered for the purpose of the pending court proceedings and issued by experts in internal medicine, orthopaedics, neurology and psychiatry, the court established that the applicant had been completely unfit for farm work throughout the whole period starting from the end of March 2008 – that is to say from the day on which he had stopped receiving the above mentioned pension. The forensic experts – of whom at least two (the neurologist, a certain J.W., and the orthopedist, a certain J.B.) – had also issued their respective medical reports for the purpose of the previous set of proceedings in which the applicant's disability pension had been discontinued, had prepared their latest reports on the basis of the medical documentation previously available to them, as well as on the medical files relating to the applicant's treatment in the Szczecin Neurosurgical Clinic in December 2009. The court noted that they had indicated, without providing further details, that during the previous set of proceedings they had not had at their disposal the complete medical documentation and procedural files concerning the applicant (*dokumentacja orzecznicza*). Thus, in the reports issued for the purposes of the second set of proceedings they had reached a conclusion contrary to their previous findings, even though the applicant's state of health had not improved and he had been completely unfit for farm work for the whole time. Lastly, the experts had indicated that the applicant's complete inability to perform farm work would cease to exist no earlier than on 30 April 2011. Consequently, the Regional Court reinstated the applicant's entitlement to a disability pension until that date.

19. The applicant appealed against the judgment of the Regional Court, in particular demanding that his right to a disability pension be reinstated with effect from 1 April 2008.

20. On 27 January 2011 the Szczecin Court of Appeal dismissed the applicant's appeal. The court held that, given the scope of the principle of *res iudicata*, it was impossible to re-examine and re-establish the issue of

the applicant's state of health, even though the experts in the ongoing proceedings had declared him completely unfit for farm work as of 31 March 2008. The court referred in this respect to a Supreme Court judgment of 18 February 2003 (file no. II UK 139/02) issued in a similar case. According to that judgment, an expert report which is contradictory to a final judgment is not subject to the court's assessment. Therefore, the court found itself bound by the findings made in the first set of proceedings, in the judgment of the Szczecin Court of Appeal of 26 November 2009 (see paragraph 14 above).

21. On 23 February 2011 the applicant was served with a copy of the aforementioned judgment delivered by the Szczecin Court of Appeal.

C. The applicant's claim for compensation

22. On 1 August 2011 the applicant, relying on Article 417 of the Civil Code (*Kodeks cywilny*), brought a civil action for compensation against the Zielona Góra Farmers' Social Security Fund. He considered that he should have been paid a disability pension for the whole period of his incapacity to perform farm work, starting from 1 April 2008. Thus, he demanded a payment of 13,850 Polish zlotys (PLN – approximately 3,462 euros (EUR)) covering the twenty-one months during which he had been deprived of his social benefits, together with and PLN 1,260 (approximately EUR 315) by way of reimbursement of the cost of the medical examination that he had undergone at his own expense and which had confirmed his incapacity for work.

23. On 29 February 2012 the Sulęcin District Court (*Sąd Rejonowy*) refused to grant the applicant the demanded compensation, finding that the requirements set out in Article 417 of the Civil Code had not been met – that is to say the activities of the Fund as a State representative had not been illegal (*bezprawne*). The District Court established that the medical experts had confirmed that they had not had at their disposal the complete relevant medical documentation and procedural files when they had issued the first medical report concerning the applicant. As a result, their second medical report had contained conclusions contrary to their previous evaluation of the applicant's state of health. Nevertheless, it held that it could not override the final and legally binding judgment of 26 November 2011 issued by the Szczecin Court of Appeal, neither with respect to the appellate court's legal assessment nor the underlying factual findings, owing to the scope of the principle of *res iudicata*, as provided in Article 365 of the Code of Civil Procedure (*Kodeks postępowania cywilnego*), which precluded it from ruling anew on the issue of whether the applicant had been completely unfit for farm work after 31 March 2008. The court also referred in this regard to the Supreme Court's judgment of 18 February 2003 (file no. II UK 139/02). Thus, the District Court found itself bound to disregard the experts' report

issued during the second set of disability-pension proceedings instituted by the applicant to the extent to which it contradicted the judgment of the Court of Appeal. Moreover, it held that the courts in the previous sets of proceedings had not made any flagrant mistakes in their interpretation and application of the relevant legal principles that could have triggered the liability of the State Treasury.

