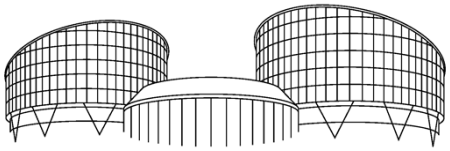

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF KRAJNC v. SLOVENIA

(Application no. 38775/14)

JUDGMENT

STRASBOURG

31 October 2017

FINAL

31/01/2018

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

In the case of Krajnc v. Slovenia,

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

Ganna Yudkivska, *President,*
Paulo Pinto de Albuquerque,
Egidijus Kūris,
Iulia Motoc,
Carlo Ranzoni,
Marko Bošnjak,
Péter Paczolay, *judges,*
and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 10 October 2017,

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

PROCEDURE

1. The case originated in an application (no. 38775/14) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Slavko Krajnc ("the applicant").

2. The applicant was represented before the Court by Ms M. Končan Verstovšek, a lawyer practising in Celje. The Slovenian Government ("the Government") were represented by their Agent, Mrs V. Klemenc, State Attorney.

3. The applicant alleged that the reduction of the benefit in respect of his disability had violated his rights under Article 1 of Protocol No. 1 to the Convention.

4. On 17 November 2014 the application was communicated to the Government.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

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

6. He had been a professional truck driver until he became unable to work due to epilepsy.

A. The granting of disability benefit to the applicant and the changes thereof

7. On 29 September 2003 the applicant was certified as having a "category III work-related disability" as a result of his condition. He was found to have a right to be reassigned to a suitable position of employment where he and others would not be at risk because of his condition, with (retroactive) effect from 14 August 2002.

8. On 21 February 2005 the Celje regional unit of the Pension and Disability Insurance Institute of Slovenia (hereinafter "the regional ZPIZ") granted the applicant a so-called "allowance for the period of waiting to be reassigned to or employed in a different appropriate position of employment" (hereinafter "waiting period allowance") from 8 October 2004. Though the sums appear to be lower during the first few months, he had been subsequently receiving around 390 euros (EUR) per month in waiting period allowance. The regional ZPIZ relied on section 123 of the Pension and Disability Insurance Act (hereinafter "the 1992 Act") and section 446 of the new Pension and Disability Insurance Act (hereinafter "the 1999 Act" – see paragraphs 24 and 25 below). It noted that the applicant had been registered as unemployed on 3 March 2003 and had been a beneficiary under section 22 of the 1999 Act from 1 March 2003 to 7 October 2004. Thus, once his unemployment allowance had come to an end he had become entitled to a waiting period allowance under section 123 of the 1992 Act (see paragraph 24 below). The regional ZPIZ also noted that, under section 193 of the 1992 Act, beneficiaries were entitled to a waiting period allowance until they fulfilled the conditions for retirement (ibid.).

9. On 15 October 2010 the applicant's doctor informed the regional ZPIZ about a shoulder injury the applicant had sustained and requested a reassessment of his level of disability.

10. On the basis of, *inter alia*, information provided by the applicant's doctor, the regional ZPIZ, on 2 February 2011, decided that the applicant had a right to be reassigned to another position of employment with several limitations, such as not to work at unprotected heights or drive category C and E vehicles, with effect from 1 February 2011. Subsequently, on 28 June 2011 it adopted a decision granting him a disability allowance (*nadomestilo za invalidnost*) from 24 February 2011 onwards. The regional ZPIZ relied on the 1999 Act, which had introduced certain new disability benefits (the term "disability benefit" is used to cover any type of allowance that arises from a disability) and discontinued some of those provided for under the 1992 Act, including the waiting period allowance. Sections 397 and 446 of the 1999 Act stipulated that a right to a disability allowance applied as from 1 January 2003 (see paragraph 25 below). The regional ZPIZ noted in its decision that the applicant had not been insured under the compulsory

insurance scheme at the onset of his disability, but had been registered as unemployed on 3 March 2003 within thirty days of the final decision on his disability, as required by section 97 of the 1999 Act. It was established that his capacity to work had in fact further reduced, even though the category (III) of his disability remained unchanged. The regional ZPIZ found that, pursuant to section 94(1)(1) and (3)(1) of the 1999 Act, he should receive a benefit in the form of disability allowance, which in his case amounted to EUR 192.91. It drew the applicant's attention to section 185 of the 1999 Act, which required beneficiaries to inform the ZPIZ of any change in circumstances which could affect their rights under that Act (see paragraph 26 below).

