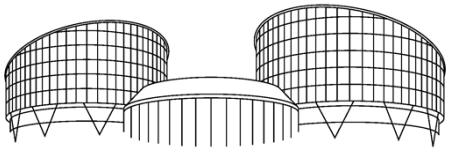

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

GRAND CHAMBER

CASE OF BÉLÁNÉ NAGY v. HUNGARY

(Application no. 53080/13)

JUDGMENT

STRASBOURG

13 December 2016

This judgment is final but it may be subject to editorial revision.

In the case of Béláné Nagy v. Hungary,

The European Court of Human Rights, sitting as a Grand Chamber composed of:

Guido Raimondi, *President,*
András Sajó,
Luis López Guerra,
Mirjana Lazarova Trajkovska,
Angelika Nußberger,
Julia Laffranque,
Päivi Hirvelä,
George Nicolaou,
Ledi Bianku,
Nona Tsotsoria,
Ganna Yudkivska,
Erik Møse,
André Potocki,
Paul Lemmens,
Krzysztof Wojtyczek,
Branko Lubarda,
Síofra O'Leary, *judges,*

and Søren Prebensen, *Deputy Grand Chamber Registrar,*

Having deliberated in private on 16 December 2015 and 10 October 2016,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 53080/13) 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, Ms Béláné Nagy ("the applicant"), on 12 August 2013.

2. The applicant, who had been granted legal aid, was represented by Mr A. Cech, a lawyer practising in Budapest. The Hungarian Government ("the Government") were represented by Mr Z. Tallódi, Agent, Ministry of Justice.

3. The applicant alleged that she had lost her means of support, guaranteed only by a disability allowance, as a result of legislative changes applied by the authorities without equity, in spite of the fact that there had been no improvement in her health.

4. The application was allocated to the Second Section of the Court (Rule 52 § 1 of the Rules of Court). The Government were given notice of

the application on 21 January 2014. On 10 February 2015 a Chamber composed of Işıl Karakaş, President, András Sajó, Nebojša Vučinić, Helen Keller, Egidijus Kūris, Robert Spano, Jon Fridrik Kjølbro, judges, and also of Stanley Naismith, Section Registrar, delivered its judgment. It declared the application admissible and held, by four votes to three, that there had been a violation of Article 1 of Protocol No. 1 to the Convention. The joint dissenting opinion of Judges Keller, Spano and Kjølbro was annexed to the judgment.

5. On 24 April 2015 the Government requested that the case be referred to the Grand Chamber in accordance with Article 43 of the Convention. The panel of the Grand Chamber accepted the request on 1 June 2015.

6. The composition of the Grand Chamber was determined according to the provisions of Article 26 §§ 4 and 5 of the Convention and Rule 24 of the Rules of Court.

7. The applicant and the Government each filed a memorial (Rule 59 § 1) on the merits. In addition, third-party comments were received from the European Trade Union Confederation, which had been granted leave by the President of the Grand Chamber to intervene in the written procedure (Article 36 § 2 of the Convention and Rule 44 § 3).

8. A hearing took place in public in the Human Rights Building, Strasbourg, on 16 December 2015 (Rule 59 § 3).

There appeared before the Court:

(a) *for the Government*
Mr Z. TALLÓDI, *Agent*,
Ms M. LÉVAI, *Adviser*;

(b) for the applicant
Mr A. CECH, *Counsel*,
Mr E. LÁTRÁNYI,
Mr B. VÁRHALMY, *Advisers*.

The Court heard addresses by Mr Cech and Mr Tallódi, and replies by them and by Ms Lévai to questions put by the judges.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant was born in 1959 and lives in Baktalórántháza.

10. Between 1 May 1975 and 14 July 1997 the applicant was employed and made the statutory contributions to the social-security scheme.

Subsequently, she was in receipt of unemployment benefit from 15 September 1997 until 9 September 1998.

11. In response to a request lodged on 16 October 2001, the applicant was granted a disability pension (*rokkantsági nyugdíj*) later that same year on the basis of a retrospective finding that she had lost, as of 1 April 2001, 67% of her capacity to work on account of various ailments. This assessment was maintained in 2003, 2006 and 2007.

12. As of 2008 the legislation on the methodology used to assess health impairment in occupational contexts changed. In application of the new methodology, the applicant's disability was assessed by an expert at 40% on 1 December 2009. Without envisaging any procedure for rehabilitation, the assessment panel scheduled the next check-up of her medical status for 2012.

13. The Government submitted that, under the new methodology, the applicant's previous condition of 67% loss of working capacity would have corresponded to 54% overall health impairment. Since, however, she was found to have only 40% health impairment, her condition had to be deemed to have improved in the intervening period.

The applicant submitted that the connection suggested by the Government between the scores of 67% in the old system and 54% in the new system was not based on any legal text. In her submission, her condition had not improved at all; the difference in scores was solely a consequence of changing the methodology used.

14. As a consequence of the applicant's newly assessed 40% level of disability, on 1 February 2010 the relevant pension insurance directorate withdrew her entitlement to the disability pension. The applicant appealed against that decision. On an unspecified date, the decision was upheld by the second-instance pension insurance authority.

At the relevant time the monthly amount of the applicant's disability pension was 60,975 Hungarian forints (HUF), approximately 200 euros (EUR).

On 25 March 2010 the applicant brought an action before the Nyíregyháza Labour Court, challenging the administrative decision.

15. The Nyíregyháza Labour Court heard the case, and appointed an expert with a view to obtaining an opinion as to the reasons for the difference in the scores. In an opinion of 16 February 2011, the expert submitted that the old score of 67%, as well as the new one of 40%, were correct under the respective methodologies; at any rate, the applicant's condition had not significantly improved since 2007.

16. Observing that the applicant had accumulated 23 years and 71 days of service time, the court retained the disability score of 40% and dismissed her action on 1 April 2011. The applicant was ordered to reimburse the amounts received after 1 February 2010. The court noted that the applicant's next medical assessment was due in 2012. It drew her attention to the

possibility of making a renewed application for disability pension should her health deteriorate.

17. In 2011 the applicant requested another assessment of her disability. On 5 September 2011 the first-instance authority assessed it at 45%, scheduling the next assessment for September 2014. The second-instance authority changed this score to 50% on 13 December 2011, with a reassessment due in March 2015. Such a level would have entitled her to disability pension had rehabilitation not been possible. However, this time the assessment panel envisaged the applicant's complex rehabilitation within a 36-month time-frame, and recommended that she be entitled to rehabilitation allowance (*rehabilitációs járadék*). Nevertheless, no such rehabilitation took place, and the applicant did not receive rehabilitation allowance.

18. As of 1 January 2012, a new law on disability and related benefits (Act no. CXCI of 2011) entered into force. It introduced additional eligibility criteria. In particular, instead of fulfilling a service period as required by the former legislation, the persons concerned had to have at least 1,095 days covered by social security in the five years preceding the submission of their requests. Individuals who did not meet this requirement could nevertheless qualify if they had no interruption of social cover exceeding 30 days throughout their careers, or if they were in receipt of a disability pension or rehabilitation allowance on 31 December 2011.

19. On 20 February 2012 the applicant submitted another request for disability allowance (*rokkantsági ellátás*). Her condition was assessed in April 2012, leading to the finding of 50% disability. On 5 June 2012 her request was dismissed because she did not have the requisite period of social cover. Rehabilitation was not envisaged. The next assessment was scheduled for April 2014.

20. Between 1 July and 7 August 2012 the applicant was employed by the Mayor's Office in Baktalórántháza.

21. On 15 August 2012 the applicant submitted a fresh request for disability pension under the new law. She underwent another assessment, during which her degree of disability was again established at 50%. Rehabilitation was not envisaged.

22. In principle, such a level of disability would have entitled the applicant to a disability allowance under the new system. However, since her disability pension had been terminated in February 2010 (that is, she was not in receipt of a disability pension or a rehabilitation allowance on 31 December 2011) and, moreover, she had not accumulated the requisite number of days of social-security cover or demonstrated uninterrupted social cover, she was not eligible, under any title, for a disability allowance under the new system. Instead of the requisite 1,095 days covered by social security in the five preceding years, the applicant had been covered for 947 days. According to the Government, had the law not been so

amended, the applicant would again have become eligible for a disability pension, since her health impairment was again assessed as exceeding the relevant threshold in 2012.

23. The applicant's request was refused by the relevant authority of Szabolcs-Szatmár-Bereg County on 23 November 2012 and, on appeal, by the National Rehabilitation and Social Welfare Authority on 27 February 2013. On 27 March 2013 the applicant filed an action with the Nyíregyháza Administrative and Labour Court, challenging these administrative decisions. On 20 June 2013 the court dismissed her case. This judgment was not subject to appeal.

24. From 1 January 2014 the impugned legislative criteria were amended with a view to extending eligibility to those who have accumulated either 2,555 days of social-security cover over ten years or 3,650 days over fifteen years. However, the applicant does not meet these criteria either.

25. In 2011 and 2012 the applicant received a monthly housing allowance from the local municipality, in the amount of HUF 4,100 (EUR 14) in 2011 and HUF 5,400 (EUR 18) in 2012. The applicant also applied for the basic welfare allowance (*rendszeres szociális segély*), but her request was denied because she did not meet the statutory requirements.

II. RELEVANT DOMESTIC LAW AND PRACTICE

26. Act no. XX of 1949 on the Constitution, as in force at the relevant time and until 31 December 2011, contained the following provisions:

Article 17

"The Republic of Hungary shall provide support for those in need through a wide range of social measures."

Article 54 (1)

"In the Republic of Hungary everyone has the inherent right to life and to human dignity. No one shall be arbitrarily stripped of these rights."

Article 70/E

"(1) Citizens of the Republic of Hungary have the right to social security; they are entitled to the support required to live in old age, and in cases of sickness, disability, or being widowed or orphaned, and in the case of unemployment through no fault of their own.

(2) The Republic of Hungary shall implement the right to social support through the social-security system and the system of social institutions.

(3)[1] The right to social support in respect of pension benefits applies to persons who have reached the statutory retirement age for old-age pension. Pension benefits may

1. Paragraph (3) was enacted on 6 June 2011.

also be granted to persons below the aforementioned age by way of an act. Pension benefits provided before the statutory retirement age for an old-age pension may be reduced on the basis of statute, and may subsequently be provided in the form of social-welfare benefits, or may be terminated if the beneficiary is able to work."

27. Article XIX of the Fundamental Law, as in force since 1 January 2012, provides:

"(1) Hungary shall strive to provide social security to all of its citizens. Every Hungarian citizen shall be entitled to assistance in case of maternity, illness, disability, handicap, widowhood, orphanage and unemployment for reasons outside of his or her control, as provided for by statute.

(2) Hungary shall implement social security for the persons referred to in paragraph (1) and for other persons in need through a system of social institutions and measures.

(3) The nature and extent of social measures may as well be determined, in statute, in accordance with the usefulness to the community of the beneficiary's activity.

(4) Hungary shall facilitate the ensuring of the livelihood of the elderly by maintaining a general state pension system based on social solidarity and by allowing for the operation of voluntarily established social institutions. The conditions of entitlement to state pension may as well be laid down in statute with regard to the requirement of stronger protection for women."

28. The relevant provisions of Act no. LXXXI of 1997 on Social-Security Pensions[2], as in force until 31 December 2011, stated:

Section 4 (1) (c)

"[Under the terms of this law], disability pension [means]: pension to be disbursed in the event of disability, on condition that the requisite length of service has been accumulated."

Section 6

"(1) The pensions that may be granted within the framework of the social-security pension system to the insured person in his or her own right are as follows:

(a) the old-age pension,

(b) the disability pension,

...

(d) the rehabilitation allowance, to be granted under a separate statute[3]."

Section 23 (1)

"Disability pension shall be due to a person who:

(a) has suffered 67% loss of capacity to work due to health problems, physical or mental impairments, without any perspective of improvement over the coming year...; [and]

2. The Act's provisions pertaining to the disability pension were repealed by Act no. CXCI of 2011 on the Benefits Granted to Persons with Reduced Work Capacity as of 1 January 2012 (see paragraph 31 below).
3. See Act no. LXXXIV of 2007 quoted in paragraph 30 below.

(b) has accumulated the necessary length of service [a function of age, as outlined in the law]; [and]

(c) does not work regularly or earns considerably less than he or she did prior to become disabled."

Section 24 (1)

"The length of service necessary for the disability pension is as follows: ...

at the age of 35 to 44 years: 10 years ..."

Section 26

"(1) The right to disability pension shall be effective as of the date on which the disability was found to be present, based on the opinion of the medical commission. If the medical commission did not take a stance about the point at which the disability began, the date to be taken in account shall be the date on which the disability pension was requested.

(2) If the claimant had not accumulated the necessary service period by the time set out in paragraph (1) above, eligibility for a disability pension shall be effective as of the day following the accumulation of the necessary length of service."

Section 29

"(1) The amount of disability pension is dependent on the person's age when he or she becomes disabled, the length of service accumulated prior to the granting of the disability pension and the degree of disability."

29. Concerning disability pensions to be granted after 31 December 2007, the same Act, as in force between 12 March and 31 December 2011, provided as follows:

Section 36/A

"(1) Disability pension shall be due to a person who:

(a) has suffered [at least 79% loss of capacity to work, or between 50 and 79% loss of capacity if rehabilitation is not feasible], and

(b) accumulated the requisite length of service in respect of his or her age, and

(c) [does not have an income or earns considerably less than before], and

(d) does not receive sick pay or disability sick pay."

30. Act no. LXXXIV of 2007 on the Rehabilitation Allowance, as in force until 31 December 2011, provided as follows:

Section 3

"(1) The rehabilitation allowance shall be due to a ... person:

(a) who has suffered an impairment of health at a rate of 50 to 79 per cent and, in the context of that impairment... cannot ... continue to be employed without rehabilitation, and

(aa) who is not engaged in any gainful activity; or

(ab) whose monthly income is at least 30 per cent lower than [before] the impairment of health; [and] moreover

(b) whose condition is amenable to rehabilitation;, and

(c) who has accumulated the requisite service time in function of his or her age."

