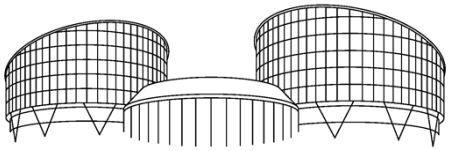

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIRST SECTION

CASE OF BIELIŃSKI v. POLAND

(Application no. 48762/19)

JUDGMENT

Art 6 § 1 (civil) • Reasonable time • Excessive length of appeal proceedings on reduction of applicant's benefits, lasting more than four years at two levels of jurisdiction • Proceedings concerning applicant's means of subsistence and thus requiring special diligence
Art 13 (+ Art 6 § 1) • No effective remedy in domestic system aimed at contesting length of time to examine a case in which judicial proceedings are stayed pending examination of a legal question by the Constitutional Court

STRASBOURG

21 July 2022

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 Bieliński v. Poland,

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

Marko Bošnjak, *President,*
Péter Paczolay,
Krzysztof Wojtyczek,
Alena Poláčková,
Erik Wennerström,
Raffaele Sabato,
Davor Derenčinović, *judges,*
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 48762/19) 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 Janusz Leszek Bieliński ("the applicant"), on 11 September 2019;

the decision to give notice to the Polish Government ("the Government") of the complaints concerning the excessive length of the proceedings, lack of an effective remedy and lack of access to a court, and to declare inadmissible the remainder of the application;

the observations submitted by the Government and the observations in reply submitted by the applicant;

the comments submitted by the Helsinki Foundation for Human Rights (*Helsińska Fundacja Praw Człowieka*) and the Federation of Associations of Uniformed Services of the Republic of Poland (*Federacja Stowarzyszeń Służb Mundurowych RP*), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 21 June 2022,

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

INTRODUCTION

1. The present application concerns reduction of the applicant's old-age pension.

THE FACTS

2. The applicant was born in 1957 and lives in Radziejowice. He was represented by Ms D. Gulińska-Aleksiejuk, a lawyer practising in Warsaw.

3. The Government were represented by their Agent, Mr J. Sobczak of the Ministry of Foreign Affairs.

4. The facts of the case may be summarised as follows.

I. THE APPLICANT'S PROFESSIONAL CAREER

5. In 1977 the applicant was employed by the Civil Militia (*Milicja Obywatelska*). In 1982 he started working for the Ministry of the Interior, and subsequently for the Office of State Protection. On 29 May 2000 the applicant was granted the right to an old-age pension for former functionaries of the uniformed services. On 10 August 2000 he was also granted the right to disability pension for former functionaries.

II. FIRST REDUCTION OF THE APPLICANT'S BENEFITS

6. On 21 October 2009 the Director of the Board for Pensions (*Dyrektor Zakładu Emerytalno-Rentowego Ministerstwa Spraw Wewnętrznych i Administracji*) issued a decision decreasing the applicant's pension on the basis of the Law of 23 January 2009 on amendments to the Law on old-age pensions of professional soldiers and their families and to the Law on old-age pensions of functionaries of the police, the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service, the Prison Service and their families (*ustawa o zmianie ustawy o zaopatrzeniu emerytalnym żołnierzy zawodowych oraz ich rodzin oraz ustawy o zaopatrzeniu emerytalnym funkcjonariuszy Policji, Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu, Służby Kontrwywiadu Wojskowego, Służby Wywiadu Wojskowego, Centralnego Biura Antykorupcyjnego, Straży Granicznej, Biura Ochrony Rządu, Państwowej Straży Pożarnej i Służby Więziennej oraz ich rodzin* – "the 2009 Act"). The 2009 Act, which came into force on 16 March 2009, introduced new rules for the calculation of the pensions of former functionaries of the State security service into the Law of 18 February 1994 on old-age pensions of functionaries of the police, the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service, the Prison Service and their families (*ustawa o zaopatrzeniu emerytalnym funkcjonariuszy Policji, Agencji Bezpieczeństwa Wewnętrznego, Agencji Wywiadu, Służby Kontrwywiadu Wojskowego, Służby Wywiadu Wojskowego, Centralnego Biura Antykorupcyjnego, Straży Granicznej, Biura Ochrony Rządu, Państwowej Straży Pożarnej i Służby Więziennej oraz ich rodzin* – "the 1994 Act"). In particular, one of the coefficients relevant for the calculation of pensions of former functionaries was decreased from 2.6% to 0.7% for each year of service with the former communist State security authorities in the period from 1944 to 1990 (see *Cichopek and Others v. Poland* (dec.), nos. 15189/10 and 1,627 others, §§ 68-72, 14 May 2013).

