



Disproportionate refusal to grant a disability pension violated the right to protection of property

In today's **Grand Chamber** judgment¹ in the case of [Bélané Nagy v. Hungary](#) (application no. 53080/13) the European Court of Human Rights held, by a majority (9 votes to 8), that there had been:

a violation of Article 1 of Protocol No.1 (protection of property) to the European Convention on Human Rights.

The case concerned a social security benefit paid to the applicant, Ms Nagy. She had received a disability benefit for almost ten years, which was then withdrawn. Her claim to re-start the payments was dismissed, because a legislative change had meant that she was no longer eligible to receive the benefit. Ms Nagy complained that the removal of her disability pension had violated her right to the protection of property.

The Court found in particular that Article 1 to Protocol 1 had applied to Ms Nagy's case, because she had had a legitimate expectation that she would receive the pension, if she had satisfied the criteria set out in the old legislation. The refusal to grant her the benefit had been in accordance with the law (as it arose from the new legislation), and had been in pursuit of a legitimate purpose (saving public funds). However, it had not been proportionate: in particular, because it had involved the complete deprivation of a vulnerable person's only significant source of income, resulting from retrospectively effective legislation that had contained no transitional arrangements applicable to Ms Nagy's case.

Principal facts

The applicant, Bélané Nagy, is a Hungarian national who was born in 1959 and lives in Baktalórántháza (Hungary).

From May 1975 to July 1997 Ms Nagy was employed and made the statutory contributions to the national social security scheme. She was granted a disability pension starting in April 2001. She qualified for the pension on account of a 67% loss in working capacity (which exceeded the minimum threshold), and the fact that she had carried out a sufficient length of service. Her health was re-assessed at the same level in 2003, 2006 and 2007. However, after a change in the assessment methodology, her disability incapacity was reduced to 40%, which was below the requisite minimum level. Consequently her disability pension was withdrawn in 2010. Ms Nagy challenged this decision before the Labour Court, but her claim was dismissed in April 2011.

In late 2011 and early 2012, Ms Nagy launched new procedures to obtain a disability pension. Her disability was re-assessed, and established to be at a level of 50%. This would have entitled her to a disability pension again, were it not for a legislative amendment that had come into force on 1 January 2012 (Act no. CXCI of 2011 on the Benefits Granted to Persons with Reduced Work Capacity). The amendment introduced new eligibility requirements, whereby the length of service criteria was replaced with the requirement that an applicant had to have had at least 1,905 days of uninterrupted social security cover in the last five years, in order to qualify for a disability pension.

1. Grand Chamber judgments are final (Article 44 of the Convention).

All final judgments are transmitted to the Committee of Ministers of the Council of Europe for supervision of their execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

Ms Nagy had only 947 days. She therefore failed to satisfy the new criteria, and her request for a pension was dismissed by the local authority. Ms Nagy's appeal was also dismissed by the National Rehabilitation and Social Welfare Authority, as was her application to challenge the decision in the Nyíregyháza Administrative and Labour Court. The final decision was handed down on 20 June 2013.

Complaints, procedure and composition of the Court

Relying in substance on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, Ms Nagy complained that she had lost her livelihood, previously secured by the disability pension – despite the fact that her health had remained as poor as at the time that she was first diagnosed with her disability.

The application was lodged with the European Court of Human Rights on 12 August 2013.

In its Chamber [judgment](#) of 10 February 2015, the European Court of Human Rights held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1 to the Convention. It noted in particular that Ms Nagy had been totally divested of her disability care instead of being subject to a reasonable and proportionate reduction. This course of events amounted to a drastic and unforeseeable change in the conditions of her access to disability benefits. The Chamber found that, in the circumstances, Ms Nagy had thus had to bear an excessive and disproportionate individual burden.

On 1 June 2015 the case was referred to the Grand Chamber at the request of the Hungarian Government.