31. Act no. CXCI of 2011 on the Benefits Granted to Persons with Reduced Work Capacity, in so far as relevant and as in force between 26 July 2012 and 31 December 2013, provided as follows:

Section 2

"A person whose health status has been found to be 60% or less following a complex assessment by the rehabilitation authority (henceforth: persons with reduced work capacity) and who:

(a) has been covered by social security for a minimum of 1,095 days under section 5 of [the Social Security Act] in the five years preceding the submission of his or her request, and

(b) is not engaged in any gainful activities and

(c) is not receiving any regular financial allowance

shall be eligible for benefits granted to persons with reduced work capacity.

(2) By derogation from subsection (1) (a), persons

...

(b) who were in receipt of a disability pension ... or a rehabilitation allowance ... on 31 December 2011

shall be eligible for the benefits granted to persons with reduced work capacity irrespective of the duration of the period covered by social security.

(3) The 1,095-day insurance period shall include:

...

(b) periods of disbursement of a disability pension ..., or rehabilitation allowance...; ...."

Section 3

"(1) Subject to any rehabilitation proposal made by the rehabilitation authority in the framework of the complex reassessment, the allowance to be granted for a person with reduced work capacity shall be either:

(a) rehabilitation benefit, or

(b) disability benefit."

Section 4

"Persons with reduced work capacity who can be rehabilitated shall be entitled to rehabilitation benefit."

Section 5

"(1) Persons with reduced work capacity shall be entitled to disability benefit if rehabilitation is not recommended."

32. The Constitutional Court's decision no. 1228/B/2010.AB of 7 June 2011 contains a sentence stating that "section 36/D (1) b) of the Social Security Pension Act had not created a [legitimate] expectation for those entitled to disability pension under the previous regulations" (compare and contrast with the wording of point 34 of the Constitutional Court decision quoted in the next paragraph).

33. The Constitutional Court examined Act no. CXCI of 2011 in decision no. 40/2012. (XII.6.) AB, of 4 December 2012. The decision contains, *inter alia*, the following passages:

"27. ... From Articles 54 § 1 and 70/E of the Constitution, the Constitutional Court deduced only one individual social entitlement, specifically the right to a benefit that would ensure subsistence, that is, the provision by the State of basic subsistence to the extent that it is indispensable to secure the right to human dignity... [A subsequent decision of the Constitutional Court] amended the above principle with the proviso that 'specific constitutional rights, such as a right to a dwelling, cannot be inferred from the obligation to provide basic subsistence']...

30. ...The Constitutional Court has already examined the amendments to the rules governing disability pension in several decisions. Decision no. 321/B/1996.AB characterised the disability pension partly as an allowance under protection of property and partly as a social service provision. As stated in the decision, the law 'provides for a benefit under the constitutional principle of social security for individuals who, before reaching the old-age pension age, have lost their ability to work by reason of disability or as the result of an accident... Prior to the retirement age, the disability pension is an exceptional benefit granted to individuals on the ground of their disability. Upon reaching pensionable age, individuals who are ... incapable of work ... are no longer entitled to this exceptional benefit, because once their employment [period has] terminated they are eligible to receive old-age pension on the basis of their age.'...

31. Decision no. 1129/B/2008.AB states that disability pension is one type of personal retirement benefit; however its 'purchased right' element is only represented inasmuch as 'its sum is greater after a longer length of service, or is equal or close to the old-age pension. Otherwise, the principle of solidarity is predominant, since the disabled individual, who would not be eligible for an old-age pension on the basis of either his age or the length of service, receives a pension once his disability is determined.' ...

32. In the Constitutional Court's interpretation, the entitlement to disability pension is not guaranteed constitutionally in an as-of-right manner; rather, it is a mixed social-security and social-service benefit, available under certain conditions to individuals below retirement age suffering from ill health, who, due to their disability, have a reduced capacity to work and are in need of financial assistance because of the loss of income."

...

34. ... [In decision no. 1228/B/2010.AB] ... the Constitutional Court held that the earlier rules on disability pension had not created a [legitimate] expectation, therefore the amendment to the conditions of entitlement had not violated any acquired right.

35. Subsequent to the adoption of the above-mentioned decisions of the Constitutional Court, the text of the Constitution changed significantly.

...

37. ... The fact that Article XIX of the Fundamental Law on social security concerns essentially State obligations and State objectives, rather than conferring rights [on individuals], represents an important change...

38. The intention to change social policies became even more explicit by virtue of [an amendment to] Article 70/E ... of the Constitution, enacted on 6 June 2011, which expressly entitled the legislature to reduce, transform into a social allowance or terminate (where there is an ability to work) such pensions as disbursed [to persons in an age] under the age-limit for the old-age pension...

40. ... From 1 January 2012 onwards, [the law] provides those with altered working capacity with a health-insurance benefit, rather than with a pension...”

III. RELEVANT INTERNATIONAL LAW AND OTHER MATERIAL

34. The European Social Charter provides, as relevant:

Article 12 – The right to social security

“With a view to ensuring the effective exercise of the right to social security, the Contracting Parties undertake:

1. to establish or maintain a system of social security;

2. to maintain the social- security system at a satisfactory level at least equal to that required for ratification of International Labour Convention No. 102 Concerning Minimum Standards of Social Security;

3. to endeavour to raise progressively the system of social security to a higher level;

4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements, or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a. equal treatment with their own nationals of the nationals of other Contracting Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Contracting Parties;

b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Contracting Parties.”

Article 15 – The right of physically or mentally disabled persons to vocational training, rehabilitation and social resettlement

"With a view to ensuring the effective exercise of the right of the physically or mentally disabled to vocational training, rehabilitation and resettlement, the Contracting Parties undertake:

1. to take adequate measures for the provision of training facilities, including, where necessary, specialised institutions, public or private;

2. to take adequate measures for the placing of disabled persons in employment, such as specialised placing services, facilities for sheltered employment and measures to encourage employers to admit disabled persons to employment."

35. The European Social Charter (revised) provides, as relevant:

Article 12 – The right to social security

"With a view to ensuring the effective exercise of the right to social security, the Parties undertake:

1. to establish or maintain a system of social security;

2. to maintain the social security system at a satisfactory level at least equal to that required for the ratification of the European Code of Social Security;

3. to endeavour to raise progressively the system of social security to a higher level;

4. to take steps, by the conclusion of appropriate bilateral and multilateral agreements or by other means, and subject to the conditions laid down in such agreements, in order to ensure:

a. equal treatment with their own nationals of the nationals of other Parties in respect of social security rights, including the retention of benefits arising out of social security legislation, whatever movements the persons protected may undertake between the territories of the Parties;

b. the granting, maintenance and resumption of social security rights by such means as the accumulation of insurance or employment periods completed under the legislation of each of the Parties."

Article 15 – The right of persons with disabilities to independence, social integration and participation in the life of the community

"With a view to ensuring to persons with disabilities, irrespective of age and the nature and origin of their disabilities, the effective exercise of the right to independence, social integration and participation in the life of the community, the Parties undertake, in particular:

1. to take the necessary measures to provide persons with disabilities with guidance, education and vocational training in the framework of general schemes wherever possible or, where this is not possible, through specialised bodies, public or private;

2. to promote their access to employment through all measures tending to encourage employers to hire and keep in employment persons with disabilities in the ordinary working environment and to adjust the working conditions to the needs of the disabled or, where this is not possible by reason of the disability, by arranging

for or creating sheltered employment according to the level of disability. In certain cases, such measures may require recourse to specialised placement and support services;

3. to promote their full social integration and participation in the life of the community in particular through measures, including technical aids, aiming to overcome barriers to communication and mobility and enabling access to transport, housing, cultural activities and leisure."

36. Hungary has ratified both the European Social Charter and the Revised European Social Charter, on 7 August 1999 and 20 April 2009 respectively. At the time of depositing the instrument of ratification, Hungary made a declaration enumerating the provisions of the European Social Charter by which it considered itself bound. That list contained neither Article 12 nor Article 15. Subsequently, in 2004, Hungary declared itself bound by paragraph 1 of Article 12 and by Article 15. According to the declaration deposited with the instrument of ratification of the Revised European Social Charter, Hungary continues to consider itself bound, among other provisions, by paragraph 1 of Article 12 and by Article 15.

37. The European Committee of Social Rights has "explicitly accepted alterations to social security systems in as far as such changes are necessary in order to ensure the maintenance of the social security system ... and where any restrictions do not deprive individuals of effective protection against social and [economic] risks without a tendency to gradually reduce the social security system to one of minimum assistance" (see Conclusions XIV-1, concerning Finland and Article 12 § 3 of the European Social Charter, p. 232, 30 March 1998).

38. The European Code of Social Security, which entered into force on 17 March 1968 and is referred to in paragraph 2 of Article 12 of the Revised European Social Charter, has been ratified by 21 Member States of the Council of Europe, not including Hungary. Sixteen of them accepted the obligations contained in Part IX thereof, which provides as follows:

Part IX – Invalidity benefit

Article 53

"Each Contracting Party for which this part of the Code is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following articles of this part."

Article 54

"The contingency covered shall include inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit."

Article 55

"The persons protected shall comprise:

a. prescribed classes of employees, constituting not less than 50 per cent of all employees; or

b. prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

c. all residents whose means during the contingency do not exceed limits prescribed in such a way as to comply with the requirements of Article 67."

Article 56

"The benefit shall be a periodical payment calculated as follows:

a. where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66;

b. where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67."

Article 57

"1. The benefit specified in Article 56 shall, in a contingency covered, be secured at least:

a. to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence; or

b. where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 of this article is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least:

a. to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or

b. where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, half the yearly average number of contributions prescribed in accordance with paragraph 1.b of this article has been paid.

3. The requirements of paragraph 1 of this article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but at a percentage of ten points lower than shown in the Schedule appended to that part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the pension corresponding to the reduced percentage exceeds five years of contribution or employment but is less

than 15 years of contribution or employment; a reduced benefit shall be payable in conformity with paragraph 2 of this article."

Article 58

"The benefit specified in Articles 56 and 57 shall be granted throughout the contingency or until an old-age benefit becomes payable."

39. The United Nations Convention on the Rights of Persons with Disabilities (promulgated in Hungary by Act no. XCII of 2007) contains the following provisions:

Article 28
Adequate standard of living and social protection

"1. States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.

2. States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

...

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

...

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes."

40. Convention no. 102 of the International Labour Organisation (ILO) on Social Security (Minimum Standards), referred to in paragraph 2 of Article 12 of the European Social Charter, entered into force on 27 April 1955 and has so far been ratified by fifty-four countries, not including Hungary. Fifteen member States of the Council of Europe have ratified Part IX of this instrument, which reads as follows:

Part IX – Invalidity benefit

Article 53

"Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following Articles of this Part."

Article 54

"The contingency covered shall include inability to engage in any gainful activity, to an extent prescribed, which inability is likely to be permanent or persists after the exhaustion of sickness benefit."

Article 55

"The persons protected shall comprise--

(a) prescribed classes of employees, constituting not less than 50 per cent of all employees; or

(b) prescribed classes of the economically active population, constituting not less than 20 per cent of all residents; or

(c) all residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 67; or

(d) where a declaration made in virtue of Article 3 is in force, prescribed classes of employees, constituting not less than 50 per cent of all employees in industrial workplaces employing 20 persons or more."

Article 56

"The benefit shall be a periodical payment calculated as follows:

(a) where classes of employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 65 or with the requirements of Article 66;

(b) where all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 67."

Article 57

"1. The benefit specified in Article 56 shall, in a contingency covered, be secured at least--

(a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or 10 years of residence; or

(b) where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number of contributions has been paid.

2. Where the benefit referred to in paragraph 1 is conditional upon a minimum period of contribution or employment, a reduced benefit shall be secured at least--

(a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of five years of contribution or employment; or

(b) where, in principle, all economically active persons are protected, to a person protected who has completed a qualifying period of three years of contribution and in respect of whom, while he was of working age, half the yearly average number of

contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part XI but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part XI may be effected where the qualifying period for the pension corresponding to the reduced percentage exceeds five years of contribution or employment but is less than 15 years of contribution or employment; a reduced pension shall be payable in conformity with paragraph 2 of this Article."

Article 58

"The benefit specified in Articles 56 and 57 shall be granted throughout the contingency or until an old-age benefit becomes payable."

41. Convention no. 128 of the ILO on Invalidity, Old-Age and Survivors' Benefits entered into force on 1 November 1969 and has so far been ratified by sixteen countries, not including Hungary, of which ten are member States of the Council of Europe. Of the latter, six have accepted the obligations contained in Part II of the Convention, which provides as follows:

Part II – Invalidity benefit

Article 7

"Each Member for which this Part of this Convention is in force shall secure to the persons protected the provision of invalidity benefit in accordance with the following Articles of this Part."

Article 8

"The contingency covered shall include incapacity to engage in any gainful activity, to an extent prescribed, which incapacity is likely to be permanent or persists after the termination of a prescribed period of temporary or initial incapacity."

Article 9

"1. The persons protected shall comprise--

(a) all employees, including apprentices; or

(b) prescribed classes of the economically active population, constituting not less than 75 per cent. of the whole economically active population; or

(c) all residents, or residents whose means during the contingency do not exceed limits prescribed in such a manner as to comply with the requirements of Article 28.

2. Where a declaration made in virtue of Article 4 is in force, the persons protected shall comprise--

(a) prescribed classes of employees, constituting not less than 25 per cent. of all employees;

(b) prescribed classes of employees in industrial undertakings, constituting not less than 50 per cent of all employees in industrial undertakings."

Article 10

"The invalidity benefit shall be a periodical payment calculated as follows:

(a) where employees or classes of the economically active population are protected, in such a manner as to comply either with the requirements of Article 26 or with the requirements of Article 27;

(b) where all residents or all residents whose means during the contingency do not exceed prescribed limits are protected, in such a manner as to comply with the requirements of Article 28."

Article 11

"1. The benefit specified in Article 10 shall, in a contingency covered, be secured at least--

(a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period which may be 15 years of contribution or employment, or ten years of residence; or

(b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whom, while he was of working age, the prescribed yearly average number or yearly number of contributions has been paid.

2. Where the invalidity benefit is conditional upon a minimum period of contribution, employment or residence, a reduced benefit shall be secured at least--

(a) to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of five years of contribution, employment or residence; or

(b) where, in principle, all economically active persons are protected, to a person protected who has completed, prior to the contingency, in accordance with prescribed rules, a qualifying period of three years of contribution and in respect of whom, while he was of working age, half of the yearly average number or of the yearly number of contributions prescribed in accordance with subparagraph (b) of paragraph 1 of this Article has been paid.