11. On 21 July 2011 the applicant appealed against the above decision, arguing that in determining the amount of his disability benefit, the regional ZPIZ should have respected the principle of acquired rights. He pointed out that his benefit had reduced considerably, even though his disability had in fact worsened, and claimed that such a decision was unlawful.

12. On 21 October 2011 the central Pension and Disability Insurance Institute of Slovenia (hereinafter "the central ZPIZ") dismissed the applicant's appeal, confirming that the regional ZPIZ had properly applied the law and correctly calculated the amount of his disability allowance.

B. The court proceedings instituted by the applicant

1. The proceedings before the Labour and Social courts

13. On 5 December 2011 the applicant lodged a claim with the Celje Labour and Social Court challenging the above decisions. He reiterated that the disability allowance granted to him under the 1999 Act violated his acquired rights and that instead of increasing his benefit it reduced it by half, which was unlawful and unconstitutional.

14. On 26 March 2012 the Celje Labour and Social Court dismissed the applicant's claim. It explained that while recipients of disability-related rights under the 1992 Act retained their acquired rights after the date set out in section 446 of the 1999 Act, in the applicant's case a reassessment of his disability had been carried out on 2 February 2011 due to a worsening of his condition (see paragraph 10 above), which had resulted in further workplace limitations and his rights being consequently determined anew. In cases where a fresh assessment was made the 1999 Act was to be applied. The court concluded that the 1999 Act did not contain the right to a waiting period allowance. Instead, under section 94, it provided for the disability allowance (see paragraph 25 below) which had been correctly granted to the applicant.

15. On 25 April 2012 the applicant appealed against the judgment, repeating the complaints he had made before the first-instance court and alleging that he ought to have been informed of the consequences of a request for a reassessment of his disability. If that had been the case, he would have "forbidden" his doctor from making such a request. Lastly, he reiterated that the decision of the regional ZPIZ of 28 June 2011 (see paragraph 10 above) was unlawful and unconstitutional, as it violated his right to social security; he pointed out that he was unable to survive on the newly determined disability allowance.

16. On 21 June 2012 the Higher Labour and Social Court dismissed the applicant's appeal, confirming the position of the lower court that the applicant's case concerned a change in the level of disability, which had required a fresh determination of his disability benefit. In such a situation, section 397(3) of the 1999 Act provided that the applicant acquired rights under the Act. Also, since the applicant's rights had been determined anew, the Higher Labour and Social Court concluded that there had been no violation of his acquired rights related to social security, and thus no violation of the Constitution.

2. The proceedings before the Supreme Court

17. On 4 September 2012 the applicant lodged an appeal on points of law before the Supreme Court, arguing that he could not have legitimately expected that the worsening of his disability would result in a severe reduction of his disability benefit. In that connection, he alleged that the Higher Labour and Social Court's view that the reduction did not interfere with his acquired rights or constitute a violation of his constitutional right to social security was arbitrary, as the court had provided no reasoning for that conclusion. The applicant further alleged that the newly determined amount of disability benefit interfered with his constitutional right to property.

18. On 5 March 2013 the Supreme Court dismissed the applicant's appeal on points of law, finding that the Higher Labour and Social Court had sufficiently explained that the change in his level of disability had required a fresh determination of his benefit in accordance with the 1999 Act.

3. The constitutional complaint

19. On 21 May 2013 the applicant lodged a constitutional complaint against the Supreme Court's judgment, alleging a violation of his constitutional rights to property and social security. He argued that the reduction in the disability benefit had put his subsistence at risk and failed the test of proportionality.

20. On 18 November 2013 the Constitutional Court refused to accept the applicant's complaint for consideration on the merits, referring to section 55b(2) of the Constitutional Court Act (see paragraph 27 below).

C. The applicant's retirement

21. In the meantime, on 22 May 2013, the applicant fulfilled the conditions for a retirement pension in the amount of EUR 374.73 and his disability allowance was discontinued from that date. He thus received the disability allowance for a period of twenty-seven months.