24. The applicant appealed against the first-instance judgment.

25. On 29 June 2012 the Gorzów Wielkopolski Regional Court dismissed his appeal. The Regional Court concurred with the legal assessment of the court of first instance as regards the lawfulness of the Fund's activity and the protection of the principle of legal certainty, construed as the principle *res iudicata*, and referred to the same Supreme Court judgment. Moreover, the court considered that the applicant had failed to prove that the lack of the complete medical documentation and procedural files had resulted from a failing on the part of the Fund. Additionally, the Regional Court examined the case under Article 417^2 of the Civil Code, which allowed the granting of compensation even in the event that the actions of the State representative in question had been legal, the condition for qualifying for such compensation being here a bodily injury *(szkoda na osobie)*. The court, however, also refused to award compensation on those grounds, holding that the damage suffered by the applicant had been purely pecuniary in nature. Given the amount of the claim, a cassation appeal was not available in these proceedings.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. The Farmers' Social Security Act of 20 December 1990 (*Ustawa z dnia 20 grudnia 1990 r. o ubezpieczeniu społecznym rolników*) ("the 1990 Act")

26. The right to a disability pension is regulated by sections 21 and 22 of the 1990 Act, which at the relevant time read in their pertinent parts as follows:

Section 21.1.

"An insured person is entitled to a disability pension if he meets ... the following requirements:

...;

(2) [he is], permanently or temporarily, completely unfit for farm work;

...;"

Section 22.2.

"A right to a disability pension [owing to] being unfit for work that has expired because the state of complete incapacity for work [has ended] shall be reinstated if

within eighteen months of the date of expiry of that right the applicant is again found to be unfit for farm work."

27. Section 44(2), read in conjunction with section 6(6) of the 1990 Act, as applicable at the material time, contained a reference to the rules specified in the relevant provisions of the Act of 13 October 1998 on the System of Social Insurance (*Ustawa o systemie ubezpieczeń społecznych*) ("the 1998 Act") with regard to the issue of a re-assessment of the right to social benefits, including a disability pension, both *ex officio and* upon an insured person lodging an application therefor.

B. The Act of 13 October 1998 on the System of Social Insurance ("the 1998 Act")

28. Section 114 of the 1998 Act read at the relevant time as follows:

"1. The right to benefits, or the amount [thereof], will be re-assessed – [either] upon an application being lodged by the person concerned or *ex officio* – if, after the validation of the decision concerning benefits, new evidence is submitted or circumstances which existed before the issuance of the decision and which have an impact on the right to benefits or the amount thereof are discovered.

...

2. If the right to benefits or the amount thereof was established by a decision of an appellate authority, the pension authority, on the basis of the evidence or circumstances specified in paragraph 1:

(1) shall issue of its own motion a decision allotting the right to benefits or increasing the amount thereof;

..."

C. The Civil Code (*Kodeks cywilny*)

29. Article 415 of the Civil Code reads as follows:

"Anyone who has inflicted damage on another person through their own fault shall make redress for it."

30. Article 417 § 1 of the Civil Code reads, in so far as relevant, as follows:

"1. The State Treasury, a municipality or another legal person wielding public power by virtue of the law shall be liable for damage caused by an unlawful act or [failure to act] in the exercise of that power."

31. Article 417^2 § 1 of the Civil Code reads, in so far as relevant, as follows:

"If by a lawful act [of a state official] a bodily injury has been inflicted *(szkoda na osobie)* the harmed person may demand full or partial compensation and just satisfaction if the circumstances – in particular their incapacity for work or their difficult financial situation – indicate that that is required by the principles of equity."

D. The Code of Civil Procedure (*Kodeks postępowania cywilnego*)

32. The principle of legal certainty, construed as the principle of *res iudicata*, is regulated by Articles 365 and 366 of the Code of Civil Procedure, of which the relevant parts read as follows:

Article 365.1.

"A final and binding judgment shall be binding not only on the parties and the court that rendered the judgment, but also on other courts, State and public administrative authorities, and other persons in such instances as provided for by the law.

..."

