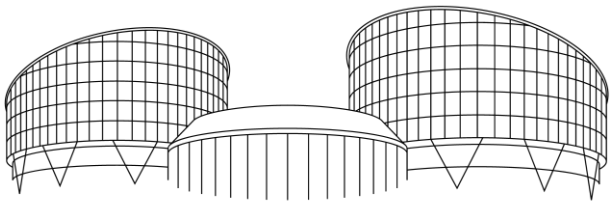

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

CASE OF CZAJA v. POLAND

(Application no. 5744/05)

JUDGMENT

STRASBOURG

2 October 2012

FINAL

02/01/2013

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

In the case of Czaja v. Poland,

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

David Thór Björgvinsson, *President,*
Lech Garlicki,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Zdravka Kalaydjieva,
Nebojša Vučinić, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 11 September 2012,

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

PROCEDURE

1. The case originated in an application (no. 5744/05) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Polish national, Mr Józef Czaja ("the applicant"), on 24 January 2005.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the *ex officio* reopening of the social security proceedings concerning his right to an early-retirement pension, which resulted in the quashing of the final decision granting him a right to a pension, was in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 20 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1955 and lives in Zagórczyce.

6. The applicant is married and has children. Prior to his application for an early-retirement pension he had been employed and paid social security contributions to the State.

A. Proceedings concerning the grant and revocation of the EWK pension

7. On 17 April 2001 the applicant filed an application with the Rzeszów Social Security Board *(Zakład Ubezpieczeń Społecznych)* to be granted the right to an early-retirement pension for persons raising children who, due to the seriousness of their health condition, required constant care, the so-called "EWK" pension.

8. Along with his application for a pension, the applicant submitted, among other documents concerning his daughter's health condition, a medical certificate issued by a specialist medical centre on 28 March 2001. The certificate stated that his daughter A (born in 1989) suffered from epilepsy and that she was in need of her parent's constant care.

9. On 18 May 2001 the Rzeszów Social Security Board ("the SSB") issued a decision granting the applicant the right to an early-retirement pension as of 1 April 2001 in the net amount of 676 Polish zlotys (PLN).

10. The Social Security Board initially suspended the payment of the pension due to the fact that the applicant was still working on the date of the decision. On 30 June 2001 the applicant resigned from his full-time job in a filter manufacturing plant in Sedziszów where he had been working since 1982. On 1 July 2001 payment of the pension was resumed.

11. On 16 July 2002 the Rzeszów SSB asked the Main Social Security Board's doctor (*Główny Lekarz Orzecznik*) to inform it whether the applicant's daughter required the permanent care of a parent. On 3 September 2002 the doctor stated that, on the basis of the medical documents, the child could not be considered as ever having required such care.

12. On 6 September 2002 the Rzeszow SSB reopened the proceedings, revoked the initial decision granting him a pension and eventually refused to grant the applicant the right to an early-retirement pension under the scheme provided for by the 1989 Ordinance. On 18 September 2002 the Rzeszów SSB issued a decision by virtue of which the payment of the applicant's pension was discontinued as of 1 October 2002.

13. The applicant appealed against the respective decisions divesting him of the right to an early-retirement pension. He submitted that he should receive the benefit because his child required constant care, as confirmed by the medical certificate attached to the applicant's original application for a pension. Moreover, the applicant alleged that the revocation of his retirement pension was contrary to the principle of vested rights.

14. On 1 April 2003 the Rzeszów Regional Court (*Sąd Okręgowy*) dismissed the appeal. The Regional Court concluded on the basis of the evidence that the applicant's child did not require her father's permanent care since her health condition did not significantly impair her bodily functions. The domestic court held that the applicant had been rightfully divested of his right to a pension under the scheme provided by the 1989 Ordinance as he did not satisfy the requirement of necessary permanent care.

15. The applicant further appealed against the first-instance judgment.

16. On 22 April 2004 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal.

17. On 9 July 2004 the Supreme Court (*Sąd Najwyższy*) refused to entertain the cassation appeal lodged by the applicant (decision served on the applicant on 26 July 2004).

B. The applicant's financial situation following the revocation of the EWK pension

18. Following the social security proceedings the applicant was not ordered to return his early-retirement benefits paid by the Social Security Board, despite the revocation of his right to an early-retirement pension.