22. Data concerning the applicant's income provided by the Slovenian tax authorities shows that he received EUR 4,908 in 2010 in pension and disability insurance and, after the impugned change in his allowance, EUR 2,902 in 2011 and EUR 2,480 in 2012.

II. RELEVANT DOMESTIC LAW, PRACTICE AND MATERIALS

A. Constitution

23. The rights to private property and social security form part of the human rights and fundamental freedoms guaranteed by the Constitution. The relevant provisions provide as follows:

Article 33

Right to private property and inheritance

"The right to private property and inheritance shall be guaranteed."

Article 50

Right to social security

"Citizens have the right to social security, including the right to a pension, under conditions provided by law.

The state shall regulate compulsory health, pension, disability and other social insurance, and ensure its proper functioning.

..."

B. Pension and Invalidity Insurance Act

1. 1992 Act

24. The Pension and Disability Insurance Act ("the 1992 Act") was passed on 5 March 1992 and came into force on 1 April 1992. It was

subsequently amended several times. The amended version applied in the domestic proceedings in the present case reads as follows:

Section 123

"The right to an allowance for the period of waiting to be reassigned to or employed in a different appropriate position of employment shall be granted to the disabled worker with a category II or III disability who is entitled to be reassigned to or employed in a different appropriate job or to work part-time, if he or she has not been provided with such employment.

A disabled worker with a category II or III disability shall be granted the allowance referred to in the preceding paragraph if he or she registers with the employment office within thirty days of the final decision by which he or she has been granted the right to be reassigned to or employed in a different appropriate position of employment or to work part-time."

Section 193

"The right to reassignment or employment in a different appropriate position of employment ... ceases to apply to a beneficiary with a remaining capacity to work who is unemployed or uninsured ... and is not on a professional rehabilitation programme, on the day that he or she fulfills the conditions for a retirement pension."

2. 1999 Act

25. The new Pension and Disability Insurance Act ("the 1999 Act") was passed on 10 December 1999 and came into force on 1 January 2000. It has subsequently been amended several times. The second consolidated version, *ZPIZ-1-UPB2* (Official Gazette, no. 20/2004), applied in the domestic proceedings in the present case. The relevant provisions read as follows:

Section 22

Unemployed beneficiaries

"Unemployed persons receiving unemployment allowance and persons for whom the employment office is paying contributions for pension and disability insurance are insured under the compulsory scheme until they fulfill the conditions for retirement."

Section 94

Right to and determination of disability allowance

"(1) The right to disability allowance shall be granted to a beneficiary with a category II disability after he or she reaches 53 years of age, or a category III disability if his or her capacity to work has been reduced by less than 50% or if he or she can continue to work full-time in his or her occupation but is incapable of working in the job to which he or she has been assigned, if:

- he or she was unemployed and/or not covered by compulsory insurance at the onset of the disability;

..."

(3) An insured person with a category III disability, if his or her capacity to work has been reduced by less than 50% or if he or she can continue to work full-time in his or her occupation but is incapable of working in the job to which he or she has been reassigned, shall have his or her disability allowance assessed as follows:

- in cases from the first indent of the first paragraph of the present section, in the amount of 40% of disability pension he or she would be entitled to at the onset of the disability,

..."

Section 97

Employment of unemployed disabled workers

"A beneficiary, who at the onset of the disability was uninsured ... acquires a right to a partial disability pension or appropriate financial allowance under this Act, if within thirty days of the final decision on his rights from the disability insurance ... registers with the employment office."

Section 397

Enjoyment of rights concerning disability insurance acquired under the previous legislation

"(1) Recipients of the rights based on a remaining capacity to work (category II or III disability) asserted under the regulations applicable at the date stipulated in section 446 hereof [1 January 2003], shall also retain [the same] rights after that date.

...

(3) Recipients of the rights as per the first subsection may only acquire the rights hereunder in the event of a worsening of an already established disability or the onset of a new one."

Section 446

Application of provisions concerning rights stemming from disability insurance

"(1) Sections 60 to 71, 80 to 101, 106, 138(5) 158 to 163 and 169(4) are applicable as from 1 January 2003.

...

(3) Until the date of application of the provisions in the preceding paragraph and section, provisions of the [1992 Act] should apply."