3. The requirements of paragraph 1 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V but at a percentage of ten points lower than shown in the Schedule appended to that Part for the standard beneficiary concerned is secured at least to a person protected who has completed, in accordance with prescribed rules, five years of contribution, employment or residence.

4. A proportional reduction of the percentage indicated in the Schedule appended to Part V may be effected where the qualifying period for the benefit corresponding to the reduced percentage exceeds five years of contribution, employment or residence but is less than 15 years of contribution or employment or ten years of residence; a reduced benefit shall be payable in conformity with paragraph 2 of this Article.

5. The requirements of paragraphs 1 and 2 of this Article shall be deemed to be satisfied where a benefit calculated in conformity with the requirements of Part V is secured at least to a person protected who has completed, in accordance with prescribed rules, a qualifying period of contribution or employment which shall not be more than five years at a prescribed minimum age and may rise with advancing age to not more than a prescribed maximum number of years."

Article 12

"The benefit specified in Articles 10 and 11 shall be granted throughout the contingency or until an old-age benefit becomes payable."

Article 13

"1. Each Member for which this Part of this Convention is in force shall, under prescribed conditions--

(a) provide rehabilitation services which are designed to prepare a disabled person wherever possible for the resumption of his previous activity, or, if this is not possible, the most suitable alternative gainful activity, having regard to his aptitudes and capacity; and

(b) take measures to further the placement of disabled persons in suitable employment.

2. Where a declaration made in virtue of Article 4 is in force, the Member may derogate from the provisions of paragraph 1 of this Article."

42. The European Code of Social Security, ILO Convention no. 102 and ILO Convention no. 128 contain virtually identical provisions whereby, in situations where eligibility for invalidity benefit is conditional upon a minimum period of contribution or employment, a reduced invalidity benefit should at least be secured to persons who have completed a period of five years of contributions prior to the contingency (see Article 57 § 2 (a) of the European Code of Social Security and ILO Convention no. 102, as well as Article 11 § 2 (a) of ILO Convention no. 128). Twenty member States of the Council of Europe have accepted that undertaking in one or more of these instruments, but Hungary has not.

43. The World Health Organization's International classification of functioning, disability and health (ICF), Annex 6 - Ethical guidelines for the use of ICF, states:

"Social use of ICF information

(8) ICF information should be used, to the greatest extent feasible, with the collaboration of individuals to enhance their choices and their control over their lives.

(9) ICF information should be used towards the development of social policy and political change that seeks to enhance and support the participation of individuals.

(10) ICF, and all information derived from its use, should not be employed to deny established rights or otherwise restrict legitimate entitlements to benefits for individuals or groups.

(11) Individuals classed together under ICF may still differ in many ways. Laws and regulations that refer to ICF classifications should not assume more homogeneity than

intended and should ensure that those whose levels of functioning are being classified are considered as individuals."

44. The European system of integrated social protection statistics (ESSPROS)[4] classifies pensions, as a first-level breakdown, according to four different functions: disability, old age, survivors and unemployment. In 2012, of these, pensions relating to old age were the largest category, accounting for 77.3% of total expenditure and received by the same proportion of pension beneficiaries. Survivors' pensions were the second largest category, accounting for just less than 11.3% of expenditure and received by 20.3% of beneficiaries, followed by disability pensions, accounting for 8.4% of expenditure and received by 12.3% of beneficiaries. Unemployment pensions were the smallest category (accounting for less than 0.3% of expenditure and of beneficiaries).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

45. The applicant complained that she had lost her source of income, previously secured by the disability pension, because under the new system, in place as of 2012, she was no longer entitled to that, or a similar, benefit, although her health had not improved; and she submitted that this was a consequence of the amended legislation, which contained conditions she could not possibly fulfil. She relied on Article 6 of the Convention.

46. The Chamber found it appropriate to examine the applicant's complaint under Article 1 of Protocol No. 1, 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."

The Grand Chamber agrees with this approach. It will therefore proceed in the same manner.

47. The Government contested the applicant's argument.

4. Source: EUROSTAT – Social protection statistics – pension expenditure and pension beneficiaries, data from December 2014

A. The Chamber judgment

48. Interpreting the Constitutional Court's approach to the question, the Chamber was satisfied that the disability benefit, in the form of a pension or an allowance, flowed from an assertable right under the domestic law, in the sense that once the individual concerned had made the requisite contributions to the scheme, she would become entitled to it whenever her health situation so required. The Chamber observed that, during her employment, the applicant had contributed to the social-security system as required by the law. For the Chamber, those contributions resulted in a legitimate expectation that she would receive disability benefit, which expectation was formally recognised and honoured by the authorities when the applicant was granted a disability pension in 2001. The Chamber thus found Article 1 of Protocol No. 1 applicable to the case.

49. The Chamber further held that the recognised legitimate expectation, continuous in its legal nature, could not be considered extinguished by the fact that, under a new assessment methodology, the applicant's disability was evaluated at a lower level in 2009. Her previously obtained possession of a disability pension had been replaced at that time with the recognised legitimate expectation of continued payment of a benefit, should the circumstances again so require.

50. In the Chamber's view, the denial of the applicant's eligibility for disability pension under the 2012 rules constituted an interference with her property rights as guaranteed by Article 1 of Protocol No. 1. As to the proportionality of that interference, the Chamber held that the applicant had sustained a drastic change, namely the total removal of her possibility to access disability benefits, which represented an excessive individual burden, with no possibility of remedying her situation once the new rules were enacted. For these reasons, the Chamber found that there had been a violation of Article 1 of Protocol No. 1.

B. The parties' submissions to the Grand Chamber

1. The applicant

51. The applicant was of the opinion that Article 1 of Protocol No. 1 was applicable to her case. She contended that between 2001 and 1 February 2010 she had had a possession, in the form of an existing pecuniary asset, specifically the disability pension. She had subsequently retained an assertable right to disability benefit for as long as she satisfied the criteria that were applicable in 2001; in other words, she had a legitimate expectation stemming from various sources.

52. In her view, the former Constitution had conferred on disabled persons an entitlement to social-welfare benefits as of right. According to the Constitutional Court's interpretation, she, as a disabled individual, had

an assertable right to some form of welfare benefit. At the hearing, she referred to decisions no. 37/2011 of the Hungarian Constitutional Court and no. 1 BvL 1/09 of the German Federal Constitutional Court, both confirming, in her view, the existence of a right to a social allowance for those in need, to the extent that this is required for basic subsistence.

53. Moreover, she relied on Article 12 § 2 of the European Social Charter, which contains a reference to ILO Convention no. 102, setting forth minimum standards in the field of social security, as well as on the United Nations Convention on the Rights of Persons with Disabilities. In her view, these texts, forming part of Hungary's obligations under international law, also provided for an assertable right to disability benefit.

54. The applicant further argued that her right to disability pension was likewise assertable under the domestic law, in particular Act no. LXXXI of 1997 on Social-Security Pensions. Under the terms of that statute, she had obtained an assertable right to a disability benefit on the strength of having become disabled; in subsequently granting her the disability pension, the authorities had merely endorsed that right, already existing.

55. At the hearing, the applicant noted that the Government had accepted, if only for the period until her actual pension entitlement was terminated, the existence of a legitimate expectation flowing from the domestic law as in force when her eligibility was first established in 2001.

56. The applicant stressed that her health condition had not improved, as was stated in the expert opinion of 16 February 2011. Accordingly, she had not ceased to satisfy the relevant conditions; instead, it was the legal conditions which had changed. She noted that the Government had not produced any medical report or expert opinion clearly pointing to any improvement in her health.

57. The interference with her rights under Article 1 of Protocol No. 1 consisted not only in the dismissal of her request in 2012 but in a "continuing situation" of interference since the withdrawal of her disability pension in 2010, enshrined in the persistent denial of disability benefits, notwithstanding the periodic reviews undergone by her. As this rendered the six-month rule inapplicable, the applicant invited the Grand Chamber to examine the lawfulness of the termination of her disability pension in 2010.

58. Furthermore, the applicant argued that the disability pension had been withdrawn by way of quasi-retroactive legislation, without regard to acquired rights and on the ground of an assessment methodology of dubious legal value. The Government had failed to provide any truly legitimate aim pursued by the interference. Nor was it proportionate. Despite her continuous illness, her disability benefit had been unduly withdrawn and her subsequent requests had also been unduly denied. Rather than having to endure a reasonable and commensurate reduction in the level of benefits, she had been totally divested of her means of subsistence and had thus to bear an excessive individual burden.

59. Lastly, the applicant insisted, for the first time in her memorial to the Grand Chamber, on the need for a separate scrutiny of the facts of the case under Article 8 of the Convention should the Court be unable to find Article 1 of Protocol No. 1 applicable to her claim.

2. The Government

60. The Government argued that the application was inadmissible as being incompatible *ratione materiae* with the provisions of the Convention or its Protocols. The legitimate expectation to receive a disability benefit - which admittedly had been generated by the domestic law in 2001 when the applicant's eligibility had first been established – had been extinguished with the withdrawal of her entitlement in 2010. The Government added that, had the law not been amended, she would once again have become eligible when her health impairment was again assessed as exceeding the relevant threshold in 2012. The Constitution could not serve as a basis in national law for the legitimate expectation as argued by the applicant, since it merely laid down principles, whereas the actual eligibility rules for disability benefits were outlined in other legal provisions.

61. In the Government's opinion, the broadening of the notion of legitimate expectation – as suggested by the Chamber judgment – would be wholly inconsistent with the Court's case-law, place an excessive financial burden on the Contracting States and exert a "chilling effect" on national legislatures intent on reforming their social-security systems. The Convention did not guarantee any property rights independently from the domestic law of sovereign States. At the hearing, they cautioned against the stealthy creation of an independent European social law on an undefined basis, without the checks and balances that only a State legislature could guarantee.

62. According to the Government, some improvement in the applicant's health had been substantiated by the expert opinion and the national court's judgment (see paragraphs 15 and 16 above). This was also indicated by the fact that her 67% loss of working capacity under the pre-2008 system would have been equivalent to 54% health impairment under the new methodology; however, it had been assessed at 40% in 2009, which thus indicated a certain improvement in her health. The regular statutory reviews foreseen by the expert opinions prior to the withdrawal of the disability pension suggested only that the applicant's ailments were susceptible to evolution, whereas the periodic reviews subsequent to that withdrawal had been requested by the applicant, rather than ordered by the authorities, and could therefore not be interpreted as proof of any subsisting legitimate expectation.

63. The Government further asserted that *ex post facto* legislation was typical of any social-security system, because of the lengthy and continuing nature of the social-security relationship between an insured person and the

State. Applications for such benefits were normally not adjudicated on the basis of the law as in force at the beginning of the insurance relationship but rather under the law as it stood when the request was decided upon. Amendments enacted in the meanwhile to social-security laws might thus inevitably impose an individual burden on the insured. Any *ex post facto* legislation could only be validly disputed if the new law concerned those already in receipt of a benefit at the time of the entry into force of the retroactive law; however, this was not the case here.

64. The Government also argued that the State could not be held liable for the applicant's failure to acquire the requisite insurance cover. Had she contributed to the scheme without interruption through social-security contributions while she was capable of doing so, she could most probably have attained the requisite number of days. To dispense the applicant from making the necessary contributions would be unfair and discriminatory towards those in a comparable situation who had diligently contributed to the social-security scheme. With regard to the actual aggregate of contributions made by the applicant, the Government submitted that this was a necessary but not a sufficient precondition, which was not capable of substituting for a valid national legal basis.

65. Given that social-welfare cover was continuously secured for those who were entitled to it on the date that the social-security scheme in question was amended, the Government submitted that the cover did not cease to exist, nor was it reduced as a result of that change. It would be unreasonable to expect the scheme to cover everyone who had once been granted such an allowance, irrespective of the loss of such status. This would place a heavy and excessive burden on the social-security schemes of the member States, and was not required by the principle of proportionality.

66. The Government lastly challenged the relevance of ILO Convention no. 102 on Social Security (Minimum Standards) and the International Classification of Functioning, Disability and Health (ICF) endorsed by the Member States of the World Health Organisation. With respect to the ILO Convention, the Government referred to the lack of a minimum level of adherence by European States; with regard to the ICF, they pointed to the absence of an "international-law" character.

C. The third-party intervener's arguments

67. The European Trade Union Confederation (ETUC) set out the international standards and case-law, as well as the practice in European States, pertaining to the right to social security in general and the right to invalidity benefits in particular.

68. It provided the Court with an analysis of Articles 22 and 25 (1) of the Universal Declaration of Human Rights; Article 9 of the International Covenant on Economic, Social and Cultural Rights together with the

relevant general comments adopted by the Committee of Economic, Social and Cultural Rights; Article 28 of the UN Convention on the Rights of Persons with Disabilities; Conventions nos. 102 and 128 of the International Labour Organization; Article 12 of the European Social Charter; the European Code of Social Security; and Article 34 of the Charter of Fundamental Rights of the European Union. It also described the relevant practice of the European Union and Council of Europe Member States, based on the comparison of data available from the MISSOC and MISSCEO databases.

69. Against that background, it argued that it was demonstrated that the overwhelming majority, if not the totality, of Council of Europe Member States had agreed to provide protection against the risk of invalidity, by means either of international ratifications and/or national legislation within their social-security system; and that thus a European consensus had emerged in that field. This fact should warrant, as a consequence, an interpretation of Article 1 of Protocol No. 1 to the effect that its material scope should include the right to social security in general and the right to invalidity benefits in particular.

D. The Grand Chamber's assessment

1. The Government's plea of inadmissibility

70. The Court observes that the Government's plea of inadmissibility, arguing the complaint's incompatibility *ratione materiae* with the Convention and the Protocols thereto, was raised for the first time before the Grand Chamber.

71. The Court sees no need to examine whether the Government are estopped under Rule 55 of the Rules of Court from making the said objection, since it finds in any event that it concerns a matter which goes to the Court's jurisdiction and which it is not prevented from examining of its own motion (see, for instance, *R.P. and Others v. the United Kingdom*, no. 38245/08, § 47, 9 October 2012). It considers that, in the particular circumstances of the present case, the objection is so closely linked to the substance of the applicant's complaint that it should be joined to the merits.