19. The applicant submitted that since the date of the revocation of the EWK he remained unemployed.

20. The Government submitted that the applicant's wife was covered by the social insurance for farmers between 1977 and 1998. She was further awarded a periodic agricultural disability pension between October 1998 and October 2011. She owns a farm with an area of 1.80 physical hectares. The applicant's daughter A. earned PLN 1,054 in 2009 and PLN 3,974 in 2010.

21. In addition, the Government submitted information as regards various types of social benefits available in Poland. However, they did not specify which of those benefits, if any, were available in the applicant's situation.

22. Under the relevant laws currently in force, it appears that the applicant will qualify for a regular retirement pension in 2020.

C. Other EWK cases pending before the Court

23. Some 130 applications arising from a similar fact pattern have been brought to the Court. The majority of the applicants form the Association of Victims of the SSB (*Stowarzyszenie Osób Poszkodowanych przez ZUS*) ("the Association"), an organisation monitoring the practices of the Social Security Board in Poland, in particular in the Podkarpacki region.

24. Out of all applications lodged with the Court, about twenty-four applicants decided not to lodge a cassation appeal against the judgment of the Court of Appeal given in their case.

25. One hundred-and-four applicants lodged cassation appeals against the final judgments given in their cases. The Supreme Court entertained and dismissed on the merits fifteen appeals. In eighty-one applications the Supreme Court refused to entertain cassation appeals on the ground that they did not raise any important legal issues or require the Supreme Court to give a new interpretation to legal provisions which raised serious doubts or gave rise to ambiguity in the jurisprudence of the domestic courts. In the remaining eight cases cassation appeals were rejected for failure to comply with various procedural requirements.

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Social security system

26. The legal provisions applicable at the material time and questions of practice are set out in the judgment in the case of *Moskal v. Poland*, no. 10373/05, § 31-34, 15 September 2009.

27. The social security scheme for farmers is regulated by the Farmers' Social Security Act of 20 December 1990 ("the 1990 Act"; *ustawa o ubezpieczeniu społecznym rolników*).

28. The reopening of the proceedings concerning the early retirement pension is regulated in section 114 (1) of the Law of 13 October 1998 on the system of social insurance (*Ustawa o systemie ubezpieczeń społecznych*), which at the relevant time read as follows:

> "The right to benefits or the amount of benefits will be re-assessed upon application by the person concerned or, *ex officio*, if, after the validation of the decision concerning benefits, new evidence is submitted or circumstances which had existed before issuing the decision and which have an impact on the right to benefits or on their amount are discovered."

On 1 July 2004 a new subparagraph 114 (1) a was added, which reads as follows:

> "Section 1 shall apply respectively, if, after the validation of the decision it is discovered that the evidence that had been submitted did not give the right to a pension, disability pension or its amount."

B. Cassation appeal

29. A party to civil proceedings could, at the material time, lodge a cassation appeal with the Supreme Court against a judicial decision of a second-instance court. A party had to be represented by an advocate or a legal adviser.

30. Article 393^{1} of the Code of Civil Procedure as applicable at the material time listed the grounds on which a cassation appeal could be lodged. It read as follows:

> "The cassation appeal may be based on the following grounds:
>
> 1) a breach of substantive law as a result of its erroneous interpretation or wrongful application;
>
> 2) a breach of procedural provisions, if that defect could significantly affect the outcome of the case."

31. Pursuant to Article 393^{13} the Supreme Court, having allowed a cassation appeal, could quash the challenged judgment in its entirety or in part and remit the case for re-examination. Where the Supreme Court failed to find non-conformity with the law, it dismissed the cassation appeal. According to Article 393^{15} if the cassation appeal was well-founded the Supreme Court could also amend the impugned judgment and adjudicate on the merits.

C. Constitutional Court's judgments

1. Judgment no. K 18/99

32. On 22 June 1999 the Ombudsman made an application to the Constitutional Court, asking for section 186 (3) of the Law of 17 December 1998 on retirement and disability pensions paid from the Social Insurance Fund (*Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*) ("the 1998 Law") to be declared unconstitutional in so far as it restricted the application of the 1989 Ordinance to persons born before 1 January 1949. More specifically, the Ombudsman submitted that the introduction of an age-limit in respect of persons taking care of a child, which in essence amounted to a deprivation of the right to a benefit, constituted a violation of the principle of equality set forth in Article 32 § 1 of the Constitution.