Article 366

"A final and binding judgment shall have the force of *res iudicata* only with regard to that which constituted the subject matter of the case [that is to say the) basis of the dispute, and only between the same parties [as those that were the parties to the previous dispute]."

33. The possible grounds for lodging a cassation appeal with the Supreme Court, together with the admissibility criteria, are set out in Articles $398,^{1}$ 398^{2} and 398^{3} of the Code of Civil Procedure, which read, in so far as relevant, as follows:

Article 398^{1}.1.

"A final and binding judgment rendered by a court of second instance, or a decision rejecting a statement of claim, or a decision discontinuing proceedings, which terminate the proceedings, may be appealed against to the Supreme Court by a party [to the case in question], the Prosecutor General, the Civil Rights Ombudsman or the Children's Rights Ombudsman, unless otherwise provided by law."

Article 398^{2}.1.

"No cassation appeal may be lodged with the Supreme Court in cases regarding pecuniary interests (*sprawy o prawa majątkowe*) where the value of the rights disputed in that appeal (*wartość przedmiotu zaskarżenia*) is lower than fifty thousand Polish zlotys or, in cases pertaining to labour law and social security, lower than ten thousand Polish zlotys. However, in cases pertaining to social security a cassation appeal may be lodged, irrespective of the value of the rights disputed in that appeal, in cases concerning the establishment or suspension of a retirement or disability pension or in cases concerning enrolment in a mandatory social security scheme. Notwithstanding the value of the rights disputed in an appeal, a cassation appeal may also be lodged in cases concerning compensation for damage caused by the issuance of an unlawful final and binding judgment."

Article 398^{3}.1.

"A cassation appeal to the Supreme Court may rely on the following grounds:

(1) a breach of substantive law due to its incorrect interpretation or incorrect application;

(2) a breach of the procedural law, if such a breach could have a significant impact on the outcome of the case.

2. The Prosecutor General may rely in a cassation appeal on the grounds specified in paragraph 1 if a decision was issued in violation of the fundamental principles of the rule of law. The Civil Rights Ombudsman may rely in a cassation appeal on the same grounds if a decision was issued in violation of constitutional freedoms or human and civil rights, as may the Children's Rights Ombudsman if a decision was issued in violation of children's rights.

3. A cassation appeal may not be based on allegations concerning the establishment of facts or the evaluation of evidence."

34. The issue of the reopening of proceedings is regulated in Article 403 of the Code of Civil Procedure, which reads as follows:

"1. The reopening of proceedings may be requested on the following grounds:

(1) when a judgment was based on a forged or modified document or on a conviction that was later set aside;

(2) when a judgment was delivered as a result of a criminal offence.

2. The reopening [of proceedings] may also be requested if it is later discovered that a final and binding judgment concerning the same legal relation was issued or if facts or items of evidence which might have affected the outcome of the case but which the party could not have presented during the original proceedings are discovered.

3. *(repealed)*

4. The reopening [of proceedings] may also be requested if the contents of a judgment was affected by a non-final decision issued based on a legislative act that was later declared by the Constitutional Court to be incompatible with the Constitution, a ratified international treaty or a legal act, or [that was] repealed or amended in accordance with Article 416^1."

THE LAW

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

35. The applicant complained that, given the circumstances of the case, the refusal to grant him compensation for the period of twenty-one months when, in spite of his recognised incapacity for farm work, he had remained without any financial support from the State had amounted to an unjustified deprivation of property. This complaint falls to be examined under Article 1 of Protocol No. 1 to the Convention, which reads as follows:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in

accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

36. The Government contested that argument.

A. Admissibility

1. Compliance with the six-month rule

(a) The parties' submissions

37. The Government also argued that the present application should be declared inadmissible as having been lodged after the expiry of the six-month time-limit. They referred to the case of *Fernie v. the United Kingdom* (dec.), no. 14881/04, 5 January 2006, which was declared inadmissible for failure to comply with the six-month rule because after the termination of the domestic proceedings before the Court of Appeal the applicant had lodged an appeal with the House of Lords, which was inadmissible in law.