III. SECOND REDUCTION OF THE APPLICANT'S BENEFITS AND JUDICIAL PROCEEDINGS

7. On 4 August 2017 the Director of the Board for Pensions, pursuant to amended sections 15c and 22a read in conjunction with section 32(1) of the 1994 Act and on the basis of information received from the Institute for National Remembrance (*Instytut Pamięci Narodowej*), issued two decisions on the recalculation of the applicant's monthly pension and disability pension, whereby the former benefit was reduced again, from 4,086.49 Polish zlotys (PLN) (approximately 908 euros (EUR)) to PLN 2,069.02 (approximately EUR 458), and the latter to PLN 1,000 (approximately EUR 222). The applicant was to receive only the old-age pension, which was the more favourable of the two benefits. After tax, the net amount of his pension was PLN 1,716.81 (approximately EUR 381).

8. On 28 August 2017 the applicant lodged appeals against those decisions with the Board for Pensions. On 30 January 2018 his appeals were submitted to the Warsaw Regional Court – Social Security Division (*Sąd Okręgowy – Wydział Ubezpieczeń Społecznych*).

9. On 8 February 2018 the Warsaw Regional Court issued an order obliging the applicant to submit all requests for evidence. On the same day that court also requested the applicant's personal files and the history of his service from the Institute for National Remembrance.

10. On 18 June 2018 the Warsaw Regional Court stayed the proceedings. The court relied on the fact that, on 24 January 2018, in a similar case pending before the same court, legal questions had been referred by the court to the Constitutional Court (*Trybunał Konstytucyjny*) as regards the constitutionality of the provisions introducing new calculation methods for old-age pensions.

11. The applicant appealed against this decision.

12. On 18 December 2018 the Warsaw Court of Appeal (*Sąd Apelacyjny*) dismissed his appeal.

13. The applicant lodged several complaints about the excessive length of the proceedings before the Regional Court concerning his appeal against the decision recalculating the amount of his pension. He sought a declaration that the proceedings in question had been excessively long, and just satisfaction of PLN 20,000 (approximately EUR 4,956).

14. On 11 July 2018 the Warsaw Court of Appeal dismissed the applicant's length-of-proceedings complaint, holding that only four and a half months had passed since registration of the case at the Regional Court and that that period could not be considered excessive.

15. On 23 August 2019 the Warsaw Court of Appeal dismissed the applicant's further complaint about the excessive length of the proceedings, holding that their length could not be attributed to the Regional Court since they had been stayed pending examination of the legal questions put to the

Constitutional Court. As regards the period after resumption of the proceedings, the Court of Appeal found that the Regional Court had acted without undue delays.

16. It appears that the applicant requested several times that the stayed proceedings be resumed.

17. On 19 November 2018 the Warsaw Regional Court dismissed one of his requests for resumption of the proceedings. The applicant appealed.

18. On 5 June 2019 the Warsaw Court of Appeal dismissed his appeal.

19. On 17 July 2019 the Warsaw Regional Court dismissed his further request for the resumption of the proceedings.

20. The applicant appealed against the decision of 17 July 2019, submitting, among other things, that the stay of the proceedings had amounted to an unjustified limitation of his right of access to a court.