33. On 4 January 2000 the Constitutional Court (K18/99) declared the impugned section 186 (3) of the 1998 Law unconstitutional in so far as it restricted the application of the 1989 Ordinance to persons born before 1 January 1949. The Constitutional Court reiterated among other things the constitutional principle of acquired rights which guarantees particularly strong protection for the right to receive social welfare benefits.

2. Judgment no. K5/11

34. On 10 February 2011 the Ombudsman made an application to the Constitutional Court, asking for section 114 (1)(a) of the 1998 Law to be declared unconstitutional in so far as it allowed the SSB to reopen *ex officio* proceedings relating to the grant of a pension or a disability pension on the basis of a new assessment of evidence which had already been submitted.

35. On 28 February 2012 the Constitutional Court (K5/11) declared the impugned section 114 (1)(a) of the 1998 Law unconstitutional in so far as it allowed the SSB to reopen such proceedings following a new assessment of evidence which had already been submitted.

THE LAW

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

36. The applicant complained that divesting him, in the circumstances of the case, of his acquired right to an early-retirement pension amounted to an unjustified deprivation of property. The 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 her possessions. No one shall be deprived of her 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

1. The Government's preliminary objections

(a) Abuse of the right of an individual application

(i) The parties' submissions

37. The Government submitted that the present application constituted an abuse of the right of individual application under Article 35 § 3 of the Convention in that the applicant had misrepresented to the Court his social security status and the financial situation of his family.

38. In particular, the Government argued that the applicant misled the Court in representing himself as a person who had been deprived of a pension, unemployment allowance and health insurance thus free medical care for him and his sick child. In reality, the applicant had been covered by health insurance throughout the proceedings concerning the revocation of the pension. In addition, his daughter was covered by social insurance for farmers. Furthermore, the applicant failed to disclose a source of income, namely his wife's agricultural pension and income obtained from the farm.

39. The applicant contested the Government's submissions and argued that his application had been truthful and sincere.

(ii) The Court's assessment

40. The Court considers that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1206, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X or *Rehak v. the Czech Republic*, (dec.), no 67208/01, 18 May 2004).

41. The Court notes that in the present case the gist of the Government's arguments does not actually concern "untrue facts" allegedly adduced by the applicant before the Court. Rather, their objection is based on their own perception of the applicant's assessment of his overall financial situation after the revocation of the pension. It has not been disputed that the applicant quit his job when he was officially judged eligible to obtain an EWK pension and only resumed full-time employment after his pension had been withdrawn.

42. The Government's preliminary objection should therefore be dismissed.

(b) Non-exhaustion of domestic remedies

(i) The parties' submissions

43. The Government argued that the applicant had not exhausted the domestic remedies available to him, as required by Article 35 § 1 of the Convention.

44. They submitted that the applicant should have made an application to the Constitutional Court challenging the compatibility of the relevant social security provisions with the Constitution. They relied on a judgment delivered by the Constitutional Court on 4 January 2000 (see paragraphs 32 and 33 above).

45. In their further submissions, the Government referred to the Constitutional Court's judgment of 28 February 2012 (see paragraphs 34 and 35). They maintained that even though the decisions issued in the EWK cases had been based on section 114 (1) of the 1998 law and not on section 114 (1)(a), the applicant should nevertheless have availed himself of the possibility of lodging a constitutional complaint.

46. The applicant did not comment on this objection.

(ii) The Court's assessment

47. The Court reiterates that it has already held that in Poland a constitutional complaint was an effective remedy for the purposes of Article 35 § 1 of the Convention only in situations where the alleged violation of the Convention resulted from the direct application of a legal provision considered by the complainant to be unconstitutional (see, among other authorities, *Szott-Medyńska v. Poland* (dec.), no. 47414/99, 9 October 2003).

48. Furthermore, Article 35 of the Convention, which sets out the rule on exhaustion of domestic remedies, provides for a distribution of the burden of proof. It is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one available not only in theory but also in practice at the relevant time, that is to say that it was accessible, was capable of providing redress in respect of the applicant's complaints, and offered reasonable prospects of success (see *Selmouni v. France* [GC], no. 25803/94, § 76, ECHR 1999-V, and *Mifsud v. France* (dec.), no. 57220/00, § 15, ECHR 2002-VIII).