26. Under section 185 of the 1999 Act, a beneficiary must inform the ZPIZ of any change in circumstances which could affect his or her rights or their scope or payments.

C. Constitutional Court Act

27. Section 55b(2) of the Constitutional Court Act (Official Gazette no. 15/94 with relevant amendments) provides as follows:

> "(2) A constitutional complaint shall be accepted for consideration:
>
> - if there has been a violation of human rights or fundamental freedoms which has had serious consequences for the complainant; or
>
> - if it concerns an important constitutional issue which exceeds the importance of the particular case in question."

D. Supreme Court's case-law

28. The Government relied on two judgments of the Supreme Court dealing with a similar subject matter to the present case. In judgment no. VIII Ips 389/2009 of 18 April 2011, the Supreme Court emphasised that the acquisition of rights under the 1999 Act meant that a beneficiary could no longer exercise his or her rights under the 1992 Act. In judgment no. VIII Ips 402/2007 of 7 September 2009, it confirmed that the worsening of a medical condition which resulted in further workplace limitations had to be interpreted as the worsening of a disability within the meaning of section 397(3) of the 1999 Act, which in turn meant that a beneficiary's rights should be determined under the 1999 Act. In the case under consideration, this implied that the beneficiary could no longer receive the waiting period allowance but was instead entitled to disability allowance. The Supreme Court further confirmed that beneficiaries of the rights based on a remaining capacity to work (namely category II and III) continued to enjoy their rights acquired under the 1992 Act only if, at the time of reassessment of their rights, the factual situation, which was the basis for the decision granting rights under the 1992 Act, remained unchanged.

E. Report on the financial situation of disabled workers

29. The Government submitted a report on the financial situation of disabled workers (hereinafter "the report") prepared in April 2009 by the Institute for Economic Research and founded by the ZPIZ. The report noted as encouraging data showing a significant increase in the number of disabled workers deregistering as unemployed. It also noted that while in 2005 only 16.8% of the disabled workers had found employment, that figure had increased to 31% in 2008. However the chances of employment were found to be lower amongst older disabled workers.

30. According to the report, the average amount of a waiting period allowance was, in the period between 2004 and 2008, between 46 and 48% of the average net salary. The report noted that with the introduction of the

1999 Act the situation of the unemployed disabled workers had significantly deteriorated and those receiving disability allowance found themselves in an extremely bad financial situation, receiving on average 18.3% of the average net salary.

THE LAW

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

31. The applicant complained that the reduction in his disability benefit had been excessive. He relied on Article 1 of Protocol No. 1 to the Convention, which reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

A. Admissibility

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

B. Merits

1. The parties' arguments

(a) The applicant

33. The applicant argued that the reduction in his disability benefit had been disproportionate and arbitrary. The waiting period allowance and subsequent disability allowance were his only source of income and with a worsening disability he was unable to find employment. The benefit was thus supposed to allow him to survive until retirement.

34. The applicant maintained that the problem of public finances should be tackled by equal and gradual adjustments and not by a significant reduction to the detriment of only some beneficiaries. In particular, because

of his injury, which he had sustained involuntarily and should logically lead to an increase in the benefit, he had been affected by the reduction introduced by the new law, whereas those whose conditions had not worsened continued to receive the full amount granted under the 1992 Act. This was disproportionate and he had been made to bear an excessive burden.

35. The applicant further argued that his life savings in the amount of 14,800 euros were insignificant and that he was keeping them in case of emergency. The interest he received on that account was nominal, amounting to EUR 46 or 58 a month in 2011 and 2012 respectively. Indeed, the savings were unable to replace a steady income and, despite the Government's assertions (see paragraph 38 below), were irrelevant to the examination of his case. He pointed out that the amount of the minimum wage, which was meant to represent the threshold for a decent life in Slovenia, was EUR 748 in 2011 and EUR 763 in 2012.

(b) The Government

36. The Government argued that even if it did generate a proprietary interest, the legislation in question did not give rise to a right to a particular amount of disability allowance. They maintained that the legislature had to be allowed to respond to demographic changes and budgetary constraints. The 1992 Act had provided for a rather high waiting period allowance, which had dissuaded disabled person from finding employment. The 1999 Act was thus intended to motivate disabled workers to use their remaining capacity to work and stay employed and, moreover, was meant to reduce the State's public spending. As a result of the change in the legislation a number of disabled workers had found employment.

