FOURTH SECTION

**CASE OF BACZÚR v. HUNGARY**

*(Application no. 8263/15)*

JUDGMENT

STRASBOURG

7 March 2017

FINAL

07/06/2017

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

In the case of Baczúr v. Hungary,

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

Vincent A. De Gaetano, *President,* András Sajó, Nona Tsotsoria, Paulo Pinto de Albuquerque, Krzysztof Wojtyczek, Egidijus Kūris, Iulia Motoc, *judges,*

and Marialena Tsirli, *Section Registrar,*

Having deliberated in private on 31 January 2017,

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

PROCEDURE

1.  The case originated in an application (no. 8263/15) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Hungarian national, Mr István Baczúr (“the applicant”), on 12 March 2013.

2.  The applicant was represented by Mr D. Karsai, a lawyer practising in Budapest. The Hungarian Government (“the Government”) were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3.  The applicant complained, in particular, of a significant decrease in the benefit he had received on account of his reduced capacity to work. He relied on Article 1 of Protocol No. 1 as well as on Articles 6, 8, 13 and 14 of the Convention.

4.  On 21 April 2015 the application was communicated to the Government.

THE FACTS

THE CIRCUMSTANCES OF THE CASE

5.  The applicant was born in 1958 and lives in Nagykozár.

6.  The applicant had been working as a tax inspector. In 1996 he applied for early retirement on account of disability. As of 1 April 1996, he was declared to have lost 67% of his capacity to work and was granted a disability pension of 114,880 Hungarian forints (HUF) per month (approximately 370 euros (EUR) at the rate of January 2017). That disability assessment was maintained in 1999, 2003 and 2006.

7.  The relevant assessment methodology changed as of 1 January 2008. The applicant’s case was reviewed under the new rules in 2009. Without any significant change in his state of health having occurred, he was then found to have lost 50% of his working capacity. As a consequence, his disability pension was terminated and, as of 1 July 2009, he was declared suitable for institutional rehabilitation and granted a monthly rehabilitation allowance in the amount of HUF 152,820 (approximately EUR 490), minus payroll deductions. Under the relevant statute, the benefit could only be granted for a limited period, namely until 31 October 2011 in the applicant’s case. The law allowed for one extension of the time-limit, making the maximum deadline for the benefit 30 June 2012. However, under the law, the overall period allowable for rehabilitation could not exceed three years.

8.  The monthly amount payable evolved in the period preceding the deadline. On expiry, it was HUF 173,980 (approximately EUR 570) per month, minus HUF 17,398 in payroll deductions, resulting in a net sum of HUF 156,585 (approximately EUR 510).

9.  Meanwhile, on 29 December 2011 Act no. CXCI of 2011 on the Benefits Granted to Persons with Reduced Work Capacity was enacted. It came into effect on 1 January 2012 and introduced a new system of allowances.

10.  On 28 March 2012 the applicant applied for a disability allowance under the new law. On 8 May 2012 he was medically examined before an expert panel of the National Rehabilitation and Social Welfare Authority. The applicant’s state of health was rated at 46% and he was classified as being suitable for rehabilitation within a time-frame of thirty-six months. The authority initially granted him HUF 41,850 (approximately EUR 140) per month in disability allowance, as of 1 July 2012.

11.  On appeal, the applicant’s health score was maintained but the second-instance authority no longer recommended his rehabilitation. The monthly disability allowance corresponding to his situation was eventually set at HUF 55,800 (approximately EUR 180).

12.  The applicant sought a judicial review before the Pécs Administrative and Labour Court, but in vain. On 26 May 2014 the *Kúria* rejected his petition for review on the grounds that he had not relied on any particular breach of the law, as required by the Code of Civil Procedure.

13.  Following a further legislative amendment of 1 April 2014, the applicant became entitled to a disability allowance of HUF 159,100 (approximately EUR 520) per month retroactively as of 1 January 2014.

THE LAW

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

14.  The applicant complained that the drastic decrease in his monthly disability allowance, which had prevailed between 1 July 2012 and 31 December 2013, amounted to an unjustified deprivation of possessions in view of the fact that his underlying medical condition had not changed. He relied on Article 1 of Protocol No. 1 to the Convention and Articles 6, 8, 13 and 14 of the Convention.

The Court considers that the complaint falls to be examined under Article 1 of Protocol No. 1 alone, 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

15.  The Government argued that the application was incompatible *ratione materiae* with the provisions of the Convention. They essentially reiterated the arguments they had put forward in the case of *Béláné Nagy v. Hungary* ([GC], no. 53080/13, §§ 60-66, 13 December 2016), emphasising, as an additional and crucial element, that the present application concerned a fixed-term benefit which, on its expiry, did not create any “assertable right” or “legitimate expectation” enabling the applicant to avail himself of Article 1 of Protocol No. 1 in order to challenge the reduced benefit granted to him in the period complained of.