2. Applicability of Article 1 of Protocol No. 1

(a) General principles regarding the scope of the provision

72. The Court reiterates that Article 1 of Protocol No. 1, which guarantees in substance the right of property, comprises three distinct rules. The first rule, which is set out in the first sentence of the first paragraph, is of a general nature and enunciates the principle of peaceful enjoyment of property. The second rule, contained in the second sentence of the first

paragraph, covers deprivation of possessions and subjects it to certain conditions. The third rule, stated in the second paragraph, recognises that the Contracting States are entitled, amongst other things, to control the use of property in accordance with the general interest, by enforcing such laws as they deem necessary for the purpose. However, the rules are not "distinct" in the sense of being unconnected. The second and third rules are concerned with particular instances of interference with the right to peaceful enjoyment of property and should therefore be construed in the light of the general principle enunciated in the first rule (see, among many other authorities, *James and Others v. the United Kingdom*, 21 February 1986, § 37, Series A no. 98; and *Sargsyan v. Azerbaijan* [GC], no. 40167/06, § 217, ECHR 2015).

73. The concept of "possession" within the meaning of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of material goods and is independent from the formal classification in domestic law: certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see *Iatridis v. Greece* [GC], no. 31107/96, § 54, ECHR 1999-II; *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; and *Parrillo v. Italy* [GC], no. 46470/11, § 211, ECHR 2015).

74. Although Article 1 of Protocol No. 1 applies only to a person's existing possessions and does not create a right to acquire property (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011), in certain circumstances a "legitimate expectation" of obtaining an asset may also enjoy the protection of Article 1 of Protocol No. 1 (see, among many authorities, *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 65, ECHR 2007-I).

75. A legitimate expectation must be of a nature more concrete than a mere hope and be based on a legal provision or a legal act such as a judicial decision. The hope that a long-extinguished property right may be revived cannot be regarded as a "possession"; nor can a conditional claim which has lapsed as a result of a failure to fulfil the condition (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.) [GC], no. 39794/98, §§ 69 and 73, ECHR 2002-VII). Further, no "legitimate expectation" can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 50, ECHR 2004-IX). At the same time, a proprietary interest recognised under domestic law – even if revocable in certain circumstances – may constitute a "possession" for the purposes of Article 1 of Protocol No. 1 (see *Beyeler,* cited above, § 105).

76. In cases concerning Article 1 of Protocol No. 1, the issue that needs to be examined is normally whether the circumstances of the case,

considered as a whole, conferred on the applicant title to a substantive interest protected by that provision (see *Iatridis*, cited above, § 54; *Beyeler*, cited above, § 100; and *Parrillo*, cited above, § 211). In applications concerning claims other than those relating to existing possessions, the idea behind this requirement has also been formulated in various other ways throughout the Court's case-law. By way of example, in a number of cases the Court examined, respectively, whether the applicants had "a claim which was sufficiently established to be enforceable" (see *Gratzinger and Gratzingerova*, cited above, § 74); whether they demonstrated the existence of "an assertable right under domestic law to a welfare benefit" (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2005-X); or whether the persons concerned satisfied the "legal conditions laid down in domestic law for the grant of any particular form of benefits" (see *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012).

77. In *Kopecký*, the Grand Chamber recapitulated the Court's case-law on the notion of "legitimate expectation". Following an analysis of different lines of cases concerning legitimate expectations, the Court concluded that its case-law did not contemplate the existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there was a "legitimate expectation" protected by Article 1 of Protocol No. 1. It took the view that "where the proprietary interest is in the nature of a claim it may be regarded as an "asset" only where it has a sufficient basis in national law, for example where there is settled case-law of the domestic courts confirming it" (see *Kopecký*, cited above, § 52).

78. One of the lines of case-law on "legitimate expectation" referred to above involved situations where the persons concerned were entitled to rely on the fact that a legal act, on the basis of which they had incurred financial obligations, would not be retrospectively invalidated to their detriment (see *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222; and *Stretch v. the United Kingdom*, no. 44277/98, § 35, 24 June 2003). In this line of cases, the "legitimate expectation" was thus based on a reasonably justified reliance on a legal act which had a sound legal basis and which bore on property rights (see *Kopecký*, cited above, § 47). Respect for such reliance follows from one aspect of the rule of law, which is inherent in all the Articles of the Convention and which implies, *inter alia*, that there must be a measure of legal protection in domestic law against arbitrary interferences by public authorities with the rights safeguarded by the Convention (see, as a recent authority, *Karácsony and Others v. Hungary* [GC], no. 42461/13, § 156, 17 May 2016, with further references).

79. Notwithstanding the diversity of the expressions in the case-law referring to the requirement of a domestic legal basis generating a proprietary interest, their general tenor can be summarised as follows: for

the recognition of a possession consisting in a legitimate expectation, the applicant must have an assertable right which, applying the principle enounced in paragraph 52 of *Kopecký* (rendered in paragraph 77 above) may not fall short of a sufficiently established, substantive proprietary interest under the national law.

(b) The scope of Article 1 of Protocol No. 1 in regard to social benefits, in particular disability/invalidity benefits

80. In the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social-security and welfare benefits. Many national legal systems recognise that such individuals require a degree of certainty and security, and provide for benefits to be paid – subject to the fulfilment of the conditions of eligibility – as of right (see *Stec and Others* (dec.), cited above, § 51). The principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to social and welfare benefits (see *Stec and Others* (dec.), cited above, § 54). The Court has previously addressed the issue of legitimate expectation in the context of social benefits on a number of occasions (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 44, ECHR 2004-IX, and *Klein v. Austria*, no. 57028/00, § 45, 3 March 2011.

81. In those legal systems where the national legislation requires mandatory contributions of employees to the social-security system, the legislation normally provides that those who have made adequate contributions and satisfied the statutory requirements of disability will receive some form of long-term disability benefit, on grounds of the principles of social solidarity and equivalency, for the period of the disability persisting or until the age of retirement. Such insurance schemes, which are typically mandatory, provide such protection, that is, the availability of benefits, for the entire period of insurance and on every occasion when the conditions of the insurance are satisfied. The relevant legal conditions are however subject to evolution. In this connection, it may be reiterated that in *Gaygusuz v. Austria* (16 September 1996, § 41, *Reports of Judgments and Decisions* 1996-IV) the Court found that the right to emergency assistance – a social benefit linked to the payment of contributions to the unemployment insurance fund – was, in so far as provided for in the applicable legislation, a pecuniary right for the purposes of Article 1 of Protocol No. 1. In *Klein* (cited above, § 43) it was noted that entitlement to a social benefit – in that instance, a pension payable from a lawyers' pension scheme – was linked to the payment of contributions, and, when such contributions had been made, an award could not be denied to the person concerned. Contributions to a pension fund may thus, in certain circumstances and according to the domestic law, create a property right (see *Kjartan Ásmundsson*, cited above, § 39; *Apostolakis v. Greece*,

no. 39574/07, §§ 28 and 35, 22 October 2009; *Bellet, Huertas and Vialatte v. France* (dec.), nos. 40832/98, 40833/98 and 40906/98, 27 April 1999; *Skórkiewicz v. Poland* (dec.), no. 39860/98, 1 June 1999; and *Moskal v. Poland*, no. 10373/05, § 41, 15 September 2009).

82. The Court has also held that Article 1 of Protocol No. 1 imposes no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social-security scheme, or to choose the type or amount of benefits to provide under any such scheme (see *Sukhanov and Ilchenko v. Ukraine*, nos. 68385/10 and 71378/10, §§ 35-39, 26 June 2014; *Kolesnyk v. Ukraine* (dec.), no. 57116/10, §§ 83, 89 and 91, 3 June 2014; and *Fakas v. Ukraine* (dec.), no. 4519/11, §§ 34, 37-43, 48, 3 June 2014). If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stec and Others* (dec.), cited above, § 54).

83. In certain circumstances the making of compulsory contributions, for example to a pension fund or a social insurance scheme, may create a property right protected by Article 1 of Protocol No. 1 even before the contributor fulfils all the conditions to actually receive the pension or other benefit. This is the case when there is a direct link between the level of contributions and the benefits awarded (see *Stec and Others* (dec.), cited above, § 43). The payment of contributions to a pension fund may in certain circumstances create a property right in a portion of such a fund and a modification of the pension rights under such a system could therefore in principle raise an issue under Article 1 of Protocol No. 1; even if it is assumed that Article 1 of Protocol No. 1 guarantees to persons who have paid contributions to a special insurance system the right to derive benefit from the system, it cannot be interpreted as entitling that person to a pension of a particular amount (see *Müller v. Austria*, no. 5849/72, Commission's report of 1 October 1975, DR 3, p. 25, § 30, quoted in *T. v. Sweden*, no. 10671/83, Commission decision of 4 March 1985, DR 42, p. 229, at p. 232).

84. In this connection, it ought to be reiterated that Article 1 of Protocol No. 1 to the Convention does not guarantee, as such, any right to a pension of a particular amount (see *Kjartan Ásmundsson*, cited above, § 39), although where the amount of a benefit is reduced or discontinued, this may constitute interference with possessions which requires to be justified (see *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011; and *Grudić v. Serbia*, no. 31925/08, § 72, 17 April 2012).

85. In determining whether there has been an interference, the Court's enquiry will focus on the domestic law in force at the time of the alleged

interference (see, as an example from the law on compensation, *Maurice v. France* [GC], no. 11810/03, § 67, ECHR 2005-IX).

86. Where the person concerned did not satisfy (see *Bellet, Huertas and Vialatte*, cited above), or ceases to satisfy, the legal conditions laid down in domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (see *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009) where the conditions had changed before the applicant became eligible for a specific benefit (see *Richardson*, cited above, § 17). Where the suspension or diminution of a pension was not due to any changes in the applicant's own circumstances, but to changes in the law or its implementation, this may result in an interference with the rights under Article 1 of Protocol No. 1 (see *Grudić*, cited above, § 77).

87. In a number of cases the Court has been prepared to accept that the grant of a pension benefit, of which the applicant was subsequently divested on the grounds that the legal conditions for such a grant had not been fulfilled to begin with, could give rise to a possession for the purposes of the Protocol (see *Moskal*, cited above, § 45; and *Antoni Lewandowski v. Poland*, no. 38459/03, §§ 78 and 82, 2 October 2012). In another case it considered that the failure to fulfil a condition (namely the requirement of affiliation to a professional association), which under national law was a sufficient reason for forfeiture of a pension claim, did not lead to the conclusion that the applicant had no possession within the meaning of Article 1 of Protocol No. 1 (see *Klein*, cited above, § 46). Nor was the Court prevented from finding that an applicant, whose application for disabled adults allowance had been rejected on the grounds of his non-fulfilment of a statutory nationality condition, had a pecuniary right for the purposes of Article 1 of Protocol No. 1 (see *Koua Poirrez v. France*, no. 40892/98, §§ 37-42, ECHR 2003-X). By contrast, in yet a further case, the mere fact that the public authorities had tolerated the cumulating of two pensions and, where it was permitted, reimbursement of the contributions for one of them, did not give rise to a right protected by the Protocol (see *Bellet, Huertas and Vialatte*, cited above).

88. 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*, cited above, § 17). 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).

89. Thus, as can be seen from the above case-law**,** where the domestic legal conditions for the grant of any particular form of benefits or pension have changed and where the person concerned no longer fully satisfies them due to the change in these conditions, a careful consideration of the individual circumstances of the case – in particular, the nature of the change in the requirement – may be warranted in order to verify the existence of a sufficiently established, substantive proprietary interest under the national law. Such are the demands of legal certainty and the rule of law, which belong to the core values imbuing the Convention.

(c) Application of these principles to the present case

90. At the outset, the Grand Chamber notes that in the proceedings before it the applicant reverted to her argument made before the Chamber concerning the allegedly "continuing situation" of the interference originating in the discontinuation of her disability pension in 2010 (see paragraph 57 above). However, the Grand Chamber also notes that the Chamber considered that the Nyíregyháza Labour Court's judgment of 1 April 2011 dismissing the applicant's appeal was final, and that the application to the Strasbourg Court had been filed more than six months later. For that reason, the Chamber considered that it was prevented, pursuant to Article 35 § 1 of the Convention, from examining the procedure having led to the judgment of 1 April 2011 (see § 31 of the Chamber judgment). The Grand Chamber therefore has no jurisdiction to examine the proceedings that ended with the judgment of 1 April 2011.

91. The Grand Chamber will accordingly limit its examination to the case as it was declared admissible by the Chamber (see *K. and T. v. Finland* [GC], no. 25702/94, § 141, ECHR 2001-VII), namely the applicant's grievance resulting from the proceedings which began with the applicant's request for a disability pension submitted on 20 February 2012 and which ended with the Nyíregyháza Administrative and Labour Court's judgment of 20 June 2013, in which she was found ineligible for a disability pension under the 2012 rules on account of an insufficient period of social cover (see the description of the relevant proceedings in paragraphs 19 to 23 above).

92. However, in examining whether the outcome of the proceedings ending with the judgment of 20 June 2013 (see paragraph 23 above) was compatible with Article 1 of Protocol No. 1, the Court is not prevented from taking into account facts that occurred before and after the decision of 1 February 2010.

93. The Court notes that the system of disability allowances in question, both in its pre-2012 and its current form, essentially operated on the basis of two cumulative eligibility criteria: (i) a "health condition", under which the benefit was due only to persons whose health and employment status so required, and (ii) a "contribution condition", which required the fulfilment

of a certain service period (as under the pre-2012 legislation) or, in essence, a period covered by social-security contributions (see paragraphs 28 and 29 above).

94. Thus, when the applicant completed the requisite service period (on a date not specified but by 2001 at the latest) she fulfilled the "contribution condition" as contained in the law in force at the time; and, when in 2001 her disability was established as exceeding the requisite level, the second criterion (the "health condition") was also met. Accordingly, from 2001 until 2009/10, that is, for almost ten years, the applicant fulfilled all the conditions of eligibility for receiving a disability pension as of right (see *Stec and Others* (dec.), cited above, § 51, quoted in paragraph 80 above). The decision granting her a disability pension in accordance with the provisions of the 1997 Act and which formed the basis of her original entitlement could thus be regarded as representing an "existing possession" (see *Kopecký*, § 35(c)). Further, it seems undeniable that throughout the said period, she could, on the basis of the said "legal act", entertain a "legitimate expectation" (ibid., § 47) of continuing to receive disability benefits should her disability persist to the requisite degree, there being no dispute as to the correct interpretation and application of domestic law (ibid., § 50).