49. In so far as the Government referred to the Constitutional Court's judgment of 4 January 2000, the Court observes that the Government failed to indicate which provision of the 1998 Law should have been challenged by the applicant before the Constitutional Court. They have merely stated that the applicant could have contested "the relevant social security provisions" without specifying any constitutional provision that could have been relied on in the applicant's situation. Furthermore, they have not adduced any relevant case-law of the Constitutional Court which would have demonstrated that such complaint, in the circumstances of the applicant's case, offered any prospects of success.

50. As regards the second limb of the Government's objection, the Court observes that, as the Government have acknowledged, section 114(1)(a) of the 1998 Law was not applicable in the present case. The SSB's decision to reopen the proceedings concerning the relevant benefit was based on section 114(1) (see paragraphs 28 and 45). While it is true that the Ombudsman's application was successful (see paragraph 35 above), this does not of itself indicate that a hypothetical complaint lodged by the applicant would have had a similar effect. Moreover, it should be noted that the Ombudsman's challenge was examined nearly ten years after the events complained of in the present case. In reality, the Government's objection is based on a theoretical and retrospective, and therefore highly speculative, comparison between the applicant's situation at the material time and recent developments in the Constitutional Court's case-law.

51. In consequence, the Court considers that in the present case a constitutional complaint cannot be considered with a sufficient degree of certainty to have been a remedy offering reasonable prospects of success. For these reasons, the Government's plea of inadmissibility on the ground of non-exhaustion of domestic remedies must be dismissed.

(c) Six months

(i) The parties' submissions

52. The Government submitted that should the Court consider that the cassation appeal had not been an effective remedy in the instant case, the calculation of the time-limit should start from the date on which the judgment of the Court of Appeal had been given. If that decision had been given more than six months before the date of introduction of the application to the Court, the application should be considered as having been lodged out of time and rejected in accordance with Article 35 §§ 1 and 4 of the Convention.

53. The applicant contested the argument and claimed that he had complied with the six-month requirement.

(ii) The Court's assessment

54. The Court reiterates that the object of the six-month time-limit under Article 35 § 1 is to promote legal certainty, by ensuring that cases raising issues under the Convention are dealt with in a reasonable time and that past decisions are not continually open to challenge. It marks out the temporal limits of supervision carried out by the organs of the Convention and signals to both individuals and State authorities the period beyond which such supervision is no longer possible (see, amongst other authorities, *Varnava and Others v. Turkey* [GC], nos. 16064/90; 16065/90; 16066/90; 16068/90; 16069/90; 16070/90; 16071/90; 16072/90 and 16073/90, §§ 156 et seq., ECHR 2009-...; and *Walker v. the United Kingdom* (dec.), no. 34979/97, ECHR 2000-I).

The final decision for this purpose is the decision taken in the process of exhaustion of effective domestic remedies which exist in respect of the applicant's complaints (see *Kozak v. Poland*, no. 13102/02, § 64, 2 March 2010, with further references).

55. The Court further notes that there were essentially two types of decisions terminating the proceedings in the EWK cases. First, in all cases where the applicants lodged cassation appeals in accordance with the procedural requirements the Supreme Court either examined them on the merits as in *Moskal* (cited above, § 24) or, as in the instant case, decided not to entertain them. Second, in cases where the applicants desisted from lodging cassation appeals the final decisions were those given by the courts of appeal.

56. The cassation appeal was thus a remedy that had been used by the applicant in the lead *Moskal* case as well as by ninety-six other applicants whose cases are pending before the Court regarding the same subject-matter. Although the effectiveness of this remedy has been contested by certain applicants, the Court nevertheless considers that the applicant in the instant case should not be penalised for having tried to file a cassation appeal with the Supreme Court in order to avoid any risk of having his case rejected by the Court for non-exhaustion of domestic remedies.

57. Accordingly the final decision in the case was given by the Supreme Court on 9 July 2004 and served on the applicant on 26 July 2004 whereas the applicant lodged his application with the Court on 24 January 2005.

58. That being so, the Court concludes that the applicant complied with the six-month term laid down in Article 35 § 1 and that the Government's objection should be dismissed.