16.  The applicant contested that view.

17.  The Court considers that the Government’s objection is so closely linked to the substance of the applicant’s complaint that it should be joined to the merits (see *Béláné Nagy*, cited above, § 71). It further notes that the application is not inadmissible on any other grounds. It must therefore be declared admissible.

B.  Merits

1.  The parties’ submissions

18.  As to the applicability of Article 1 of Protocol No. 1, the applicant submitted that, given that his state of health was permanently impaired, he legitimately expected an adequate benefit from the State throughout, notwithstanding the fact that the statutory time-frame for rehabilitation was a fixed-term one. Any change in the rate of his health impairment was artificial and had resulted merely from the 2008 change in the scoring methodology.

19.  As to compliance with Article 1 of Protocol No. 1, the applicant accepted that the measures underlying his grievance had pursued the general interest of overhauling the system of disability benefits and had been lawful. However, he was of the view that the interference he had suffered was disproportionate in that two-thirds of his benefit had been eliminated for a period of one and a half years, notably from 1 July 2012 until 31 December 2013 (see paragraphs 10 and 13 above).

20.  The Government submitted that even if Article 1 of Protocol No. 1 were applicable, the applicant had not sustained any interference with his rights under that provision, since there was no basis in domestic law for him to claim the continuous payment of an unchanged disability benefit, no matter how the circumstances evolved. Moreover, even assuming the existence of an interference, the measures applied in the applicant’s case flowed directly from the relevant rules of the domestic law as amended and pursued the general interest of rationalising the system of disability benefits. They could by no means be considered as disproportionate since (i) the impugned period had lasted only eighteen months; (ii) the applicant had been in receipt of a benefit even during that time; (iii) the amount of that benefit had exceeded one-third of his previous benefit and almost equalled 60% of the minimum subsistence income relevant in the years 2012 and 2013; and (iv) the 2014 amendment, consisting in an equitable adjustment of the law, had resulted in partial compensation for the applicant.

2.  The Court’s assessment

21.  The Court has summarised its position on the applicability of Article 1 of Protocol No. 1 in cases similar to the present one in paragraphs 72 to 110 of the *Béláné Nagy* judgment (cited above). It sees no reason to depart from those considerations.

22.  In particular, the Court reiterates that, in the field of social-security benefits, “for the recognition of a possession consisting in a legitimate expectation, the applicant must have an assertable right which ... may not fall short of a sufficiently established, substantive proprietary interest under the national law” (see *Béláné Nagy*, cited above, § 79).

23.  It transpires from the facts of the present application that, since 1996, the applicant has been continuously entitled, under one legal regime or another, to receive disability benefits from the State. For the Court, this element gains particular significance when dealing with the Government’s argument pointing to the fixed-term character of the rehabilitation allowance. It has not been disputed by the Government that the applicant’s health impairment has, by and large, remained unchanged throughout the entire period since 1996. This was reflected repeatedly by the domestic authorities’ consecutive decisions granting him various related benefits.

24.  The Court is therefore satisfied that the applicant’s claim for disability benefit during the eighteen-month period in issue (from 1 July 2012 until 31 December 2013) constituted a “sufficiently established, substantive proprietary interest under the national law”, just as it had in the preceding or subsequent periods. This holds true irrespective of whether the benefit in a given period was granted for a definite or an indefinite duration, since the underlying medical condition remained constant.

25.  It follows that Article 1 of Protocol No. 1 is applicable and the Government’s preliminary objection of incompatibility *ratione materiae* must be dismissed.

26.  Moreover, the Court cannot but emphasise that, as of 1 July 2012, the applicant’s benefit had been reduced to approximately one-third of its previous value – a situation which lasted eighteen months, since the applicant became entitled to a higher disability allowance calculated according to a further legislative amendment only as of 1 January 2014 (see paragraphs 10-13 above). It must therefore be concluded that his right to receive social-security benefits on account of his ailments was interfered with. It remains to be ascertained whether the interference was justified.

27.  A synopsis of the Court’s position on compliance with Article 1 of Protocol No. 1 in this field can be found in paragraphs 112 to 118 of the *Béláné Nagy* judgment (cited above). Those considerations are also valid in the present case.