38. In that respect the Government submitted that the applicant had availed himself of a remedy that had had no prospect of success, namely a compensation claim under Article 417 of the Civil Code, and that the final domestic decision relevant for the calculation of the time-limit for lodging the application with the Court had been delivered by the Szczecin Court of Appeal on 27 January 2011 and served on the applicant on 23 February 2011.

39. The Court reiterates that the six month time-limit imposed by Article 35 § 1 of the Convention requires applicants to lodge their applications within six months of the final decision in the process of the exhaustion of domestic remedies. This requirement entitles only remedies that are normal and effective to be taken into account, as an applicant cannot extend the strict time-limit imposed under the Convention by seeking to make inappropriate or misconceived applications to bodies or institutions that have no power or competence under the Convention to offer effective redress for the complaint in issue (see *Fernie*, cited above).

40. In his observations of 6 July 2015 the applicant requested the Court to deem the case admissible, even assuming non-compliance with the six-month rule.

(b) The Court's assessment

41. The Court notes that after the termination of the second set of proceedings concerning the applicant's right to a disability pension, on 1 August 2011 the applicant lodged a civil claim for compensation. Courts at two levels of jurisdiction dismissed his claim and his appeal. However, they examined the applicant's claim on the merits and, having applied and interpreted the relevant domestic provisions, concluded that compensation

could not be granted because the activities of the agents of the State had not been illegal (see paragraph 23 above). Moreover, the second-instance court additionally examined the applicant's claim under Article 417^2 of the Civil Code in order to determine whether compensation could be granted to the applicant on equity grounds. Accordingly, the Court does not share the Government's view that the applicant's compensation claim had clearly had no prospect of success.

42. The instant case is not similar to the case referred to by the Government (see paragraph 47 below), where the applicant made use of a remedy that was inadmissible in law. In the instant case the applicant instituted a new set of proceedings, claiming compensation from the State. The Court considers that the applicant should not bear the negative consequences of the fact that he tried to find a legal solution at the domestic level, through available remedies that did not exclude any prospect of success. The Court has already found that it should not be held against the applicants if they used the domestic remedies acting neither unreasonably nor contrary to the wording of the domestic law (see *Zdravka Kušić and Others v. Croatia (dec.)*, no. 71667/17, 10 December 2019, §§86-87).

43. Bearing in mind the above considerations, the Court holds that the final effective domestic decision for the purposes of calculating the six-month period was the Gorzów Wielkopolski Regional Court's judgment of 29 June 2012. It follows that the application was not lodged out of time.

2. Exhaustion of domestic remedies

(a) The parties' submissions

44. The Government submitted that the applicant had failed to exhaust all available domestic remedies, given that he had not lodged cassation appeals against the judgments delivered on 26 November 2009 and 27 January 2011 by the Szczecin Court of Appeal.

45. They expressed the view that that remedy would have been effective and had been available, as required by the Court's case-law, submitting in the first place that the question of whether a cassation appeal was to be lodged had depended exclusively on the will of the applicant and had not been up to the discretion of any authority. They referred in this respect to a statement made by the Court in respect of the case of *Immobiliare Saffi v. Italy* [GC], no. 22774/93, ECHR 1999-V, § 42, in which the Italian Government's preliminary objection that the applicant company had not exhausted domestic remedies was dismissed by the Court. The Government also submitted that a cassation appeal did not constitute an "extraordinary procedure in the understanding of the Court's case-law". The Government referred to the cases of *Çinar v. Turkey* (dec.), no. 28602/95, 13 November 2013, *Prystavska v. Ukraine* (dec.), no. 21287/02, 17 December 2002, *Horvat v. Croatia*, no. 51585/99, ECHR 2001-VIII, and *Hartman*

v. the Czech Republic, no. 53341/99, ECHR 2003-VIII. By way of justification for their submission regarding the effectiveness of a cassation appeal in cases relating to a disability pension, the Government invoked a Supreme Court judgment of 12 February 2009 (file no. III UK 71/08) and considered that any doubts on the part of the applicant, who had been aware of the existence of a cassation appeal, had not absolved him from the obligation to exhaust the domestic remedies; the Government referred in that respect to the cases of *Epözdemir v. Turkey* (dec.), no. 57039/00, 31 January 2002, and *Pellegriti v. Italy* (dec.), no. 77363/01, 26 May 2005).