2. Conclusion on admissibility

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

B. Merits

1. The parties' submissions

(a) The applicant

60. The applicant submitted that divesting him, in the circumstances of the case, of his acquired right to an early-retirement pension had amounted to an unjustified deprivation of property.

61. In the applicant's view, there was no reasonable relationship of proportionality between the interference and the interests pursued. He had quit his employment in order to take care of his sick child. The special measures taken by the Government in the Podkarpacki region had no relevance for his professional situation, in view of his age and education. For these reasons it had been impossible for him to find a job after the revocation of the EWK pension.

62. The applicant also claimed that he had borne an excessive burden in that the decision of 18 September 2002 had deprived him of his main source of income with immediate effect.

(b) The Government

63. The Government claimed that the interference with the applicant's property rights had been lawful and justified. In particular, divesting the applicant of his right to the early-retirement pension had been provided for by law and was in the public interest. There was also a reasonable relationship of proportionality between the interference and the interests pursued. In the Polish social security system only retirement pensions granted under the general scheme, were, in principle, permanent and irrevocable. All other benefits based on conditions subject to change were subject to verification and possible revocation.

64. They further noted that even though the decision to revoke the EWK pension had a retroactive effect, the applicant had not been required to reimburse the sum of PLN 13,331.

2. The Court's assessment

(a) General principles

65. The relevant general principles are set out in the *Moskal* judgment, cited above, paragraphs 49-52. The Court would nevertheless reiterate that any interference by a public authority with the peaceful enjoyment of possessions should be lawful and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Moskal*, cited above, §§ 49 and 50).

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

(i) Whether there has been an interference with the applicant's possessions

66. The parties agreed that the decisions of the Rzeszów Social Security Board of 18 September 2002, subsequently validated by two court instances (the regional court and the court of appeal), which deprived the applicant of the right to receive the EWK pension, amounted to an interference with his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise.

(ii) Lawfulness of the interference and legitimate aim

67. As in the *Moskal* case the Court considers that this interference was provided for by law and pursued a legitimate aim, as required by Article 1 of Protocol No. 1 to the Convention (see *Moskal*, cited above §§ 56, 57 and 61-63 and also *Iwaszkiewicz v. Poland*, no. 30614/06, §§ 47, 48, 26 July 2011).

(iii) Proportionality

68. In the instant case, a property right was generated by the favourable evaluation of the applicant's dossier attached to the application for a pension, which was lodged in good faith, and by the Social Security Board's recognition of the right (see paragraphs 8 and 9 above). Before being invalidated the decision of 2001 had undoubtedly produced effects for the applicant and his family.

69. It must be stressed that the delay with which the authorities reviewed the applicant's dossier was relatively long. The decision was left in force for sixteen months before the authorities became aware of their error. On the other hand, as soon as the error was discovered the decision to discontinue the payment of the benefit was issued relatively quickly and with immediate effect (see paragraph 12 above). Even though the applicant had an opportunity to challenge the Social Security Board's decision of 2002 in judicial review proceedings, his right to the pension was determined by the courts more than twenty one months later and during that time he was not in receipt of any welfare benefit (see paragraphs 17 and 19 above).

70. In examining the conformity of these events with the Convention, the Court reiterates the particular importance of the principle of good governance. It requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 128, ECHR 2004-XII; *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008; and *Rysovskyy v. Ukraine*, no. 29979/04, § 71, 20 October 2011). It is desirable that public authorities act with the utmost care, in particular when dealing with matters of vital importance to individuals, such as welfare benefits and other such rights. In the present case, the Court considers that having discovered their mistake, the authorities failed in their duty to act speedily and in an appropriate and consistent manner (see *Moskal*, cited above, § 72).

71. In the Court's opinion, the fact that the State did not ask the applicant to return the pension which had been unduly paid (see paragraph 63 above) did not mitigate sufficiently the consequences for the applicant flowing from the interference in his case. The Court notes in this connection that the applicant, after his right to the EWK pension had been confirmed by the authorities, decided to resign from his employment.