21. On 20 December 2019 the Warsaw Court of Appeal quashed the challenged decision. It noted that even though considerable time had passed since the legal questions had been referred to the Constitutional Court, it was unknown when that court would deal with the merits of the case. The Court of Appeal further held that the proceedings, which had been pending before the Regional Court since 2 February 2018, were essential for the applicant because they concerned the amount of his retirement pension which had been decreased on the basis of a challenged, not a final, decision. It also noted that the length of the proceedings was to be assessed on the basis of the particular circumstances of each case and that in the light of Article 6 of the European Convention on Human Rights, States should organise their judicial systems in such a way as to ensure the examination of cases in a reasonable time. The court concluded that the "state of suspension" of the proceedings had in fact deprived the applicant of his constitutional right of access to a court and suggested that the Regional Court examine the case on the merits applying directly the provisions of the Polish Constitution.

22. On 18 November 2020 a hearing was held and the applicant was heard by the court. The hearing was adjourned and the representative of the Board for Pensions was ordered to take a position as regards the applicant's requests for evidence within twenty-one days.

IV. DEVELOPMENTS AFTER COMMUNICATION OF THE APPLICATION TO THE GOVERNMENT

23. On 7 May 2021 the Warsaw Regional Court gave judgment, amended the challenged decisions and established that the amount of the applicant's benefits should be equal to the amount paid to him before 1 October 2017.

24. On 21 September 2021 the Warsaw Court of Appeal dismissed the appeal lodged by the Board for Pensions. The first-instance judgment became final.

25. On 8 October 2021 the Director of the Board for Pensions issued two decisions on the recalculation of the applicant's pension and disability pension in accordance with the final judgment of the Warsaw Regional Court. The payment of the disability pension was suspended, since the old-age pension was a more favourable benefit. The applicant was also compensated for the whole period during which he had received the reduced pension.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. RELEVANT DOMESTIC LAW

26. The relevant domestic law and practice concerning the pension entitlements of former functionaries of the uniformed services was described in *Cichopek and Others v. Poland* (dec.), nos. 15189/10 and 1,627 others, §§ 63-87, 14 May 2013. For relevant domestic law concerning the complaints against the excessive length of civil proceedings, see *Rutkowski and Others v. Poland*, nos. 72287/10 and 2 others, §§ 75-92, 7 July 2015.

27. On 1 January 2017 an amendment of 16 December 2016 ("the 2016 Act") to the 1994 Act came into force. In particular, section 15c was added, which provided that one of the coefficients relevant for the calculation of the pensions of former functionaries was decreased from 0.7% to 0% for each year of service with the former communist State security authorities in the period from 1944 to 1990.

28. Section 15c(3) of the amended 1994 Act provided that the amount of old-age pension calculated on the newly introduced principles could not be higher than the average monthly old-age pension paid by the Social Security Board (*Zakład Ubezpieczeń Społecznych*), as announced by the President of the Board.

29. Section 22a of the amended 1994 Act provided that the disability pension for a person who had served a totalitarian regime was reduced by 10% for each year of service for the totalitarian regime.

II. PROCEEDINGS BEFORE THE CONSTITUTIONAL COURT

30. The Warsaw Regional Court referred a legal question (*pytanie prawne*) to the Constitutional Court on 27 February 2018. It was registered under case no. P 4/18. The first hearing before the Constitutional Court was scheduled to take place on 17 March 2020, before being rescheduled to 21 April 2020. On that date the hearing was adjourned until 19 May 2020 and subsequently until 2 June 2020. On 15 June 2020 the Constitutional Court adjourned the hearing again until 18 August 2020. On 18 August 2020 the Constitutional Court heard submissions from the Prosecutor General (*Prokurator Generalny*) and representatives of the *Sejm* (the lower house of Parliament). It then adjourned the hearing until 11 September 2020. On that

date the hearing was cancelled and postponed until 6 October 2020. On 20 October 2020 delivery of its judgment was revoked. Since then no decision has been taken by the Constitutional Court.