46. They furthermore submitted that the applicant should have brought an action for compensation against the medical experts under Article 415 of the Civil Code.

47. Moreover, when communicating the case, the Court asked the parties whether an application for the reopening of the relevant proceedings on the grounds of a new assessment of the applicant's state of health could be considered to constitute an effective remedy in the present case. In that respect the Government submitted that the new assessment of the applicant's state of health had been prepared essentially on the basis of the same evidence as had the previous assessment and that it could not amount to "new factual circumstances" that would justify the reopening of the proceedings under Article 403 (2) of the Code of Civil Procedure. At the same time the Government did not make any submissions regarding the applicability of section 114 of the 1998 Act to the present case.

48. The applicant did not make any comments regarding the non-exhaustion of domestic remedies or the reopening of the relevant proceedings.

(b) The Court's assessment

49. At the outset the Court reiterates that the only remedies that Article 35 of the Convention requires to be exhausted are those which are related to the breaches alleged and which at the same time are available and sufficient. The existence of such remedies must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see, among other authorities, *Akdivar and Others v. Turkey* [GC], no. 21893/93, ECHR 1996-IV, § 65, and *Pellegriti* (cited above).

50. The Court furthermore notes that in assessing the availability and effectiveness of a remedy, the specific circumstances of each case should be taken into consideration. In the present case, after termination of the proceedings that ended on 27 January 2011, the applicant instituted civil proceedings for compensation against the Zielona Góra Farmer's Social Security Fund (see paragraph 22 above). As the Court found above, these proceedings were not deprived of prospect of success; the applicant's compensation claim was examined on the merits (see paragraph 41 above).

51. The Court recalls its case-law, according to which if more than one potentially effective remedy is available, the applicant is only required to have used one of them (*Moreira Barbosa v. Portugal* (dec.), no. 65681/01, ECHR 2004-V (extracts); *Aquilina v. Malta* [GC], no. 25642/94, § 39, ECHR 1999-III). When one remedy has been attempted, use of another remedy which has essentially the same purpose is not required (*Kozacıoğlu v. Turkey* [GC], no. 2334/03, §§ 40 et seq., 19 February 2009; *Micallef v. Malta* [GC], no. 17056/06, § 58, ECHR 2009; *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019). The Court considers that having made the compensation claim against the Zielona Góra Farmer's Social Security Fund the applicant exhausted a domestic remedy that gave the authorities the opportunity to prevent or put right the alleged violations of the Convention on the domestic level. It follows that the Government's pleas on inadmissibility must be rejected.

3. Conclusion on admissibility

52. The Court concludes that the applicant complied with the six-month rule and exhausted the effective domestic remedies available to him. It furthermore notes that the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

53. The applicant submitted that the refusal to grant him compensation for the period of twenty-one months during which, in spite of his recognised incapacity for farm work, he had remained without any financial support from the State had violated his Convention rights.

(b) The Government

54. The Government submitted that the refusal to grant the applicant compensation had not amounted to a disproportionate interference with his property rights that had been in breach of Article 1 of Protocol No. 1 to the Convention. In the Government's view, the applicant had availed himself of legal action that had not offered any prospects of success, as the Fund had not committed any delict (that is to say tort) to the applicant's detriment and its actions had not been illegal. Thus, they considered that the dismissal of his claim by the domestic courts, which had correctly applied the relevant domestic law, could not have contributed to any interference with the applicant's property rights.

2. The Court's assessment

(a) General principles

55. The Court points out that Article 1 of Protocol No. 1 comprises three distinct rules: the first rule, set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of the peaceful enjoyment of property; the second rule, contained in the second sentence of the first paragraph, covers the deprivation of possessions and subjects it to certain conditions; the third rule, stated in the second paragraph, recognises that the Contracting States are entitled to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties. The three rules are not, however, "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many authorities, *AGOSI v. the United Kingdom*, 24 October 1986, § 48, Series A no. 108, and *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 185, ECHR 2012).