37. The Government further argued that the 1999 Act did not apply retroactively but only to those cases in which the situation had changed after its entry into force and only *ex nunc*. The right to a waiting period allowance was anyhow only of a temporary nature and was supposed to last until a change in the person's medical condition or employment situation. Beneficiaries were obliged to inform the ZPIZ of any change in circumstances which could affect their rights, and the applicant thus could not have avoided the impugned consequences by banning his doctor from informing the authorities.

38. Lastly, the Government argued that the applicant had EUR 14,280 in savings and had received the sums of EUR 562 and EUR 703 in interest in 2011 and 2012 respectively. He could not therefore claim to be at risk of destitution and was precisely on account of his savings ineligible for regular social support allowance.

2. The Court's assessment

(a) General principles

39. The Court observes that the general principles concerning the loss of social benefits and allowances have recently been resumed in *Béláné Nagy v. Hungary* ([GC], no. 53080/13, §§ 72 to 89 and 112 to 118, ECHR 2016).

40. In particular, the Court has held that Article 1 of Protocol No. 1 imposes no restriction on the Contracting States' 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. However, if a Contracting State has legislation in force 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 a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Béláné Nagy*, cited above, § 82). Where the amount of a benefit is reduced or discontinued, this may constitute interference with possessions which requires to be justified (ibid., § 84).

41. An essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with that provision is that it should be lawful and serve a legitimate public (or general) interest (see *Béláné Nagy*, cited above, §§ 112 and 113). In addition, Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised. The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (ibid., § 115). In considering whether that is the case, the Court must have regard to the particular context of social security schemes, which are an expression of a society's solidarity with its vulnerable members (see *Béláné Nagy*, cited above, § 116, and *Stefanetti and Others v. Italy*, nos. 21838/10 and 7 others, § 55, 15 April 2014).

42. The Court further reiterates that the deprivation of the entirety of a pension is likely to breach the provisions of Article 1 of Protocol No. 1 and that, conversely, reasonable reductions to a pension or related benefits are unlikely to do so. However, the fair balance test cannot be based solely on the amount or percentage of the reduction suffered, in the abstract. In a number of cases the Court has endeavoured to assess all the relevant elements against the specific background, attaching importance to such factors as the discriminatory nature of the loss of entitlement, the absence of transitional measures, the arbitrariness of the condition, as well as the applicant's good faith (see *Béláné Nagy*, cited above, § 117, with references therein). An important consideration in this context is whether the applicant's right to derive benefits from the social-insurance scheme in question has been infringed in a manner resulting in the impairment of the

essence of his or her rights (see, *mutatis mutandis*, *Béláné Nagy*, cited above, § 118).

(b) Application of these principles to the present case

43. The Court notes that it has not been disputed between the parties that Article 1 of Protocol No. 1 to the Convention applies to the present case and that the replacement of the waiting period allowance with a much lower disability allowance amounted to an interference with the applicant's right to property enshrined in the aforementioned provision. The Court sees no reason to find otherwise.

44. The Court further notes that the measure complained of was based on sections 94, 97, 397 and 446 of the 1999 Act (see paragraph 25 above), which together provided that in cases where the onset or worsening of the disability occurred after 1 January 2003, eligible disabled workers were entitled to rights, including a disability allowance, under the 1999 Act. That, as inferred from the provisions of the 1999 Act and confirmed in the Supreme Court's case-law (see paragraph 28 above), meant that beneficiaries were in such cases no longer entitled to the rights provided for in the 1992 Act. Therefore, the Court is satisfied that the interference in the present case complied with the requirement of lawfulness.

45. The Court, having regard to the wide margin of appreciation available to the legislature in implementing social and economic policies (see *Béláné Nagy*, cited above, §§ 113 and 114), also has no doubt that the impugned interference pursued the legitimate aims of protecting the public purse and motivating disabled adults with a remaining capacity to work to find employment (see paragraphs 29, 34 and 36 above).