95. However, the question arises whether the applicant's legitimate expectation still existed on 1 January 2012, when the legislature changed the contribution criteria for the disability benefit, effectively invalidating the legal effect of the fact that she had already once fulfilled the "contribution condition". Due to that legislative change, she was denied disability allowance on the ground that she was not eligible under the newly introduced contribution rules. This state of affairs was then reaffirmed in the applicant's individual case, with authoritative force, by the final judgment of the Nyíregyháza Administrative and Labour Court, adopted on 20 June 2013 (see paragraph 23 above). It is only if her legitimate expectation continued to exist until 1 January 2012 that this legislative amendment could be considered to constitute an interference with the applicant's possessions within the meaning of Article 1 of Protocol No. 1.

96. The parties' positions diverged as to whether the applicant's legitimate expectation to receive disability benefits whenever eligible (see paragraphs 51, 55 and 60 above) was extinguished after the discontinuation of her entitlement to the pension in 2010. Thus, the question to be determined by the Court is whether in 2012, when the applicant applied for disability allowance on the basis of the new finding that her health was sufficiently impaired, she still had a legitimate expectation, satisfying the criteria in its case-law, of receiving disability benefits.

97. In examining this question, the Court does not find it necessary to resolve the disagreement between the parties as to whether or not the applicant's health had actually improved in the period at issue. It notes that, according to the expert opinion of 16 February 2011 submitted to the

Labour Court (see paragraph 15 above), her condition had not significantly improved since 2007. Moreover, it was not in dispute between the parties that her medical situation would have made her eligible for the disability benefit in 2012 had the new law not entered into force earlier that year. Indeed the Government even confirmed that this would have been the case (see paragraphs 22 and 60 above).

98. The question whether the applicant still had a legitimate expectation, satisfying the criteria in the Court's case-law, at the time of the entry into force of the new legislation in 2012 cannot be answered solely on the basis of that legislation. The underlying reason for such an assertion is that the principles which exclude the finding of an interference where the person concerned ceases to satisfy the legal conditions laid down in domestic law cannot be mechanically applied to situations where the complaint specifically concerns the very change in the legal conditions that is at issue.

99. Therefore, to limit the Court's scrutiny to the question as to whether Article 1 of Protocol No. 1 is inapplicable on the sole ground of the absence of a domestic legal basis in 2012 would be tantamount to deliberately circumventing the crux of the applicant's grievance, that crux being precisely the change in the law (see *Lakićević and Others*, cited above, § 70) annihilating the previously existing legal basis for her disability allowance. The change in the law effectively imposed on a certain category of insured persons, including the applicant, a condition whose advent had not been foreseeable during the relevant potential contributory period and which they could not possibly satisfy once the new legislation entered into force – a combination of elements which is ultimately difficult to reconcile with the rule of law. The Court points out at this juncture that the Convention is intended to guarantee rights that are "practical and effective" rather than theoretical and illusory (see *Perdigão v. Portugal* [GC], no. 24768/06, § 68, 16 November 2010). To hold that although a person has contributed to an insurance scheme and has satisfied its contributory requirement, he or she could be totally deprived of the legitimate expectation of eventual benefits would sit uncomfortably with this principle.

100. As mentioned above, a proprietary interest recognised under domestic law – even if revocable in certain circumstances – may constitute a "possession" for the purposes of Article 1 of Protocol No. 1 (see *Beyeler*, cited above, § 105). In following such an approach, the Court has declared Article 1 of Protocol No. 1 applicable in a number of cases where the applicants, by the time they lodged their application with the Court, no longer satisfied the conditions of entitlement laid down in national law for the benefit in question (see, for example, *Kjartan Ásmundsson*, cited above, § 40).

101. A closer examination is therefore warranted as to whether, at least until the alleged legislative interference in 2012, the applicant had a sufficiently established, substantive proprietary interest that qualified as a

"possession" for the purposes of Article 1 of Protocol No. 1 (see paragraph 79 above).

102. In this connection, the Court observes in particular that during the intervening period between the discontinuation of the applicant's disability pension in 2010 and the legislature's introduction of the new contribution requirement in 2012, the applicant not only continued to be part of the social-security system but also continued to fulfil the relevant length-of-service requirement for disability benefits. Co-operating with the authorities at all times, and actively and continuously pursuing her disability claim, she underwent several periodic reassessments of her condition in the years 2011 and 2012; further such assessments were scheduled for November 2012, April and September 2014 and March 2015.

103. In its ruling of 1 April 2011, the Nyíregyháza Labour Court noted that the applicant had accrued 23 years and 71 days of service time (see paragraph 16 above), which, the Court observes, far exceeds the five-year minimum period (prior to contingency) warranting at least a reduced invalidity benefit under the European Code of Social Security and ILO Conventions nos. 102 and 128 (see paragraph 42 above). Furthermore, whilst approving the withdrawal of the applicant's disability pension as of 1 February 2010, the Labour Court expressly confirmed that a new medical assessment could take place in 2012 and drew her attention to the possibility of making a renewed application should her health deteriorate (see paragraph 16 above).

104. Moreover, although for a while her degree of disability was considered somewhat below the minimum level required (40% in December 2009 and April 2011, then 45% in September 2011, see paragraphs 12 to 17 above), in December 2011, that is, before the end of the said period, it reached 50%, as it did again in February 2012. It was undisputed that this disability level would have qualified the applicant for a disability benefit in February 2012 had it not been for the new retroactive contribution requirement, which was not met by her. In the meantime, on 13 December 2011, she had been recommended for rehabilitation and for the accompanying allowance – a type of benefit closely related to disability pension (see paragraph 17 above) and introduced to take the place of the disability pension for individuals capable of being rehabilitated. However, the authorities did not implement this recommendation. Had they done so, the applicant might have been in receipt of a benefit on 31 December 2011, which would have altered her situation under the new law.

105. The Court reiterates that the applicant contributed to the insurance scheme on a mandatory basis and satisfied the statutory requirements of eligibility for disability benefits. The Court has already noted that contributions to a pension fund may, in certain circumstances and according to the domestic law, create a property right for the purposes of Article 1 of Protocol No. 1 (see paragraphs 81 and 83 above) and finds that such

circumstances exist in the present case, in view of the fact that her contribution was recognised as sufficient at the latest on 1 April 2001 (see paragraph 11 above). She could therefore reasonably rely on the promise of the law that she would be entitled to disability benefits whenever she satisfied the applicable health-related conditions.

106. In these circumstances, the Court does not consider that the reduction in the applicant's disability degree in 2009, the resultant discontinuation of her disability pension in 2010 or any other factors pertaining to her pension status during the intervening period until 31 December 2011 were sufficient to extinguish her legitimate expectation that she would receive disability benefits should her disability again attain the requisite degree. On the contrary, the measures taken by the authorities and the judgment of 1 April 2011 in particular indicate that the authorities acted in full recognition of the applicant's insured status, and therefore the applicant could have relied in a reasonably justified manner on the applicable legislation and had a legitimate expectation of receiving a disability benefit should the statutory conditions be satisfied. As the Government admit, but for the new conditions of the 2012 Act she would have qualified for disability allowance in 2013.

107. In short, between 2010 and 31 December 2011 the applicant, while not in receipt of a pension, continued to entertain a "legitimate expectation", covered by the notion of "possession" in Article 1 of Protocol No. 1.

108. When, following the entry into force of the new law and relying on her newly re-assessed and sufficiently impaired health, the applicant applied for disability allowance in 2012, she did no more, in the Court's view, than seek to avail herself once again of an existing legitimate expectation to be provided with a social-security benefit, rather than pursuing the "acquisition" of a "possession". It was not in dispute between the parties that the applicant would have been eligible for the disability allowance from the date on which her health impairment was found in 2012 to have exceeded the relevant threshold, had the new law not entered into force earlier that year (see paragraphs 22 and 60 above).

109. The interference in question, which resulted from the entry into force of the new law as from 2012, consisted in a complete refusal of the applicant's request for the disability allowance; in other words, her right to derive benefits from the social-insurance scheme in question was infringed in a manner that resulted in the impairment of her pension rights.

110. These elements are sufficient for the Court to find that Article 1 of Protocol No. 1 is applicable in the present case. The Government's preliminary objection concerning incompatibility *ratione materiae* with the provisions of the Convention must thus be dismissed.

111. In view of this conclusion, the Court finds that it is not warranted to address the parties' further arguments intended to elucidate the nature of the disputed entitlement as it is described by various international texts.

3. Compliance with Article 1 of Protocol No. 1

(a) General principles

112. An essential condition for an interference with a right protected by Article 1 of Protocol No. 1 to be deemed compatible with this provision is that it should be lawful. The rule of law, one of the fundamental principles of a democratic society, is inherent in all the Articles of the Convention (see *Iatridis,* cited above, § 58; *Wieczorek*, cited above, § 58; and *Vistiņš and Perepjolkins v. Latvia* [GC], no. 71243/01, § 96, 25 October 2012).

113. Moreover, any interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is "in the public interest". Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions. The notion of "public interest" is necessarily extensive. In particular, the decision to enact laws concerning social-insurance benefits will commonly involve consideration of economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one and will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see, *mutatis mutandis*, *The former King of Greece and Others v. Greece* [GC], no. 25701/94, § 87, ECHR 2000-XII; *Wieczorek*, cited above, § 59; *Frimu and Others v. Romania* (dec.), nos. 45312/11, 45581/11, 45583/11, 45587/1 and 45588/11, § 40, 7 February 2012; *Panfile v. Roumania* (dec.), no. 13902/11, 20 March 2012, and *Gogitidze and Others v. Georgia*, no. 36862/05, § 96, 12 May 2015).

114. This is particularly so, for instance, when passing laws in the context of a change of political and economic regime (see *Valkov and Others*, cited above, § 91; the adoption of policies to protect the public purse (see *N.K.M. v. Hungary*, no. 66529/11, §§ 49 and 61, 14 May 2013); or to reallocate funds (see *Savickas v. Lithuania and Others* (dec.), no. 66365/09, 15 October 2013); or of austerity measures prompted by a major economic crisis (see *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 37 and 39, 7 May 2013; see also *da Conceição Mateus and Santos Januário v. Portugal* (dec.) nos. 62235/12 and 57725/12, § 22, 8 October 2013; *da Silva Carvalho Rico v. Portugal* (dec.), § 37, no. 13341/14, 1 September 2015).

115. In addition, Article 1 of Protocol No. 1 requires that any interference be reasonably proportionate to the aim sought to be realised (see *Jahn and Others v. Germany* [GC], nos. 46720/99, 72203/01 and

72552/01, §§ 81‑94, ECHR 2005‑VI). The requisite fair balance will not be struck where the person concerned bears an individual and excessive burden (see *Sporrong and Lönnroth v. Sweden*, 23 September 1982, §§ 69-74, Series A no. 52; *Kjartan Ásmundsson*, cited above, § 45; *Sargsyan*, cited above, § 241; *Maggio and Others*, cited above, § 63; and *Stefanetti and Others*, cited above, § 66).

116. In considering whether the interference imposed an excessive individual burden the Court will have regard to the particular context in which the issue arises, namely that of a social-security scheme. Such schemes are an expression of a society's solidarity with its vulnerable members (see *Maggio and Others*, § 61, and *Stefanetti and Others*, § 55, both cited above, and also, *mutatis mutandis*, *Goudswaard-Van der Lans v. the Netherlands* (dec.), no. 75255/01, ECHR 2005-XI).

117. The Court reiterates that the deprivation of the entirety of a pension is likely to breach the provisions of Article 1 of Protocol No. 1 and that, conversely, reasonable reductions to a pension or related benefits are likely not to do so. However, the fair balance test cannot be based solely on the amount or percentage of the reduction suffered, in the abstract. In a number of cases the Court has endeavoured to assess all the relevant elements against the specific background (see *Stefanetti and Others*, cited above, § 59, with examples and further references; see also *Domalewski*, *v. Poland* (dec.), no. 34610/97, ECHR 1999-V). In so doing, the Court has attached importance to such factors as the discriminatory nature of the loss of entitlement (see *Kjartan Ásmundsson*, cited above, § 43); the absence of transitional measures (see *Moskal*, cited above, § 74, where the applicant was faced, practically from one day to the next, with the total loss of her early-retirement pension, which constituted her sole source of income, and with poor prospects of being able to adapt to the change); the arbitrariness of the condition (see *Klein*, cited above, § 46), as well as the applicant's good faith (see *Moskal*, cited above, § 44).

118. 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 or her pension rights (see *Domalewski,* cited above; *Kjartan Ásmundsson*, cited above, § 39; *Wieczorek*, cited above, § 57; *Rasmussen*, cited above, § 75; *Valkov and Others,* cited above, §§ 91 and 97; *Maggio and Others*, cited above, § 63; and *Stefanetti and Others*, cited above, § 55).

(b) Application of these principles to the present case

119. In the present case the parties differed as to whether the interference with the applicant's property right was "subject to the conditions provided for by law" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 and whether it was possible to identify a legitimate aim pursued by it.

120. The Court notes that the interference consisted in the specific legislation introduced as of 2012 and in its application in the instant case. It is therefore satisfied that the interference complied with the requirement of lawfulness contained in the above provision.

121. The Court further considers that the interference complained of pursued the communal interest in protecting the public purse, by means of rationalising the system of disability-related social-security benefits.

122. As to the proportionality of the interference, the respondent Government offered little comment.

123. The Court notes that the applicant was subjected to a complete deprivation of any entitlements, rather than to a commensurate reduction in her benefits, such as by, for example, calculating an allowance *pro rata* on the basis of the existing and missing days of social cover (see *Kjartan Ásmundsson*, §§ 44-45; *Lakićević*, § 72; and, *a contrario*, *Richardson*, § 24; and *Wieczorek*, § 71, all cited above), in view of the fact that her social-security cover was only 148 days short of the required length. This element gains particular importance in view of the fact that the applicant did not have any other significant income on which to subsist (see paragraph 25 above; compare also *Kjartan Ásmundsson*, cited above, § 44) and that she evidently had difficulties in pursuing gainful employment and belonged to the vulnerable group of disabled persons (see *Alajos Kiss v. Hungary,* no. 38832/06, § 42, 20 May 2010). The Court is indeed mindful of the special characteristics of the type of pension at issue. Although, as mentioned above, the applicant was recommended for rehabilitation in December 2011, rehabilitation was not undertaken and she was not offered the related allowance (see paragraphs 17 and 104 above).