72. It should be further observed that as a result of the impugned measure, the applicant was faced, without any transitional period enabling him to adjust to the new situation, with the total loss of his early-retirement pension, which constituted his main source of income. Moreover, the Court is aware of the potential risk that, in view of his age and the economic reality in the country, particularly in the undeveloped Podkarpacki region, the applicant might have considerable difficulty in securing new employment. Indeed, the applicant has not yet been able to find a full-time job.

73. The Government submitted that the applicant's wife owned a farm which had been a source of income for him. However, the Court considers that this fact is not decisive for the matter at hand, namely whether the revocation of the EWK pension placed an excessive burden on the applicant as an individual in his own right irrespective of third party financial support.

74. In so far as the Government listed various benefits available in Poland, the Court considers that they have failed to specify which of those benefits, if any, were available in the applicant's situation.

75. In view of the above considerations, the Court does not see any reason to depart from its ruling in the leading case concerning EWK pensions, *Moskal v. Poland*, and finds that in the instant case a fair balance has not been struck between the demands of the general interest of the public and the requirements of the protection of the individual's fundamental rights and that the burden placed on the applicant was excessive.

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

II. ALLEGED VIOLATIONS OF ARTICLES 6 § 1 AND 8 OF THE CONVENTION

77. The applicant also complained about the *ex officio* reopening of the social security proceedings, which had resulted in the quashing of the final decision granting him a right to a pension, was in breach of Article 6 § 1 of the Convention.

78. He also complained under Article 8 of the Convention of an interference with his right to respect for his private and family life that by divesting him of the EWK pension the authorities had deprived him of his sole source of income and financial resources indispensable for his livelihood.

79. The Court notes that these complaints are linked to the one examined above and must therefore likewise be declared admissible.

80. Having regard to the reasons which led the Court to find a violation of Article 1 of Protocol No. 1 to the Convention, the Court finds that the applicant's complaints under Articles 6 and 8 of the Convention do not require a separate examination (see *Moskal*, cited above, § 83).

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

81. Lastly, the applicant complained under Article 14 of the Convention, in conjunction with Article 1 of Protocol No. 1, of discrimination based on his place of residence.

82. However, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols (see *Moskal*, cited above, § 100).

83. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

84. 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

85. The applicant claimed pecuniary damage comprising: (1) the restitution of the EWK pension in the amount of approximately PLN 1,045 per month and (2) the equivalent of the EWK pension, which had not been paid to him in the period from October 2002 until the present day, with statutory interest (approximately 48,641 euros (EUR)). The applicant also claimed PLN 20,000 or EUR 5,000 in respect of non-pecuniary damage.

86. The Government contested the applicant's claims.

87. The Court finds that the applicant was deprived of his income in connection with the violation found and must take into account the fact that he undoubtedly suffered some pecuniary and non-pecuniary damage (see *Moskal*, cited above, § 105 with a further reference). Making an assessment on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 12,000 to cover all heads of damage.

B. Costs and expenses

88. The applicant also claimed PLN 10,000 or EUR 2,500 for the costs and expenses incurred in relation to the present application in the domestic proceedings and the proceedings before the Court. He did not submit any invoices to justify his claim.

89. The Government contested the applicant's claim.

90. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as

to quantum. In the present case, regard being had to the above criteria and the fact that the applicant failed to provide the Court with the necessary documents, the Court rejects the claim for costs and expenses under all heads.

C. Default interest

91. 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

1. *Declares* unanimously the complaints under Articles 6 and 8 of the Convention and Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

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

3. *Holds* unanimously that there is no need to examine separately the complaints under Articles 6 and 8 of the Convention;

4. *Holds* by five votes to two
   (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, in respect of pecuniary and non-pecuniary damage, EUR 12,000 (twelve thousand euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 2 October 2012, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	David Thór Björgvinsson
Deputy Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the joint partly dissenting opinion of Judges Hirvelä and Bianku is annexed to this judgment.

D.T.B.
F.A.

JOINT PARTLY DISSENTING OPINION OF JUDGES HIRVELÄ AND BIANKU

The instant case raises issues similar to those dealt with by the Court in *Moskal v. Poland* (no. 10373/05) and *Lewandowski v. Poland* (38459/03). The majority in those cases found that there had been a breach of Article 1 of Protocol No. 1 to the Convention. We dissented. We dissent in this case also, for the reasons we gave in our Joint Partly Dissenting Opinion in the Moskal case and in the Lewandowski case.