III. THE RESOLUTION OF THE SUPREME COURT

31. On 16 September 2020 the Supreme Court, sitting as a bench of seven judges, issued Resolution no. III UZP 1/20 on the interpretation of the 1994 Act, adopted in response to a legal question put by a panel of three judges of the Supreme Court. It read as follows:

> "The criterion of 'service for a totalitarian regime' referred to in section 13(b)1 of the Law of 18 February 1994 on old-age pensions of functionaries of the police, the Internal Security Agency, the Intelligence Agency, the Military Counter-Intelligence Service, the Military Intelligence Service, the Central Anti-Corruption Bureau, the Border Guard, the Government Protection Bureau, the State Fire Service, the Prison Service and their families should be assessed on the basis of all the circumstances of the case, including on the basis of individual acts and their verification from the standpoint of a violation of fundamental human rights and freedoms."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

32. The applicant complained that the length of the proceedings in his case had been excessive, in violation of Article 6 § 1 of the Convention, the relevant part of which reads as follows:

> "In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a ... hearing within a reasonable time by [a] tribunal ..."

A. Admissibility

33. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. Period to be taken into consideration

34. The period to be considered under Article 6 § 1 started on 28 August 2017, when the applicant appealed against the decisions reducing his benefits and ended on 21 September 2021, the date on which the Court of Appeal gave the final judgment in the applicant's case (see paragraphs 8 and 24 above).

Accordingly, it lasted four years and twenty-five days at two levels of jurisdiction.

2. Reasonableness of the length of that period

(a) The parties' submissions

35. The applicant submitted that the proceedings in his case had exceeded the "reasonable time" requirement. He emphasised that the proceedings concerned his means of subsistence, which had been decreased drastically with immediate effect.

36. The Government decided to refrain from taking any standpoint as regards this complaint.

(b) Third party interveners

(i) The Helsinki Foundation for Human Rights

37. The Helsinki Foundation for Human Rights ("the Foundation") submitted that until 14 April 2021 the Director of the Board for Pensions had issued more than 56,500 decisions reducing pensions on the basis of the 2016 Act. Some 25,900 appeals had been lodged against these decisions. As a rule, these appeals were being examined by the Warsaw Regional Court. However, that court could exceptionally refer a case to other equivalent courts. Some 7,000 cases had been referred for examination to other regional courts in Poland by reason of the fact that the Warsaw Regional Court was unable to examine the sheer number of appeals lodged against the decisions issued by the Director of the Board for Pensions. The Foundation further submitted that out of almost 26,000 appeals lodged against the decisions decreasing pensions, only around 2,100 appeals had been examined and judgments issued by various regional courts in Poland.

38. The Foundation concluded that taking into account the number of pending proceedings following appeals against the decisions reducing pensions (some 13,000 sets of proceedings pending in the first half of 2021), the length of the respective proceedings combined with the lack of an effective remedy amounted to a systemic problem.

(ii) The Federation of Associations of Uniformed Services of the Republic of Poland

39. The Federation of Associations of Uniformed Services of the Republic of Poland ("the Federation"), which is a non-governmental organisation representing the interests of the uniformed services, submitted some statistical information similar to that produced by the Foundation. It further pointed to the Court's case-law specifying factors that must be taken into account when assessing the length of proceedings. In this respect it submitted that the cases in issue were not particularly complex and the applicants whose benefits had been reduced had in no way contributed to the

length of the relevant proceedings since they had been stayed pending examination of the case by the Constitutional Court. It also pointed to the subject matter of the disputes which was of crucial importance to the persons concerned; the cases concerned their means of subsistence, the decisions reducing their pensions were immediately enforceable and lodging appeals against these decisions did not suspend their enforcement.

40. It submitted, finally, that it was aware of the workload imposed on the Warsaw Regional Court. However, the only organisational measure taken by the authorities had been to establish a special department in that court dealing exclusively with appeals against the decisions reducing pensions. That department employed eight judges.

41. The Federation concluded that it had been estimated that some two thousand persons concerned had died while awaiting examination of their appeals by the courts.