46. The Court now turns to the issue at the centre of the present case − whether the interference imposed an excessive individual burden on the applicant. It observes that he had been receiving a monthly waiting period allowance of about EUR 390 until February 2011, on the basis of a decision by the regional ZPIZ (see paragraphs 8 and 10 above). The applicable legislation, both before the legislative reform in 1999 and afterwards, made the granting of a disability benefit dependent, *inter alia*, on the condition of having a limited capacity to work on medical grounds. The legislation also stipulated that beneficiaries were obliged to inform the authorities of any change in circumstances (see paragraphs 10 and 26 above). After the applicant sustained a shoulder injury and the regional ZPIZ, in 2011, reassessed his level of disability, finding that his capacity to work had further reduced, his waiting period allowance was replaced with a disability allowance of around EUR 190 per month, which is less than half of the amount he was receiving under the provisions of the 1992 Act (see paragraph 10 above). That was not because he no longer met the relevant eligibility criteria (compare and contrast *Wieczorek v. Poland*, no. 18176/05, §§ 67-74, 8 December 2009, and *Iwaszkiewicz v. Poland*, no. 30614/06,

§ 56, 26 July 2011), but because of changes in the law (see, *mutatis mutandis*, *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06 and 3 others, § 70, 13 December 2011, and *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 44, ECHR 2004-IX) which were applicable to those who had either become disabled after 1 January 2003 or whose disability had worsened after that date (see section 397 of the 1999 Act, cited in paragraph 25 above, and the Supreme Court's position, cited in paragraph 28 above).

47. Though little information was submitted by the parties on that point, it would appear that the waiting period allowance and subsequent disability allowance were not directly related to any contributions paid by the applicant (see paragraph 10 above). Rather, they were essentially provided based on the principle of solidarity (see paragraph 41 above) and were therefore likely to be altered in response to societal changes and evolving views on the categories of persons who need social assistance (see, among many other authorities, *Wieczorek*, cited above, § 67, and, *mutatis mutandis*, *Iwaszkiewicz*, cited above, § 50).

48. That said, the Court cannot ignore that the legislature stipulated in the 1999 Act that those who had acquired rights under the 1992 Act would continue to enjoy them after the new legislation came into force (see section 397(1) of the 1999 Act, cited in paragraph 25 above). That reinforced the applicant's legitimate expectation of continuing to receive a waiting period allowance after the legislative reform and, provided that he remained unemployed, until his retirement (see paragraphs 8 and 24 above). It was only when his disability was found to have deteriorated − a fact which he could have hardly predicted and prepared for − that he became affected by the new legislation. In the Court's view, this differential treatment of two groups of unemployed disabled workers – those whose disabilities remained unchanged and those whose disabilities had deteriorated after 1 January 2003 – which resulted in the applicant being suddenly divested of half of his disability benefit while being at the same time further limited in working opportunities, carries great weight in the assessment of the proportionality issue under Article 1 of Protocol No. 1 (see, *mutatits mutandis*, *Kjartan Ásmundsson*, cited above, § 43).

49. Other important considerations for the Court's assessment relate to the nature of the benefit and the effect the impugned measure had on the applicant's particular situation. In that connection, the Court finds it significant that he was unemployed and evidently had difficulties pursuing gainful employment due to his disability (see, *mutatis mutandis*, *Béláné Nagy*, cited above, § 123). That vulnerability was precisely what the disability benefit in question was meant to address. The Court further notes that the applicant had been dependent on the waiting period allowance he had been receiving on a regular basis for more than six years (see paragraphs 8 and 10 above). Even if he had certain savings (see paragraphs 35 and 38 above), they appeared to have played no role in his

eligibility for the disability benefit and moreover were clearly insufficient to provide for his long-term subsistence. The Court also observes that the decrease in the applicant's disability benefit, which seriously affected his means of subsistence (see *Moskal v. Poland*, no. 10373/05, § 74, 15 September 2009, and, by contrast, *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, § 97, 25 October 2011), was not mitigated by any transitional measure allowing him to adapt to the new situation (see, *mutatis mutandis*, *Béláné Nagy*, cited above, § 124).

50. In view of the above considerations, the Court finds that the disputed measure has infringed the applicant's right to derive benefits from the social-insurance scheme in a manner resulting in the impairment of the essence of his rights. It is indeed mindful of the fact that the reform in legislation concerning pension and disability insurance served a legitimate purpose, as found above (see paragraph 45 above), and also *de facto* resulted in the increased employment of disabled workers (see paragraph 29 above). However, those disabled workers whose health had deteriorated after 1 January 2003 and were unable to find employment, like the applicant, had to bear the disproportionate burden of losing a significant portion of their disability benefit and, as observed in the report of the Institute for Economic Research submitted by the Government (see paragraphs 30 above), found themselves in a particularly precarious situation.