28.  The Court notes at the outset that the measure complained of had undisputedly a clear basis in national law; and it accepts that it corresponded to the general interest attached to the rationalisation of the social-security system. At this juncture, the Court reiterates that “the fact that a person has entered into and forms part of a State social-security system (even if a compulsory one, as in the instant case) does not necessarily mean that that system cannot be changed, either as to the conditions of eligibility of payment or as to the quantum of the benefit or pension (see, mutatis mutandis, *Carson and Others v. the United Kingdom* [GC], no. 42184/05, §§ 85-89, ECHR 2010; and *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012). Indeed, the Court has accepted the possibility of amendments to social-security legislation which may be adopted in response to societal changes and evolving views on the categories of persons who need social assistance, and also to the evolution of individual situations (see *Wieczorek v. Poland*, no. 18176/05, § 67, 8 December 2009)” (see *Béláné Nagy*, cited above, § 88). The Court would stress that, in present-day conditions, these considerations play a primordial role in assessing complaints going to the impairment of social welfare rights; and they undoubtedly provide the State with a wide margin of appreciation in rationalising their social-security systems (see paragraph 31 below). Nevertheless, the examination of proportionality of such measures cannot be dispensed with.

29.  In addressing the proportionality of the measure, that is, in considering whether the interference imposed an excessive individual burden on the applicant, the Court will have regard to the particular context in which the issue arose, namely that of a social-security scheme. Such schemes are an expression of a society’s solidarity with its vulnerable members (see *Béláné Nagy*, cited above, § 116). An important consideration 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 pension rights (see *Béláné Nagy*, cited above, § 118).

For the Court, a two-thirds reduction, as in the present case, undoubtedly falls into this latter category.

30.  The Court notes that although the applicant – unlike Mrs Nagy – was not completely deprived of all entitlements, his income was nevertheless abruptly reduced to EUR 180 per month (see paragraph 11 above), which, as admitted by the Government themselves, was barely 60% of the minimum subsistence level relevant in the period in issue (see paragraph 20 above). This element is aggravated by the fact that the applicant apparently had no other significant income on which to subsist and that he belonged to a vulnerable group of disabled persons (see *Béláné Nagy*, cited above, § 123).

31.  The Court thus considers that in the present case the application of the impugned legislation resulted in a situation in which a fair balance was not struck between the interests at stake – even if that legislation was aimed at protecting the public purse by rationalising the scheme of disability benefits, a matter of legitimate general interest in whose pursuit the State enjoys a wide margin of appreciation (see paragraph 28 above). Once again, it must be stressed that the applicant suffered the removal of two-thirds of his benefit, whereas there was no indication that he had failed to act in good faith at all times, to co-operate with the authorities or to make any relevant claims or representations (see *Béláné Nagy*, cited above, §§ 121, 125 and 126).

32.  The Court thus considers that there was no reasonable relation of proportionality between the aim pursued and the restrictions applied to the applicant’s allowance in the period from 1 July 2012 to 31 December 2013. It therefore finds that, notwithstanding the State’s wide margin of appreciation in this field, the applicant had to bear, in the period at issue; an excessive individual burden. Even though the applicant later benefitted from a further legislative amendment, which resulted in an increase of his disability allowance, that measure only applied from 1 January 2014 onwards (see paragraph 13 above).

33.  It follows that there has been a violation of his rights under Article 1 of Protocol No. 1.

II.  APPLICATION OF ARTICLE 41 OF THE CONVENTION

34.  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

35.  The applicant claimed EUR 6,320 in respect of pecuniary damage, which corresponds to the accumulated difference between the previous benefit and the one prevailing in the period giving rise to the violation found. He also claimed EUR 30,000 in non-pecuniary damage.

36.  The Government found these claims to be excessive.

37.  The Court cannot speculate on the amount of disability benefit which would have been disbursed to the applicant had the violation not occurred. It therefore awards him a lump sum of EUR 5,000 in respect of the pecuniary damage sustained (see *Béláné Nagy*, cited above, § 131). Moreover, it considers that he must have suffered some non-pecuniary damage on account of the distress suffered and awards him, on the basis of equity, EUR 5,000 under this head.

B.  Costs and expenses

38.  The applicant also claimed EUR 13,400 plus VAT for the costs and expenses incurred before the Court. This amount corresponds to sixty-seven hours of legal work billable by his lawyer at an hourly rate of EUR 200 plus VAT.

39.  The Government contested this claim.

40.  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 documents in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 9,000 covering costs under all heads.

C.  Default interest

41.  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.  *Joins* *to the merits* the Government’s preliminary objection and *dismisses* it;

2.  *Declares* the application admissible;

3.  *Holds* that there has been a violation of Article 1 of Protocol No. 1 to 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 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;

(ii)  EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

(iii)  EUR 9,000 (nine thousand 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;

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

Done in English, and notified in writing on 7 March 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Marialena Tsirli Vincent A. De Gaetano  
 Registrar President