(c) The Court's assessment

42. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case and the conduct of the applicant and of the relevant authorities. On the latter point, what is at stake for the applicant has also to be taken into account (see *Kudła v. Poland* [GC], no. 30210/96, § 124, ECHR 2000-XI).

43. Article 6 § 1 of the Convention imposes on the Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of the requirements of this provision, including the obligation to hear cases within a reasonable time (see, among many other authorities, *Rutkowski and Others*, cited above, § 128; *Bottazzi v. Italy* [GC], no. 34884/97, § 22, ECHR 1999-V; and *Scordino v. Italy (no. 1)*, no. 36813/97, § 183, ECHR 2006-V).

44. States are responsible for delays attributable to the conduct of their judicial or other authorities. They are also responsible for delays in the presentation of the reports and opinions of court-appointed experts. A State may be found liable not only for a delay in the handling of a particular case, but also for a failure to increase resources in response to a backlog of cases, or for structural deficiencies in its judicial system that cause delays. Tackling the problem of unreasonable delays in judicial proceedings may thus require the State to take a range of legislative, organisational, budgetary and other measures (see *Finger v. Bulgaria*, no. 37346/05, § 95, 10 May 2011, with further references).

45. Turning to the circumstances of the present case, the Court notes that it took five months to transmit the applicant's appeals from the Board for Pensions to the Warsaw Regional Court (see paragraph 8 above). Subsequently, after a further five months, the proceedings were stayed. This state of affairs lasted until 20 December 2019, that is, for eighteen months.

The first hearing was held on 18 November 2020, that is, almost eleven months after the resumption of the proceedings (see paragraph 22 above), and the first-instance judgment was delivered six months after the hearing. The case does not seem to have been particularly complex, nor did it require obtaining any expert reports. There is no indication that the applicant contributed in any way to the length of the proceedings.

46. It is true that the Warsaw Regional Court had to deal with an exceptionally heavy workload following the reduction of social benefits for thousands of former functionaries of the uniformed services. However, as noted above, it is the State's duty to organise its judicial system in such a way that its courts can meet the obligation to hear cases within a reasonable time.

47. In this context the Court notes that the overall length of the proceedings can only partially be attributed to the delays before the Regional Court. Their duration is due in large part to the length of the proceedings before the Constitutional Court, the result of which may be decisive for the examination of appeals such as that of the applicant. The Court reiterates that proceedings before a Constitutional Court are taken into consideration where, although the court has no jurisdiction to rule on the merits, its decision is capable of affecting the outcome of the dispute before the ordinary courts (see *Deumeland v. Germany*, 29 May 1986, § 77, Series A no. 100; *Pammel v. Germany*, 1 July 1997, §§ 51-57, *Reports of Judgments and Decisions* 1997-IV; and *Süßmann v. Germany*, 16 September 1996, § 39, *Reports* 1996-IV). The Court notes that the proceedings before the Constitutional Court have been pending since 27 February 2018, that is, for over four years, and that no judgment has been issued. As submitted by the Helsinki Foundation for Human Rights (see paragraph 37 above), out of almost 26,000 appeals lodged against the decisions decreasing pensions, only around 2,100 appeals have been examined and judgments issued by various regional courts in Poland. It follows that the remaining appeals are still waiting for examination of the case by the Constitutional Court and only in some situations have the courts decided to resume the proceedings without waiting for that court to deliver its judgment.

48. The Court further notes that the proceedings in issue concerned the applicant's means of subsistence. Throughout the whole proceedings, the applicant was receiving the reduced amount of benefits. In this context, the Court reiterates that pension disputes fall within a particular category of cases which require special diligence in their examination by the domestic authorities (see *Borgese v. Italy*, 26 February 1992, § 18, Series A no. 228-B).

49. Taking into account all the above circumstances, the Court finds no sufficient justification for the delay in the examination of the applicant's case.