56. The Court reiterates that the principles that apply generally in cases brought under Article 1 of Protocol No. 1 to the Convention are correspondingly relevant when it comes to social and welfare benefits. In particular, Article 1 of Protocol No. 1 to the Convention does not create a right to acquire property. This provision places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit - whether conditional or not on the prior payment of contributions - that legislation must be regarded as generating possessions falling within the ambit of Article 1 of Protocol No. 1 to the Convention for persons satisfying its requirements (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2005-X).

57. In a modern democratic State many individuals are, for all or part of their lives, 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. Where an individual has an assertable right under domestic law to a welfare benefit, the importance of that interest should also be reflected by holding Article 1 of Protocol No. 1 to the Convention to be applicable (see, among other authorities, *Stec and Others*, cited above, § 51).

58. The mere fact that a property right is subject to revocation in certain circumstances does not prevent it from being a "possession" within the

meaning of Article 1 of Protocol No. 1 to the Convention (see *Beyeler v. Italy* [GC], no. 33202/96, § 105, ECHR 2000-I, and *Moskal v. Poland*, no. 10373/05, § 40, 15 September 2009).

On the other hand, where a legal entitlement to the economic benefit at issue is subject to a condition, a conditional claim that lapses as a result of the non-fulfilment of that condition cannot be considered to amount to "possessions" for the purposes of Article 1 of Protocol No. 1 (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, §§ 82-83, ECHR 2001-VIII, and *Rasmussen v. Poland*, no. 38886/05, §71, 28 April 2009).

59. The Court furthermore reiterates that the first and most important requirement of Article 1 of Protocol No. 1 to the Convention is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful: the second sentence of the first paragraph authorises a deprivation of possessions only "subject to the conditions provided for by law", and the second paragraph recognises that the States have the right to control the use of property by enforcing "laws" (see *The former King of Greece and Others v. Greece* [GC], no. 25701/94, §§ 79 and 82, ECHR 2000-XII).

60. Article 1 of Protocol No. 1 to the Convention also requires that a deprivation of property for the purposes of its second sentence be in the public interest and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see, among others authorities, *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and 72552/01, §§ 81-94, ECHR 2005).

61. Moreover, according to the principle of "good governance", where an issue in the general interest is at stake it is incumbent on the public authorities to act in good time, in an appropriate manner and with the utmost consistency (see *Beyeler*, cited above, § 120, and *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008).

62. Lastly, Article 1 of Protocol No. 1 to the Convention requires a fair balance between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights, so that no disproportionate burden is imposed on an applicant (see, among many other authorities, *Jahn and Others* [GC], cited above, § 93). In particular, 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, and *Brumărescu v. Romania* [GC], cited above, § 78). Despite the margin of appreciation given to the State, the Court must nevertheless, in the exercise of its power of review, determine whether the requisite balance was maintained in a manner consonant with the applicant's right to property (see *Rosinski v Poland*, no. 17373/02, § 78, 17 July 2007). The concern to achieve this balance is reflected in the structure of Article 1 of Protocol No. 1 to the

Convention as a whole, including, therefore, the second sentence, which is to be read in the light of the general principle enunciated in the first sentence. In particular, there must be a reasonable relationship of proportionality between the means employed and the aim sought to be realised by any measure depriving a person of his possessions (see *Pressos Compania Naviera S.A. and Others v. Belgium*, 20 November 1995, § 38, Series A no. 332, and *The former King of Greece and Others*, cited above, § 89). Thus, the balance to be maintained between the demands of the general interest of the community and the requirements of fundamental rights is upset if the person concerned has had to bear a "disproportionate burden" (see, among many other authorities, *The Holy Monasteries v. Greece*, 9 December 1994, §§ 70-71, Series A no. 301-A).

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

(i) Substantive scope of the application of Article 1 of Protocol 1 to the Convention

63. The Court notes that the applicant was awarded a disability pension in 1994 and was receiving it until 31 March 2008. There is no dispute that the applicant was unfit for work from 1 April 2008 until 19 January 2010 and he fulfilled all the conditions required for receiving a disability pension for that period. What was in dispute was the question whether he should have been compensated for the discontinuation of payment of the pension during that period. Thus, since the applicant had a right under the domestic law to receive a disability pension, that right is encompassed by the substantive scope of the application of Article 1 of Protocol No. 1 to the Convention.