Judgment was given by the Grand Chamber of 17 judges, composed as follows:

Guido **Raimondi** (Italy), *President*,
András **Sajó** (Hungary),
Luis **López Guerra** (Spain),
Mirjana **Lazarova Trajkovska** (“the former Yugoslav Republic of Macedonia”),
Angelika **Nußberger** (Germany),
Julia **Laffranque** (Estonia),
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Nona **Tsotsoria** (Georgia),
Ganna **Yudkivska** (Ukraine),
Erik **Møse** (Norway),
André **Potocki** (France),
Paul **Lemmens** (Belgium),
Krzysztof **Wojtyczek** (Poland),
Branko **Lubarda** (Serbia),
Síofra **O’Leary** (Ireland),

and also Søren **Prebensen**, *Deputy Grand Chamber Registrar*.

Decision of the Court

[Article 1 of Protocol 1 \(protection of property\)](#)

Due to the six-month time limit for submitting applications, the only grievance of Ms Nagy that the Court could address was the application for a disability pension that she had submitted in early 2012, which had ended with the judgment of the Administrative and Labour Court in June 2013.

Applicability of Article 1 of Protocol No. 1

The decision to grant Ms Nagy a pension provided her with an 'existing possession', falling under Article 1 of Protocol No.1. Furthermore, Ms Nagy could have a 'legitimate expectation' (also falling under Article 1 of Protocol No.1) that she would continue to receive the pension, so long as her disability persisted to the relevant degree.

This legitimate expectation had continued, even after Ms Nagy's pension payments had been stopped as of 2010. This was for a number of reasons. Ms Nagy had continued to actively pursue disability claims after having her entitlement withdrawn; she had undergone several re-assessments of her health as part of making such claims; and she had continued (until 2012) to fulfil the relevant length-of-service requirements for receiving the benefit. Furthermore, when rejecting her claim for the benefit in April 2011, the Labour Court had indicated that she would once again be eligible for it if her health were to deteriorate; and a re-assessment of her health in December 2011 had indeed recorded such deterioration. Moreover, the authorities had failed to provide rehabilitation payments (despite these being recommended in December 2011), which would have altered Ms Nagy's situation under the new law. Finally, the legitimate expectation continued because Ms Nagy had paid contributions to the social security scheme, and for a sufficient period of time to qualify for disability benefit under the old legislation. This had meant that she could rely on the promise of the law that she would be entitled to benefits whenever her disability was assessed at the relevant level.

This legitimate expectation had amounted to a property right under Article 1 of Protocol No.1. Ms Nagy's access to that property had been removed by the decision that found her ineligible to receive the pension, due to the new legislation. The decision had therefore been an interference with Ms Nagy's property rights, falling within the scope of Article 1 of Protocol No.1.

Compliance with Article 1 of Protocol No. 1

The Court held that the interference with Ms Nagy's property rights had been in accordance with the law, as it had been carried out through the application of duly passed legislation. It had also been in pursuit of a legitimate aim, as the legislation had sought to protect public funds by rationalising the system of disability-related social-security benefits.

However, the Court found that the measures used to achieve this aim had not been proportionate. Ms Nagy had been subject to a complete deprivation of disability benefits, rather than a reduction. The legislation which had caused this had had retrospective effects, and its transitional arrangements had not been applicable in Ms Nagy's case. She had belonged to a vulnerable group (namely, disabled persons) and had had no other significant source of income. Though she had been recommended for rehabilitation in December 2011, no rehabilitation had been undertaken and she had not been offered the rehabilitation allowance.

In these circumstances, such a fundamental interference with Ms Nagy's property rights had involved a failure to strike a fair balance between the relevant interests at stake. There had been no reasonable relationship of proportionality between the aim pursued and the means applied to achieve it. Notwithstanding the State's wide margin of appreciation in this field, the Court found that Ms Nagy had had to bear an excessive individual burden, amounting to a violation of her rights under Article 1 of Protocol No.1.

Just satisfaction (Article 41)

The Court held that Hungary was to pay the applicant 10,000 euros (EUR) in respect of pecuniary damage, EUR 5,000 in respect of non-pecuniary damage and EUR 12,795.05 in respect of costs and expenses.

Separate opinions

Judge Wojtyczek expressed a concurring opinion, while Judges Nußberger, Hirvelä, Bianku, Yudkivska, Møse, Lemmens and O’Leary expressed a joint dissenting opinion. These opinions are annexed to the judgment.

The judgment is available in English and French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.