There has accordingly been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

50. The applicant complained that he had not had at his disposal an effective remedy as provided in Article 13 of the Convention, which reads as follows:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

51. The Government considered that there had been no violation of Article 13 in the present case.

A. Admissibility

52. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

53. The applicant submitted that, as shown by the circumstances of the case, a complaint under the 2004 Act could not be considered an "effective remedy" within the meaning of Article 13 since it had not provided him with the requisite redress for a violation of his right to a hearing within a reasonable time. The court examining his length-of-proceedings complaint had refused to acknowledge the excessive length of the proceedings, holding that their duration had been attributable to the necessity to stay the proceedings because of the pending proceedings before the Constitutional Court rather than to the conduct of the Regional Court which had dealt with the merits of the applicant's case.

The applicant asked the Court to find a violation of Article 13 of the Convention.

54. The Government did not refer to the 2004 Act and its effectiveness in the present case. Rather, they focused on the fact that the courts were free to refer legal questions to the Constitutional Court and that in that case, domestic courts could stay the proceedings on their own initiative if the outcome of the case depended on the pending proceedings before the Constitutional Court. At the same time, they referred to some cases in which the domestic courts had issued judgments on the merits without waiting for the decision of the Constitutional Court. They also noted that while the applicant's case had indeed been stayed for some time, that had not affected the applicant's right under Article 13 of the Convention. He had been able to appeal against the

decision staying the proceedings and had been entitled to request the resumption of the proceedings at any time.

In conclusion, the Government invited the Court to reject the applicant's arguments and find no violation of Article 13.

2. The third party intervener

55. The Foundation submitted that the persons whose pensions had been reduced were not parties to the proceedings before the Constitutional Court and the complaint provided for in the 2004 Act was not applicable to the proceedings before that court. The persons concerned could lodge a complaint against the excessive length of proceedings pending before the regional courts with the respective courts of appeal. However, these complaints were rarely granted, taking into account the fact that the length of proceedings, stayed because of other proceedings pending before the Constitutional Court, could not be attributable to the courts examining the cases on the merits. In this respect the Foundation referred to Article 179 § 3 of the Code of Civil Proceedings which provided that during the suspension of the proceedings the court was not to take any steps except for those aimed at resuming the proceedings or securing the claim or evidence.

56. The persons concerned could also lodge interlocutory appeals against the decisions to stay the proceedings. Those appeals were, however, rarely effective. By way of example, the Warsaw Court of Appeal had examined 3,203 interlocutory appeals against the decisions staying the proceedings, out of which 281 appeals (less than 9%) had been granted. The Foundation pointed, however, to one decision of the Warsaw Court of Appeal of 20 January 2020 in case no. III AUz 947/17, in which that court had quashed the decision suspending the proceedings, holding that "the state of suspension [had] effectively deprived the applicant, possibly indefinitely, of the constitutionally guaranteed right to a court".

3. The Court's assessment

57. The relevant principles concerning the effectiveness of a remedy in the context of the excessive length of proceedings were summarised in *Rutkowski and Others* (cited above, §§ 172-75).

58. The Court has already found that the applicant's right to a hearing within a reasonable time guaranteed by Article 6 § 1 of the Convention has not been respected (see paragraph 49 above). There is therefore no doubt that his complaint is "arguable" for the purposes of Article 13 and that he was entitled to a remedy whereby he could obtain appropriate relief for the Convention breach before the domestic authorities, including compensation for non-pecuniary damage suffered on account of delays that had occurred in his case (see *Kudła*, cited above, § 157).

59. The applicant lodged at least two complaints under the 2004 Act. His first complaint was dismissed on 11 July 2018, that is, one month after the proceedings had been stayed. However, the second length-of-proceedings complaint was examined on 23 August 2019 and dismissed by the Warsaw Court of Appeal, which reasoned that the length of the proceedings could not be attributed to the Regional Court since they had been stayed pending examination of the legal questions by the Constitutional Court (see paragraph 15 above).