124. In the light of the above considerations, the Court is of the view that the disputed measure, albeit aimed at protecting the public purse by overhauling and rationalising the scheme of disability benefits, consisted in legislation which, in the circumstances, failed to strike a fair balance between the interests at stake. Such considerations cannot, in the Court's view, justify legislating with retrospective effect and without transitional measures corresponding to the particular situation (see *Moskal*, cited above, §§ 74 and 76; see also the ruling of the Court of Justice of the European Union referred to in *Baka v. Hungary* [GC], no. 20261/12, § 69, 23 June 2016), entailing as it did the consequence of depriving the applicant of her legitimate expectation that she would receive disability benefits. Such a fundamental interference with the applicant's rights is inconsistent with preserving a fair balance between the interests at stake (see, *mutatis mutandis*, *Pressos Compania Naviera S.A. and Others,* cited above, § 43).

125. It should also be noted that the applicant was deprived of entitlement to any allowance, despite the fact that there is no indication that she failed to act in good faith at all times, to co-operate with the authorities

or to make any relevant claims or representations (compare *Wieczorek*, cited above, § 69 *in fine*).

126. The Court thus considers that there was no reasonable relation of proportionality between the aim pursued and the means applied. It therefore finds that, notwithstanding the State's wide margin of appreciation in this field, the applicant had to bear an excessive individual burden (see *Kjartan Ásmundsson*, cited above, § 45), amounting to a violation of her rights under Article 1 of Protocol No. 1.

127. Having reached this conclusion, there is no cause for the Court to consider the applicant's alternative argument based on Article 8 of the Convention (see paragraph 59 above).

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

128. 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

129. The applicant claimed 13,185 euros (EUR) in respect of pecuniary damage, which amount corresponds to 68 months' outstanding disability benefit. Moreover, she claimed EUR 6,000 in non-pecuniary damage.

130. The Government contested these claims.

131. 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 her a lump sum of EUR 10,000 in respect of the pecuniary damage sustained. Moreover, it considers that she must have suffered some non-pecuniary damage on account of the distress suffered and awards her, on the basis of equity, EUR 5,000 under this head.

B. Costs and expenses

132. The applicant also claimed EUR 19,220, inclusive of value-added tax (VAT), for the costs and expenses incurred before the Court. This sum corresponds to 121.5 hours of legal work and 19.9 hours of paralegal work, billed by her lawyers and their staff at hourly fees of EUR 150 (inclusive of VAT) for lawyers' fees and EUR 50 (inclusive of VAT) for the paralegals.

133. The Government contested this claim.

134. 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 15,000 covering costs under all heads, less EUR 2,204.95, corresponding to the total amounts paid to the applicant's lawyers under the Council of Europe's legal-aid scheme with regard to the procedures before the Chamber and the Grand Chamber; the sum to be awarded is thus EUR 12,795.05.

C. Default interest

135. 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. *Joins to the merits*, unanimously, the Government's preliminary objection;

2. *Holds*, by nine votes to eight, that Article 1 of Protocol No. 1 to the Convention is applicable and therefore dismisses the Government's preliminary objection;

3. *Holds*, by nine votes to eight, that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

4. *Holds*, by nine votes to eight,
   (a) that the respondent State is to pay the applicant, within three months, the following amounts, to be converted into the currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 10,000 (ten 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 12,795.05 (twelve thousand seven hundred and ninety-five euros and 5 cents), inclusive of 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*, unanimously, the remainder of the applicant's claim for just satisfaction.

Done in English and in French, and delivered at a public hearing in the Human Rights Building, Strasbourg, on 13 December 2016.

Søren Prebensen	Guido Raimondi
Deputy to the Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the following separate opinions are annexed to this judgment:

(a) concurring opinion of Judge Wojtyczek;

(b) joint dissenting opinion of Judges Nußberger, Hirvelä, Bianku, Yudkivska, Møse, Lemmens and O'Leary.

G.R.
S.C.P.

CONCURRING OPINION OF JUDGE WOJTYCZEK

1. I have voted for finding a violation of the Convention in the instant case; however, I respectfully disagree with the reasoning of the judgment. Equally, I subscribe to the way in which the minority opinion of eight judges has presented the existing case-law establishing the general principles pertaining to the protection of possessions under Article 1 of Protocol No. 1. Nonetheless, in the instant case I apply these general principles in a different manner to my colleagues in the minority. Moreover, the eight colleagues of the minority consider that those principles should be applied as they stand. In my view the established principles require certain additions and clarifications, which I shall attempt to expose below. In any event, the reasoning is founded upon principles firmly rejected by nine judges, which diminishes the authority of the judgment and its practical import.

2. The Court's existing case-law on legitimate expectations is difficult to understand, due to lack of precision and inconsistencies (compare, for instance, the critical assessment made by M. Sigron, *Legitimate Expectations under Article 1 of Protocol No. 1 to the European Convention on Human Rights*, Cambridge-Antwerp-Portland: Intersentia 2014, pp. 96-97). I regret to say that the general principles as developed in the present judgment's reasoning serve only to petrify the current state of confusion. In particular, the notion of legitimate expectations on which the reasoning is based appears vague and obscure, and its relationship with the notions of right, claim and legally protected interest is not clear.

3. Without entering into details, I should like to outline very briefly how I perceive the relationship between two fundamental concepts: subjective rights and legitimate expectations.

A subjective right, by definition, entitles the right-holder to certain behaviour on the part of the right-obligor in his favour. Generally speaking, subjective rights are enforceable claims. Not only can the right-holder expect certain (future) conduct from the right-obligor, but he can also demand it and, if necessary, resort to remedies triggering an enforcement procedure. It should be noted in this context that private-law claims stemming from contracts or torts are typically subjective rights, even if the date that they are due is still in the future.

A legitimate expectation is a legal position of a legal subject who can expect, in the specific factual and legal circumstances, certain conduct on the part of a State organ or another legal subject. The notion of legitimate expectation is useful in describing legal positions which do not have the status of subjective rights in that they enjoy weaker protection. If one can claim something against a legal subject, there is no need to say that one can expect that thing from the given legal subject. Using the term "legitimate expectation" in respect of enforceable claims creates confusion.

The notion of legitimate expectations is particularly useful in social-security law. In this branch of law the acquisition of subjective rights is a long process, which begins with entry into the system in respect of certain benefits and ends with the fulfilment of all the criteria established by law. A person fulfilling only certain criteria may have an expectation of acquiring the subjective right as soon as all the criteria are fulfilled. The closer to the fulfilment of all the criteria, the stronger his expectation.

A subjective right presupposes a precise definition of: (i) the right-holder; (ii) the right-obligor and (iii) his obligations, as well as (iv) the precise conditions in which those obligations must be fulfilled. A legitimate expectation corresponds to a situation in which the future obligations correlated with the expectation are defined with less precision or are subject to some uncertainties concerning their precise scope or nature. Drawing a clear demarcation line between subjective rights and legitimate expectations may be problematic in certain cases. In particular, deciding whether a legal obligation imposed on one legal subject in favour of another legal subject is precise enough to qualify as a subjective right of the latter, or whether it should be considered as not fulfilling this criterion and therefore justifying qualification as a legitimate expectation, may be open to dispute between reasonable lawyers. In any event, the protection of legitimate expectations extends the protection of the individual beyond the scope of the protection of his subjective rights.

At the same time, it is important to note that subjective rights may differ as to the strength of their protection. Similarly, the level of the right-holders' subjective conviction – based on legislation and official declarations – that their rights should and will be upheld may vary. Both elements – subjective convictions and objective protection – interact. On the one hand, the strength of the assurances given to the right-holders should not be ignored when assessing the required level of protection of a right. On the other hand, the strength of the actual protection also determines the level of right-holders' subjective convictions and expectations.

4. The judgment (in paragraph 79) explains the gist of the approach underlying its conclusions in the following way:

> "Notwithstanding the diversity of the expressions in the case-law referring to the requirement of a domestic legal basis generating a proprietary interest, their general tenor can be summarised as follows: for the recognition of a possession consisting in a legitimate expectation, the applicant must have an assertable right which, applying the principle enounced in paragraph 52 of *Kopecký*, may not fall short of a sufficiently established, substantive proprietary interest under the national law."

It is difficult to understand this statement. Firstly, it is not clear whether the expectation and the assertable right referred to protect against the same or different State organs (see § 6 below). Secondly, if a legal subject has an assertable right protecting him against a State organ, then what is the added value of qualifying his legal position as a legitimate expectation *vis-à-vis*

this same organ? Thirdly, if a legal subject has an assertable right *vis-à-vis* a State organ, how could this legal position fall short of a sufficiently established, substantive proprietary interest under the national law? An assertable right exists only if there is a sufficiently established, substantive interest under the national law. On the other hand, not every legal interest is protected by a subjective right.

Moreover, the subsequent reasoning pertaining to the specific legal position of the applicant in the instant case (see paragraphs 95 to 111) does not refer to the concepts set out in paragraph 79. It gives the impression that her position is considered not as an assertable right but as a legitimate expectation enjoying weaker protection than a subjective right.

In my view, the scope of the notion of possession in Article 1 of Protocol No. 1 is limited to subjective rights (with pecuniary value) and does not encompass legitimate expectations which are not based on subjective rights (see § 4 of the dissenting opinion by the eight minority judges).

5. The category of possession within the meaning of Article 1 of Protocol No. 1 is extremely diverse and encompasses subjective rights of very different natures. It includes, *inter alia*, ownership of movable and immovable goods, other real rights protected *erga omnes*, pecuniary intellectual property rights and other pecuniary rights in immaterial goods, private-law assets (*créances*) stemming from tort or contract with other persons as well as acquired rights to social-security benefits. Their strength and the degree of protection should necessarily vary, depending on their nature and the weight of the values on which they are founded.

6. One of the main difficulties in applying Article 1 of Protocol No. 1 is related to the articulation between domestic law and the Convention. In order to establish whether there is a possession one must analyse the domestic law (see paragraph 89 of the judgment, and § 10 of the dissenting opinion). A possession is a subjective right, defined by domestic law. It exists only if it exists in domestic law and it exists only to the extent that it is recognised in domestic law. The domestic law defines, in particular, the right-holder, the right-obligors, the content of the right and the scope of the obligors' obligations correlated with this right, as well as the tools for and degree of the protection. The importance of this last element should not be underestimated, as it co-defines, together with other elements, the content of the right itself. A right exists as a right with a certain strength. Some rights are unconditional and enjoy strong protection, including protection *vis-à-vis* the legislator, whereas some rights are precarious and enjoy weak protection, especially *vis-à-vis* the legislator.

It is undisputed that, according to the Court's established case-law, the Convention does not confer rights to specific social-security benefits (see paragraph 82 of the judgment and § 13 of the dissenting opinion). More generally, the Convention does not create specific possessions. In principle, the legislator is free to decide whether or not a specific interest will be

protected by subjective rights (possessions in the meaning of Article 1 of Protocol No. 1). If the legislator is free to create possessions, then it is logical to recognise that it is also free to determine the strength of a right's protection. If the legislator was free not to grant a specific right at all, then is there any reason that say that it could not grant a precarious and conditional right? If the Convention does not require that a specific right be granted, does it prohibit granting this right as a weak right? Moreover, there are often serious grounds in a State governed by the rule by law to grant only weak rights enjoying limited protection, for the sake of protecting other fundamental values.

In principle, the Convention protects possessions as defined in domestic law. A possession is protected if it exists and to the extent that it exists. In other words, the Convention does not convert no-rights into rights. Similarly, it would be logical to conclude that it should not convert week rights into strong rights, non-enforceable claims into enforceable claims and toxic assets into healthy ones.

On the other hand, if possessions are protected under the Convention only to extent to which they exist and enjoy protection under domestic law, then the practical effect of Article 1 of Protocol No. 1 would be extremely reduced. The role of the Court would be to check only whether the existing domestic law has been correctly applied. There may be special circumstances when a weak possession under domestic law may require stronger protection under the Convention. Such a transformation of a weak right into a stronger one by virtue of the Convention should always be explicitly addressed and justified by the Court.

The transformation of a weak right into a stronger one may be justified, in particular if the right recognised in domestic law can be limited or withdrawn, provided that the principle of proportionality is observed. The application of this principle requires a balancing of values. The weight of different values under the national Constitution and the Convention may differ, and therefore the result of the balancing act may be different. The role of the Court is to ensure that in balancing values the High Contracting Parties did not exceed their margin of appreciation, for instance by excessively diminishing the weight of the values protected by the Convention.

The matter is even more complicated in that domestic law has a hierarchical structure. One and the same right may enjoy strong protection against the administrative authorities and weak protection against the legislator. Moreover, the legal position of a legal subject may combine a subjective right *vis-à-vis* the administrative authorities with a legitimate expectation *vis-à-vis* the legislator. The most complicated legal problems stem from the disparity of protection *vis-à-vis* the administration and the legislator.

If the interference with a subjective right is of a legislative nature, then the question arises whether the right is protected against the legislator. If there is clearly no protection of a legal subject's right *vis-à-vis* the legislator in the domestic legal system, then the Court should not convert such a right, protected only *vis-à-vis* the administrative authorities and the judicial power, into a right offering protection also *vis-à-vis* the legislative power, unless there are special reasons for doing so and especially if the weight of the conflicting values under the Convention differs from the weight of the values under the national Constitution.

7. Subjective rights to social-security benefits are possessions within the meaning of Article 1 of Protocol No. 1. A complete revocation or a limitation of such a subjective right amounts to interference with possessions, and must fulfil the criteria set forth in the Convention. Such an interference should have a legal basis in domestic law and observe the principle of proportionality.

It is important to stress that the point of departure for the identification of the possession and of the interference is the legislation in force prior to the interference. What matters is whether a legal subject had a subjective right (or an enforceable claim) before the date of the interference.

The degree of protection of social-security rights under Article 1 of Protocol No. 1 should depend on several factors. As rightly stated in the separate opinion by eight judges, benefits directly linked to the level of contributions require stronger protection than other rights. This, however, is not the only parameter to be taken into account.