51. The Court thus considers that, notwithstanding the State's wide margin of appreciation in the field, the applicant had to bear an excessive individual burden, which upset the fair balance that had to be struck between the protection of property and the requirements of the general interest.

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

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

53. 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

54. The applicant claimed 5,395 euros (EUR) in respect of pecuniary damage plus interest from 23 May 2013. That sum corresponds to the difference between the benefit he would have received under the 1992 Act and the benefit he was granted under the 1999 Act over twenty-seven

months (see paragraph 21 above). The applicant further claimed EUR 10,000 in respect of non-pecuniary damage, submitting that he had had to rely on family and friends for support, which had left him feeling ashamed, as well as unequally treated and let down by the State.

55. The Government argued that the claim in respect of non-pecuniary damage was exaggerated and unfounded. As regards the claim in respect of pecuniary damage, they argued that the difference between the two benefits amounted to EUR 5,394 and that the applicant should only be entitled to an amount proportionate to the violation found.

56. The Court is satisfied that the applicant has suffered pecuniary damage as a result of the violation found and considers that he should be awarded compensation in the amount reasonably related to any prejudice suffered, taking into account also loss of value of the award over time.

57. As regards the applicant's claim in respect of non-pecuniary damage, the Court considers that he must have suffered anxiety and distress that cannot be compensated solely by the Court's finding of a violation in his case.

58. Deciding in the light of the figures supplied by the parties and of equitable considerations, the Court considers it reasonable to award the applicant EUR 10,000 to cover all heads of damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

59. The applicant, relying on the official tariff for lawyers, claimed EUR 2,329.72, inclusive of value-added tax (VAT), for the costs and expenses incurred before the domestic courts, including EUR 700 for the preparation of his constitutional complaint. He also claimed EUR 1,520 for the costs incurred before the Court, relying again on the official tariff for lawyers. In support of his claim, he submitted two invoices: one dated 14 May 2014 for EUR 410 and another dated 22 April 2015 for EUR 585, both concerning his representation before the Court.

60. The Government disputed the applicant's claim concerning the costs incurred in the proceedings before the Court, arguing that except for the two invoices, the applicant had failed to substantiate his claim. In addition, the two invoices seemed to suggest that the applicant had been charged twice for the same work. As regards the domestic proceedings, the Government argued that the applicant had not proved that these costs had actually been incurred and, as regards his constitutional complaint, he had not declared them in the proceedings before the Constitutional Court.

61. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Moreover, the Court reiterates that it does not consider itself

bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009).

62. With regard to the costs incurred in the domestic proceedings, the Court observes that before applying to the Convention institutions, the applicant exhausted the domestic remedies available to him under domestic law. The Court therefore accepts that he incurred expenses in seeking redress for violations of the Convention through the domestic legal system (see *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 224, ECHR 2012). The Court notes in that connection that the applicant declared, based on the official tariff for lawyers, that he had incurred EUR 1,357, excluding VAT, in costs and expenses in the domestic proceedings. It finds that claim substantiated and reasonable and upholds it. However, it rejects the remainder of the claim, namely EUR 700 for the proceedings before the Constitutional Court, as it was not explained in any detail.

63. As regards the proceedings before the Court, the Court notes that the applicant submitted two invoices, one of EUR 410 relating to the time when the application was lodged and another of EUR 585 to the time when the observations were filed in the case. It therefore finds it reasonable to award him EUR 995 for the proceedings before the Court. As regards the remainder of the claim under this head, the Court, having regard to the aforementioned invoices, does not find it substantiated and therefore rejects it.

64. The Court therefore awards the applicant the total sum of EUR 2,352 for costs and expenses.

C. Default interest

65. 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:

(i) EUR 10,000 (ten thousand euros), plus any tax that may be chargeable, in respect of pecuniary and non-pecuniary damage;

(ii) EUR 2,352 (two thousand three hundred and fifty-two euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 31 October 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli
Registrar

Ganna Yudkivska
President