60. The Court has previously considered the 2004 Act under Article 35 § 1 and Article 13 of the Convention and concluded that it was "effective" for the purposes of those provisions (see *Charzyński v. Poland* (dec.), no. 15212/03, §§ 36-43, ECHR 2005-V). However, after several years of developments in Polish judicial practice, the Court decided to reconsider its previous position on the effectiveness of a complaint under the 2004 Act in respect of its compensatory aspect and found a violation of Article 13 of the Convention (see *Rutkowski and Others*, cited above, §§ 176-86).

61. In that case the Court also noted that, by virtue of section 2(2) of the 2004 Act, the domestic court's examination of such complaints focused on the question of whether the court dealing with the particular case had displayed due diligence (ibid.). It further found that a failure to deal with a case within a reasonable time was not necessarily the result of fault or an omission on the part of individual judges or prosecutors. There were instances where delays resulted from the State's failure to place sufficient resources at the disposal of its judiciary or from deficiencies in domestic legislation pertaining to the organisation of its judicial system or the conduct of legal proceedings (ibid. § 184).

62. In the present case, similarly, the overall length of the proceedings did not result entirely from the omissions of particular courts; rather, their length was due in large part to the period during which they were stayed pending the outcome of the case before the Constitutional Court. This was confirmed by the Court of Appeal which examined the applicant's length-of-proceedings complaint (see paragraph 15 above). On the other hand, there exists no remedy in the Polish domestic system aimed at contesting the length of time it takes to examine a case in which judicial proceedings are stayed pending the examination of a legal question by the Constitutional Court.

It follows that in the special procedural circumstances of this case, where the length of the proceedings depended to a large extent on the examination of the case by the Constitutional Court, the applicant did not have at his disposal an effective remedy by which to obtain appropriate relief for the Convention breach before the domestic authorities.

63. There has accordingly been a violation of Article 13 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION ON ACCOUNT OF THE APPLICANT'S LACK OF ACCESS TO A COURT

64. The applicant also complained under Article 6 § 1 of the Convention that he had been deprived of his right of access to a court. The relevant part of that provision provides as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. The parties' submissions

65. The applicant submitted that the prolonged examination of his appeals by the domestic courts had effectively deprived him of his right of access to a court, which had become illusory.

66. The Government submitted that the applicant had had a right to appeal against the decisions reducing his social benefits and that his appeals had been successfully submitted to the relevant court. They admitted that the proceedings had been stayed for some time. However, the applicant had made use of the interlocutory appeal and managed to have his proceedings resumed. Therefore, in the Government's view, the applicant's right to a court had been respected and there had been no violation of Article 6 § 1 on that account in the present case.

67. The Court notes that the parties' submissions were received before the first-instance judgment had been issued in the applicant's case.

68. On 10 November 2021 the Government sent comments on the applicant's just-satisfaction claims, in which they submitted that following the second-instance judgment, on 8 October 2021 the Director of the Board for Pensions had issued a decision on the recalculation of the applicant's pension pursuant to the courts' judgments and the applicant had been compensated for the period from 1 October 2017 until 31 October 2021.

B. The Court's assessment

69. As to the right of access to a court, the Court held as follows in *Stanev v. Bulgaria* [GC], no. 36760/06, §§ 229-31, ECHR 2012:

> "229. The Court reiterates that Article 6 § 1 secures to everyone the right to have any claim relating to his or her civil rights and obligations brought before a court or tribunal (see *Golder v. the United Kingdom*, 21 February 1975, § 36, Series A no. 18). This 'right to a court', of which the right of access is an aspect, may be relied on by anyone who considers on arguable grounds that an interference with the exercise of his or her civil rights is unlawful and complains that no possibility was afforded to submit that claim to a court meeting the requirements of Article 6 § 1 (see, *inter alia*, *Roche v. the United Kingdom* [GC], no. 32555/96, § 117, ECHR 2005-X, and *Salontaji-Drobnjak v. Serbia*, no. 36500/05, § 132, 13 October 2009).