The judgment's reasoning attaches importance to the contributory nature of the benefit in question, implicitly conveying the idea that contributory benefits require stronger protection than non-contributory ones (see paragraphs 99 and 105). I subscribe to this approach, which clearly departs from the view expressed in *Stec and Others v. the United Kingdom* ([GC], nos. 65731/01 and 65900/01, ECHR 2006-VI). Financial participation in the form of the contributions paid by insured persons for the purpose of financing social-security benefits is indeed an important argument pleading in favour of protection of the benefits financed from these contributions. It creates a strong moral basis for a reciprocal (but not necessarily strictly synallagmatic) obligation. However, the required level of protection of contributive rights that are not directly linked to the level of contributions will be lower than in the case of benefits directly linked to the level of contributions.

In my view, moreover, benefits which replace salaries, such as retirement pensions and invalidity pensions, require much stronger protection than benefits which complement other sources of revenue.

It is also important to take into account whether the benefits are granted for a specific period, for a period defined by the fulfilment of certain criteria or for an indefinite period. If legislation provides for a more precise time -

frame for the payment of benefits, this factor is an argument in favour of stronger protection.

8. In the instant case, there is no need to resort to the concept of legitimate expectation in order to conceptualise the applicant's legal position. The applicant held a subjective right to an invalidity pension prior to 1 February 2010. This right was confirmed by an administrative act and the applicant in fact received the pension in question until the end of January 2010. She also fulfilled the criteria to receive either a disability pension or a rehabilitation allowance at some point in the second semester of 2011 and this fact was subsequently confirmed by the decision of 13 December 2011 (see paragraph 17 of the judgment). She had a subjective right (an enforceable claim) to receive one of these two benefits, even if this right was not confirmed by an administrative act. This right also constituted a possession within the meaning of Article 1 of Protocol No. 1. This is where the essential difference lies between me and my colleagues in the minority.

Had her right to one of these two benefits been respected on 31 December 2011, she would also have been entitled to these two benefits after 1 January 2012 under the legislation which entered into force at that moment. In her specific circumstances, the actual implementation of her subjective right before 1 January 2012 would have given her the status of a subjective right-holder after that date.

9. An analysis of the Hungarian legal system leads to the conclusion that there are reasons pleading in favour of strong protection of the applicant's right, but there are also serious reasons pleading against such protection.

On one hand, the benefits in question were contributive and were in principle designed to replace other sources of revenue. Furthermore, the legislation in force before 1 February 2010 and the legislation in force at the end of 2011 provided for a specific time-frame for the implementation of those rights. They were to be granted and implemented as long as the health of the right-holder did not improve. All those reasons plead in favour of strong protection of the benefits in question against State interference, be that legislative, administrative or judicial in form.

Moreover, the Constitution of Hungary in force until 31 December 2011 guaranteed the right to social security. It is true that a new paragraph 3 was introduced to Article 70E of the Constitution by the Act of 6 June 2011 which weakened the protection of pensions granted to persons below the retirement age. It is important to stress, however, that under that paragraph disability pensions could be reduced or terminated if the persons concerned were able to work. The Constitution did not allow the complete withdrawal of disability pensions granted to persons unable to work. Therefore, it cannot be said that – under the letter of the Hungarian Constitution – the subjective right acquired by the applicant was devoid of constitutional protection vis-à-vis parliament. Furthermore, the actual degree of protection

of disability pensions under the Hungarian Constitution depends on the balancing of conflicting constitutional values.

At the same time, the scope of the constitutional protection as determined by the case-law of the Constitutional Court was very narrow (see paragraphs 32 and 33 of the reasoning of the judgment). The 2011 Fundamental Law (the new Constitution) which entered into force on 1 January 2012 further reduced the degree of protection for social rights. These factors are a strong argument against stronger protection of the possession in question vis-à-vis legislative interference.

In my view, the decisive factor in the instant case is the nature of the benefit. It is designed to replace employment income for persons who are unable to work. This fact justifies scrutiny of the strength of the right-holder's protection against legislative change.

10. The actual interference with the applicant's subjective rights took place in several stages and had several dimensions. Firstly, the applicant was deprived of her disability pension as of 1 February 2010, due to a new method for establishing the level of disability set out in infra-legislative (infra-statutory) provisions. Secondly, she could receive neither the disability pension nor the rehabilitation allowance to which she was entitled in the second half of 2011, apparently due to the inaction of the administrative authorities. Thirdly, she was definitely deprived of the right to either of these two allowances as of 1 January 2012, due to a change in legislation decided by the national parliament.

The Chamber judgment stated that the Court is prevented from examining the procedure having led to the judgment of 1 April 2011 because the application was filed more than 6 months later (see paragraph 31 of the Chamber judgment). This is somewhat ambiguous, but does not necessarily mean that the Court is prevented from examining the legal situation of the applicant after 31 January 2010.

The Grand Chamber declared that it will examine whether the outcome of the proceedings ending with the judgment of 20 June 2013 is compatible with the Convention (see paragraphs 91 and 92). What matters is not so much the outcome as such of those proceedings but the legal position of the applicant as determined by domestic law and confirmed by that domestic judgment.

11. The question arises whether the first interference referred to above (in § 8) is a one-off interference or amounts to a continuous situation. The answer to this question may be disputed. For my colleagues of the minority, it was a one-off violation. Given that the legislation in force on 1 February 2010 did set out a time-frame for the implementation of the right in question (until the individual's health improves), I would be inclined to see the applicant's legal position after 1 February 2010 as a continuous interference with her subjective right, acquired prior to that date. But even if we consider this first interference as a one-off interference for the purpose of the

calculation of the six-month period, there is certainly a new subjective right at stake in the second semester of 2011 and a new – twofold – interference (described above) with this subjective right. This interference came first from the administrative authorities, and only later from the legislator.

In the instant case the interference with the applicant's right was initially administrative in nature. Nonetheless, it is not possible to avoid an assessment of the legislative interference with effect from 1 January 2012. However, as stated above, such an assessment is not illegitimate, given the nature of the benefit in question. Therefore, it is justified to scrutinise the proportionality of the interference (both administrative and legislative) with the applicant's possession. In my view, this interference was not proportionate and in this respect I agree with the reasoning of the judgment.

Admittedly, we end up with the transformation of a right with limited protection against the legislator under domestic law into a right with somewhat stronger protection against the legislator. However, the specific nature of the right at stake justifies such an approach.

12. The first and foremost condition for the legitimacy of a court is the precision, clarity and methodological correctness of its reasoning. Only well-argued judgments can win the respect of citizens. The European Court of Human Rights should consolidate the rule of law by setting the highest possible standards in this respect. It is true that the Convention sets out the minimum European standard for substantive human-rights protection, but this ought not to prevent the Court from seeking and promoting excellence in the art of legal argument.

In this respect, I should like to raise two questions. Firstly, I note that the judgment does not try to consider and discuss possible counter-arguments; in particular, it ignores the arguments put forward by the minority. Such a choice of argumentative strategy is problematic. I think that the argumentation of the minority deserves thorough consideration and serious discussion.

Secondly, in many European States the domestic courts follow extremely high standards in the reasoning of judicial decisions. In particular, they pay the utmost attention to the precision of the conceptual apparatus and clearly state the applicable rules of interpretation. The quality of reasoning in the instant case does not reach the level of diligence attained in the most advanced States. Seen from this perspective, for many European lawyers, the way in which the judgment is reasoned may appear as a step back in the development of the standards of a democratic State ruled by law. Such a situation not only makes it difficult for the respondent States to implement the Convention and affects the authority of the Court, but also has a detrimental impact on European legal culture.

JOINT DISSENTING OPINION OF JUDGES NUSSBERGER, HIRVELÄ, BIANKU, YUDKIVSKA, MØSE, LEMMENS AND O'LEARY

1. We regret that we cannot share the view of the majority that there has been a violation of Article 1 of Protocol No. 1 to the Convention. In our opinion, that provision is not applicable in the circumstances of the present case. Moreover, since we are unable to find a violation of Article 1 of Protocol No. 1, we consider, unlike the majority, that it is necessary to express ourselves separately on the issue of the alleged violation of Article 8 of the Convention.

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

1. General principles

2. It should be stressed at the outset that this part of our opinion has been drafted together with Judge Wojtyczek. Given that our interpretation of the general principles deriving from the Court's established case-law on Article 1 of Protocol No. 1 is significantly different to that set out in the plurality opinion forming the judgment of the Court, it is necessary to develop our analysis of the jurisprudence in a comprehensive way, and not merely to limit ourselves to criticising those parts of the judgment, specific to the present case, with which we disagree.

(a) The scope of Article 1 of Protocol No. 1 in general

3. The concept of "possessions" within the meaning of Article 1 of Protocol No. 1 has an autonomous meaning which is not limited to ownership of physical goods and is independent from the formal classification in domestic law. Certain other rights and interests constituting assets can also be regarded as "property rights", and thus as "possessions" for the purposes of this provision (see *Beyeler v. Italy* [GC], no. 33202/96, § 100, ECHR 2000-I; *Broniowski v. Poland* (dec.) [GC], no. 31443/96, § 98, ECHR 2002-X; *Anheuser-Busch Inc. v. Portugal* [GC], no. 73049/01, § 63, ECHR 2007-I; *Depalle v. France* [GC], no. 34044/02, § 62, ECHR 2010; *Centro Europa 7 S.r.l. and Di Stefano v. Italy* [GC], no. 38433/09, § 171, ECHR 2012; *Fabris v. France* [GC], no. 16574/08, § 49, ECHR 2013 (extracts); and *Parrillo v. Italy* [GC], no. 46470/11, § 211, ECHR 2015).

4. The Court has acknowledged in its case-law the relevance of the notion of "legitimate expectations" with respect to the concept of "possessions" (see the case-law starting with *Pine Valley Developments Ltd and Others v. Ireland*, 29 November 1991, § 51, Series A no. 222, and

Pressos Compania Naviera S.A. and Others v. Belgium, 20 November 1995, § 31, Series A no. 332). Pursuant to the Court's established case-law, a "legitimate expectation" does not constitute an interest that in itself is protected under Article 1 of Protocol No. 1. According to this case-law, "no such expectation could come into play in the absence of an 'asset' falling within the ambit of Article 1 of Protocol No. 1" (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 48, ECHR 2004-IX; and *Maurice v. France* [GC], no. 11810/03, § 65, ECHR 2005-IX).

5. In a series of cases, the Court has found that the applicants did not have a "legitimate expectation" in circumstances where it could not be said that they had a currently enforceable claim that was reasonably established (see *Kopecký*, cited above, § 49, and the cases referred to in paragraphs 49-51 of the judgment). The Court's case-law thus does not contemplate the existence of a "genuine dispute" or an "arguable claim" as a criterion for determining whether there is a "legitimate expectation" protected by Article 1 of Protocol No. 1 (see *Kopecký*, cited above, § 52, and *Maurice*, cited above, § 66). On the contrary, where the proprietary interest is in the nature of a claim, the Court takes the view that it may be regarded as an "asset" only where it has a sufficient basis in domestic law, for example, where there is settled case-law of the domestic courts confirming its existence (see *Kopecký*, cited above, §§ 49 and 52; *Maurice*, cited above, § 66; *Anheuser-Busch Inc.*, cited above, § 65; *Vilho Eskelinen and Others v. Finland* [GC], no. 63235/00, § 94, ECHR 2007-II; *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 173; and *Parrillo*, cited above, § 213).

6. This principle has also been formulated in various other ways throughout the Court's case-law. By way of example, in a number of cases the Court examined, respectively, whether the applicants had "a claim which was sufficiently established to be enforceable" (see *Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 74, ECHR 2002-VII); whether they demonstrated the existence of "an assertable right under domestic law to a welfare benefit" (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2005-X); or whether the persons concerned satisfied the "legal conditions laid down in domestic law for the grant of any particular form of benefits" (see *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012).

7. In some cases the "legitimate expectation" may involve situations where the persons concerned are entitled to rely on the fact that a specific legal act will not be retrospectively invalidated to their detriment (see *Kopecký*, cited above, § 47, and *Noreikienė and Noreika v. Lithuania*, no. 17285/08, § 36, 24 November 2015). Such legal acts can consist, for example, of a contract (see *Stretch v. the United Kingdom*, no. 44277/98, § 35, 24 June 2003), an administrative decision granting an advantage or

recognising a right (see *Pine Valley Developments Ltd and Others*, cited above, § 51; *Moskal v. Poland*, no. 10373/05, § 45, 15 September 2009; and *Hasani v. Croatia* (dec.), no. 20844/09, 30 September 2010), or a judicial decision (see *Gratzinger and Gratzingerova*, cited above, § 73, and *Velikoda v. Ukraine* (dec.), no. 43331/12, § 20, 3 June 2014). In such cases the "legitimate expectation" is based on a reasonably justified reliance on a legal act which has a sound legal basis and which bears on property rights (see *Kopecký*, cited above, § 47).

8. In other cases the "legitimate expectations" may simply relate to claims arising out of certain situations which are governed by a provision of domestic law. Where the applicant can argue, for example on the basis of established case-law, that his or her claim is currently enforceable and will be determined in his or her favour (see *Gratzinger and Gratzingerova*, cited above, § 72, and *Maurice*, cited above, § 66), in accordance with domestic law, this claim qualifies as an "asset" for the purposes of Article 1 of Protocol No. 1 (see *Kopecký*, cited above, § 48, referring to *Pressos Compania Naviera S.A. and Others*, cited above, § 31).

9. A legitimate expectation must be of a nature more concrete than a mere hope (see *Gratzinger and Gratzingerova*, cited above, § 73, and *Kopecký*, cited above, § 49). The hope that a long-extinguished property right may be revived or that the survival of an old property right which it had been impossible to exercise effectively can be recognised cannot be considered a "possession" within the meaning of Article 1 of Protocol No. 1, nor can a conditional claim which lapses as a result of the non-fulfilment of the condition (see *Malhous v. the Czech Republic* (dec.) [GC], no. 33071/96, ECHR 2000-XII, and the cases referred to; see also *Prince Hans-Adam II of Liechtenstein v. Germany* [GC], no. 42527/98, § 83, ECHR 2001-VIII; *Gratzinger and Gratzingerova*, cited above, § 69; *Kopecký*, cited above, § 35 (c); and *Fabris*, cited above, § 50).