(ii) Proportionality of the interference with the applicant's possessions

64. The Court considers that at the heart of the dispute is the issue of whether the applicant's situation gave rise to an unlawful and disproportionate interference with his property rights, which remains to be examined.

65. The Court emphasises the fact that the applicant, in spite of his recognised incapacity for farm work, remained for a period of twenty-one months without any financial support from the State, and was refused redress. Accordingly, the Court concludes that the fact that the applicant was deprived of the right to obtain a disability pension without any tangible compensation possibility amounts an interference with his rights under Article 1 of Protocol No. 1 to the Convention.

66. As to the question of whether that interference was lawful and pursued a legitimate aim, the Court readily accepts that the principle of legal certainty, construed as the principle of *res iudicata*, may, as a general rule, constitute a legitimate aim – that is to say it may be "in the public interest",

within the meaning of Article 1 of Protocol No. 1 to the Convention. However, even though the Government did not submit any specific observations in this regard, the Court does not deem it necessary to examine these issues in detail in the light of the circumstances of the present case, since the interference in the applicant's property rights was clearly disproportionate (see paragraphs 67-71 below).

67. Firstly, the Court considers that an excessive burden was imposed on the applicant owing to the fact that, as a result of an incorrect assessment of his state of health by the Fund's medical experts, he was faced with a total loss of his disability pension, in spite of his being completely unfit for farm work.

Thus, regardless of any aim pursued in the general interest, it can hardly be acceptable that the authorities shifted the consequences of a mistake attributable to them onto the applicant.

68. Secondly, as stated above (see paragraph 61 above), within the context of property rights, particular importance must be attached to the principle of good governance. It is required that public authorities act with the utmost consistency, in particular when dealing with matters of crucial importance to individuals, such as social and welfare benefits and other property rights. In the present case, the Court observes that the domestic authorities, including the domestic courts during the compensation proceedings, failed in their duty to act in good time and in an appropriate manner and with the utmost consistency since they failed to remedy an error that was clearly attributable to the Fund.

69. In this connection it should be observed that the notion of legal certainty, albeit undeniably important in any legal system, is not absolute. The Court considers that in the instant case there were relevant and sufficient reasons to depart from that principle in order to secure respect for social justice and fairness.

70. The Court does not insist that departing from the principle of *res iudicata* in order to afford redress to the applicant was the only means of the domestic authorities relieving him from the disproportionate burden that had been placed on him. It considers, however, that the domestic authorities should have provided him with a legal solution that involved him being paid compensation by the Fund; this is because it was the Fund that should have borne the consequences of the mistake made by its experts.

71. The foregoing considerations are sufficient to enable the Court to conclude that the interference in the applicant's property rights was disproportionate.

(iii) Conclusion

72. There has accordingly been a violation of Article 1 of Protocol No. 1 to the Convention.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

73. 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

74. The applicant claimed PLN 13,850– approximately EUR 3,460 in respect of pecuniary damage. This sum amounts to the equivalent of the disability-pension payments that was refused to the applicant during the period from 1 April 2008 until 18 January 2010.

The applicant also claimed PLN 10,000– approximately EUR 2,500 in respect of non-pecuniary damage.

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

76. The Court finds that, in connection with the violation found, the applicant was denied compensation for the refused disability-pension payments from 1 April 2008 until 18 January 2010. It therefore awards the applicant the whole amounts claimed – that is to say EUR 3,460 to cover pecuniary damage

77. The Court must also take into account the fact that the applicant undoubtedly suffered certain non-pecuniary damage. Making an assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards the applicant the amount claimed – that is to say EUR 2,500 to cover non-pecuniary damage.

B. Costs and expenses

78. The applicant made no claim in respect of costs and expenses.

C. Default interest

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

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

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

3. *Holds*

(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, the following amounts, to be converted into Polish zlotys at the rate applicable at the date of settlement, plus any tax that may be chargeable:
   (i) EUR 3,460 (three thousand four hundred and sixty euros), in respect of pecuniary damage and,
   (ii) EUR 2,500 (two thousand five hundred euros), in respect of non-pecuniary damage;

(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.

Done in English, and notified in writing on 5 March 2020, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Abel Campos	Ksenija Turković
Registrar	President