> 230. The right of access to the courts is not absolute but may be subject to limitations; these are permitted by implication since the right of access 'by its very nature calls for regulation by the State, regulation which may vary in time and in place according to the needs and resources of the community and of individuals' (see *Ashingdane* [*v. the United Kingdom*, 28 May 1985], § 57 [Series A no. 93]). In laying down such regulation, the Contracting States enjoy a certain margin of appreciation. Whilst the final decision as to observance of the Convention's requirements rests with the Court, it is no part of the Court's function to substitute for the assessment of the national authorities any other assessment of what might be the best policy in this field. Nonetheless, the limitations applied must not restrict the access left to the individual in such a way or to such an extent that the very essence of the right is impaired. Furthermore, a limitation will not be compatible with Article 6 § 1 if it does not pursue a legitimate aim and if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be achieved (ibid.; see also, among many other authorities, *Cordova v. Italy* (no. 1), no. 40877/98 § 54, ECHR 2003-I, and the recapitulation of the relevant principles in *Fayed v. the United Kingdom*, 21 September 1994, § 65, Series A no. 294-B).
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> 231. Furthermore, the Convention is intended to guarantee not rights that are theoretical or illusory but rights that are practical and effective. This is particularly true for the guarantees enshrined in Article 6, in view of the prominent place held in a democratic society by the right to a fair trial with all the guarantees under that Article (see *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 45, ECHR 2001-VIII)."

70. The Court has further found that excessive delays in the examination of a claim may also render the right of access to a court meaningless and illusory (see *Kristiansen and Tyvik As v. Norway*, no. 25498/08, § 57, 2 May 2013).

71. Turning to the circumstances of the present case, the Court notes that the applicant did indeed have a right to appeal against the decisions reducing his social benefits and that his appeals, with some delay, were forwarded to the relevant court. The proceedings before the Regional Court were stayed for a considerable time (see paragraphs 10 and 21 above); however, the applicant did manage to have them resumed following his request to that effect and his interlocutory appeal against the decision refusing the request in question. In his interlocutory appeal, the applicant relied on the argument that the stay of the proceedings amounted to an unjustified limitation of his right of access to a court (see paragraph 20 above). The first-instance judgment on the merits of the case was issued five months after the resumption of the proceedings, on 7 May 2021, and the second-instance judgment followed in September 2021. The judgments were executed; on 8 October 2021 a decision on the recalculation of the applicant's pension was issued. He was also compensated for the whole period during which he received the reduced pension (see paragraph 25 above). The Court has already found that the proceedings in the applicant's case were lengthy, in particular taking into account what was at stake for him (see paragraph 48 above). However, the Court does not consider that the length of the proceedings was excessive to

such an extent as to deprive the applicant of the very essence of his right (compare and contrast *Kristiansen and Tyvik As*, cited above, § 57).

72. It follows that the complaint under Article 6 § 1 of the Convention concerning the applicant's right of access to a court is manifestly ill-founded within the meaning of Article 35 § 3 and must be rejected pursuant to Article 35 § 4 of the Convention.

IV. 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 100,000 euros (EUR) in respect of non-pecuniary damage and EUR 7,805.44 in respect of pecuniary damage.

75. The Government considered these claims exorbitant and unsupported.

76. The Court does not discern any causal link between the violation found and the pecuniary damage alleged; it therefore rejects this claim. However, it awards the applicant EUR 2,100 in respect of non-pecuniary damage, plus any tax that may be chargeable.

B. Costs and expenses

77. The applicant also claimed EUR 763.05 for the costs and expenses incurred before the domestic courts and for those incurred before the Court.

78. The Government considered this claim excessive and unsupported.

79. 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 were actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the full sum claimed covering costs under all heads, plus any tax that may be chargeable to the applicant.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the complaints concerning the excessive length of the proceedings and the lack of an effective remedy admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 6 § 1 of the Convention on account of the excessive length of the proceedings;

3. *Holds*, that there has been a violation of Article 13 of the Convention;

4. *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 the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 2,100 (two thousand one hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (ii) EUR 763.05 (seven hundred sixty-three euros and five cents), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 21 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Liv Tigerstedt	Marko Bošnjak
Deputy Registrar	President