10. In short, where the proprietary interest is in the nature of a claim, it may be regarded as an "asset" attracting the guarantees of Article 1 of Protocol No. 1 where it is based on a specific legal act or where it has a sufficient basis in domestic law, for example where there is settled case-law of the domestic courts confirming it. By way of contrast, no legitimate expectation can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and the applicant's submissions are subsequently rejected by the national courts (see *Kopecký*, cited above, § 50; *Anheuser-Busch Inc.*, cited above, § 65; and *Centro Europa 7 S.r.l. and Di Stefano*, cited above, § 173).

(b) The scope of Article 1 of Protocol No. 1 in regard to social benefits

11. In the modern, democratic State, many individuals are, for all or part of their lives, completely dependent for survival on social security and welfare benefits. Many domestic legal systems recognise that such

individuals require a degree of certainty and security, and provide for benefits to be paid – subject to the fulfilment of the conditions of eligibility – as of right (see *Stec and Others* (dec.), cited above, § 51; *Moskal*, cited above, § 39; and *Wieczorek v. Poland*, no. 18176/05, § 65, 8 December 2009).

12. The general principles relating to the scope of application of Article 1 of Protocol No. 1 are equally relevant when it comes to cases concerning social security and welfare benefits (see *Stec and Others* (dec.), cited above, § 54; *Moskal*, cited above, § 38; and *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011). In particular, the Court has repeatedly held that Article 1 of Protocol No. 1 does not guarantee, as such, any right to a pension or social benefit of a particular amount (see, for example, *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX, and *Wieczorek*, cited above, § 57). The right to an old-age pension or any social benefit in a particular amount is not included among the rights and freedoms guaranteed by the Convention (see, for example, *Aunola v. Finland* (dec.), no. 30517/96, 15 March 2001; *Pravednaya v. Russia*, no. 69529/01, § 37, 18 November 2004; and *Da Silva Carvalho Rico v. Portugal* (dec.), no. 13341/14, § 30, 1 September 2015).

13. Article 1 of Protocol No. 1 places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social-security or pension scheme, or to choose the type or amount of benefits to provide under any such scheme. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit or pension – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 but it does so only for persons satisfying its requirements (see *Stec and Others* (dec.), cited above, § 54; *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, ECHR 2009; *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010; and *Stummer*, cited above, § 82).

14. Within the member States of the Council of Europe, there exists a wide range of social-security benefits which are guaranteed in the form of subjective rights. Benefits are funded in a large variety of ways: some are paid for by contributions to a specific fund; some depend on a claimant's contribution record; many are paid for out of general taxation on the basis of a statutorily defined status (see *Stec and Others* (dec.), cited above, § 50).

15. In certain circumstances, the making of compulsory contributions, for example to a pension fund or a social insurance scheme, may create a property right protected by Article 1 of Protocol No. 1 even before the contributor fulfils all the conditions to actually receive the pension or other benefit. This is the case when there is a direct link between the level of contributions and the benefits awarded (see *Stec and Others* (dec.), cited above, § 43) or in other words, when the making of a contribution creates a

property right in a portion of the pension fund (see *T. v. Sweden*, no. 10671/83, Commission decision of 4 March 1985, *Decisions and Reports* 42, at p. 229). In such a situation, the contributor has an enforceable claim to a share in the fund.

16. This situation is different from the situation where a person makes contributions without there being a direct link between the level of contributions and any benefits awarded. It is true that the Court has held that the right to a pension or other benefit which is based on employment can be assimilated to a property right when special contributions have been paid (see *T. v. Sweden*, cited above, and *Klein v. Austria*, no. 57028/00, §§ 42-45, 3 March 2011). It is to be noted that in such a system the payment of contributions is a pre-condition for receiving the benefit. In other words, there is no entitlement to the benefit where such contributions have not been made. However, the benefit will only be granted to persons who have not only made contributions, but who also satisfy the other conditions laid down in domestic law (see, with respect to contributions made to an unemployment insurance fund, generating a right to emergency assistance when the entitlement to unemployment benefit is exhausted, *Gaygusuz v. Austria*, 16 September 1996, § 39, *Reports of Judgments and Decisions* 1996-IV; see also *Bellet, Huertas and Vialatte v. France* (dec.), nos. 40832/98, 40833/98 and 40906/98, 27 April 1999). In such a situation, the contributor has an enforceable claim only once he or she fulfils all the conditions required to obtain the benefit.

17. In this respect, the fact that a person has entered into and forms part of a State social-security system (even a compulsory one) 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 *Richardson*, cited above, § 17, and *Damjanac v. Croatia*, no. 52943/10, § 86, 24 October 2013; see also *Müller v. Austria*, no. 5849/72, Commission's report of 1 October 1975, DR 3, p. 25, §§ 30-31; *Skorkiewicz v. Poland* (dec.), no. 39860/98, 1 June 1999; and *Kjartan Ásmundsson*, cited above, § 39). 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 (see *Wieczorek*, cited above, § 67).

18. Where a person fulfils the requirements to receive a social-security or welfare benefit – whether conditional or not on the prior payment of contributions –, he or she has a claim that constitutes an "asset" protected under Article 1 of Protocol No. 1 (see, *a contrario, Bladh v. Sweden* (dec.), no. 46125/06, 10 November 2009). It should be noted that such a claim is enforceable only as long as the entitlement exists, that is, as long as the person fulfils the requirements laid down in domestic law as it stands (see *Velikoda*, cited above, § 23).

19. With respect to the loss of an entitlement to a social-security or welfare benefit, two situations have to be distinguished.

20. Where, on the one hand, the amount of the benefit is reduced or discontinued because of a change in the applicable rules, this constitutes an interference with possessions, which then requires to be justified under the general rule of Article 1, first paragraph, first sentence, of Protocol No. 1 (see *Kjartan Ásmundsson*, cited above, § 40; *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009; *Wieczorek*, cited above, § 57; *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011; *Richardson*, cited above, § 17; *Grudić v. Serbia*, no. 31925/08, § 72, 17 April 2012; *Khoniakina v. Georgia*, no. 17767/08, § 72, 19 June 2012; *Damjanac*, cited above, §§ 85 and 89; and *Velikoda*, cited above, § 25).

21. An important consideration in the assessment under the latter provision will be whether the applicant's right to derive benefits from the social-security or welfare scheme in question has been interfered with in a manner resulting in the impairment of the essence of his or her social security or welfare rights (see *Kjartan Ásmundsson*, cited above, § 39; *Wieczorek*, cited above, § 57; *Valkov and Others*, cited above, § 91; and *Khoniakina*, cited above, § 71). However, the fair-balance test cannot be based solely on the amount or percentage of the reduction suffered, in the abstract. All the relevant elements of the case will have to be taken in account (see *Stefanetti and Others v. Italy*, nos. 21838/10, 21849/10, 21852/10, 21822/10, 21860/10, 21863/10, 21869/10, and 21870/10, § 59, 15 April 2014). This includes the nature of the benefit taken away, in particular whether it has originated in a special advantageous pension scheme available only to certain groups of persons (see *Cichopek and Others v. Poland* (dec.), nos. 15189/10 and others, § 137, 14 May 2013; *da Conceição Mateus and Santos Januário v. Portugal* (dec.), nos. 62235/12 and 57725/12, § 24, 8 October 2013; and *Da Silva Carvalho Rico*, cited above, § 42).

22. Where, on the other hand, the person concerned ceases to satisfy the legal conditions laid down in the existing, unchanged domestic law for the grant of any particular form of benefits or pension, there is no interference with the rights under Article 1 of Protocol No. 1 (see *Rasmussen*, cited above, § 71; *Richardson*, cited above, § 17; and *Damjanac*, cited above, §§ 86 and 88). Indeed, the entitlement to a given benefit or pension can change with the evolution of the individual situation of the beneficiary. The Court has stated in this respect, with regard to disability pensions, that it is permissible for States to take measures to reassess the medical condition of persons receiving such pensions with a view to establishing whether they continue to be unfit to work, provided that such reassessment is in conformity with the law and attended by sufficient procedural guarantees

(see *Wieczorek*, cited above, § 67, and *Iwaszkiewicz v. Poland*, no. 30614/06, §§ 50-51, 26 July 2011).

2. Application of the principles to the present case

23. Turning to the application of the general principles to the facts of the present case, we agree with the majority on the starting point: the applicant cannot complain about an allegedly "continuing situation" originating in the discontinuation of her disability pension on 1 February 2010. Like the majority, we believe that the discontinuation of the disability pension was an instantaneous act, and that the final decision in this respect was taken by the Nyíregyháza Labour Court on 1 April 2011. As a result of the six-month rule contained in Article 35 § 1 of the Convention, the Court is precluded from examining the decision of 1 February 2010 and the subsequent proceedings up to the judgment of 1 April 2011, and is obliged to limit its examination to the decisions relating to the applicant's later requests for a disability pension, submitted on 20 February 2012 and 15 August 2012 (see paragraphs 90-91 of the judgment).

24. We note that between 1 May 1975 and 14 July 1997 the applicant made contributions to the social-security scheme (see paragraph 10 of the judgment). However, it is not alleged that she thus had acquired any claim to an identifiable share in a social-security fund. We therefore proceed on the basis that the payment of contributions was merely one of the pre-conditions for receiving a disability pension which became relevant once she satisfied the other conditions laid down in domestic law (see § 16 above). Unlike the majority (see paragraph 105 of the judgment), we thus do not consider that the applicant's contributions created a property right protected under Article 1 of Protocol No. 1.

25. We further note, like the majority, that the system of disability allowances in question, both in its pre-2012 and its current form, essentially operated on the basis of two cumulative eligibility criteria: (i) a "health condition", under which the benefit was payable only to persons whose health and employment status so required, and (ii) a "contribution condition", which required the fulfilment of a certain service period or a period covered by social-security contributions (see paragraph 93 of the judgment).

26. When in 2001 the applicant was granted a disability benefit (see paragraph 11 of the judgment), the relevant authorities considered that she met both the health condition and the contribution condition applicable pursuant to Act no. LXXXI of 1997 on Social-Security Pensions. That decision generated a legitimate expectation that she would receive the benefit on a monthly basis, so long as she continued to meet the two conditions and in particular the health condition.

27. The period during which the applicant received the disability benefit lasted until 1 February 2010. On that date, the relevant pension insurance authority found, on the basis of a new methodology for assessing the degree of health impairment, that the applicant had a disability of only 40%. It concluded that the applicant no longer fulfilled the health condition established by law, which had remained unchanged, and therefore withdrew her entitlement to a disability pension (see paragraphs 12-14 of the judgment). As indicated previously, the applicant's challenges to this decision were ultimately dismissed by the Nyíregyháza Labour Court on 1 April 2011 (see paragraphs 15-16 of the judgment). In consequence, in accordance with the provisions of domestic law then in force, the applicant was not entitled to and did not receive any disability pension as of 1 February 2010.

28. From the moment that her entitlement to a disability pension was withdrawn, the applicant could no longer rely on a specific legal act to support the legitimate expectation that she would receive a disability pension. She could of course rely on the legislation in force at that point, but since she did not fulfil all of the conditions to receive a disability benefit she had no enforceable claim in that regard. It cannot be argued either, in our opinion, that the applicant, who had previously had a right to a disability pension because she fulfilled the eligibility requirements under the domestic law applicable at the relevant time, had a continuous legitimate expectation to receipt of that allowance or benefit for as long as one of those requirements continued to be met, regardless of how the relevant statutory requirements were amended or developed over time. In fact, the applicant had lost her proprietary interest, protected under Article 1 of Protocol No. 1, through the decision of 1 February 2010 withdrawing her entitlement to a disability pension.

29. Following that withdrawal of her disability pension and the rejection of her appeals, the applicant first requested a new assessment of her disability. This resulted in a disability score of 50%, as determined on 13 December 2011 by the second-instance administrative authority. This, however, was insufficient, in the given circumstances, to allow the conclusion that the applicant fulfilled the conditions laid down by domestic law for entitlement to a disability allowance (see paragraph 17 of the judgment). Thus, nothing changed in respect of her situation under Article 1 of Protocol No. 1: she still had no "enforceable claim" to a disability pension. The fact that rehabilitation was envisaged, but regrettably not taken forward (*ibid.*), does not, in our opinion, alter this conclusion as regards the applicant's legal situation.

30. On 1 January 2012 a new law on disability allowances (Act no. CXCI of 2011 on the Benefits Granted to Persons with Reduced Work Capacity) entered into force. It changed the conditions of eligibility for disability benefits, now called disability allowances. In particular, a new

contribution condition was introduced, which was stricter than the one applicable under the old law (see paragraph 18 of the judgment). According to the majority, this law was of a retroactive nature (see paragraph 104 of the judgment). We cannot agree with that characterisation. The new law produced its effects only for the future, thus being of immediate but not retroactive application.

31. We reiterate that according to the Court's case-law the protection afforded by Article 1 of Protocol No. 1 does not go so far as to prevent the competent authorities from amending the relevant rules and reforming the social-security system (see § 17 above). While the new law on disability allowances could constitute an interference in the "possessions" of those persons who received a disability pension at the moment when the law entered into force (see §§ 20-21 above), this was not the case in respect of the applicant, who at that moment was not entitled to such a pension under the old law (see § 22 above).

32. The question whether any proprietary interest, within the meaning of Article 1 of Protocol No. 1, existed as from 1 January 2012 would thus have to be answered on the basis of the new law. The old law had been repealed, and could therefore no longer be the basis for any legitimate expectations to arise. In other words, although the applicant had fulfilled the contribution criterion as it applied in the past, this fact was no longer relevant once the new law entered into force, changing the relevant criteria. In order to answer the question whether, for the purposes of the applicability of Article 1 of Protocol No. 1, the applicant's claim had a sufficient basis in domestic law, it is the domestic law as it stood when the decisions were taken on her requests for a disability allowance, submitted on 20 February 2012 and 15 August 2012, that is relevant.

33. We would like to add that the fact that the applicant had made contributions under the old law does not change that finding. Indeed, as explained above, these contributions did not generate any claim to an identifiable share in a social-security fund, and therefore did not as such generate a proprietary interest protected under Article 1 of Protocol No. 1 (see § 24 above).

34. Accordingly, the question is whether there was a sufficient basis in domestic law, as interpreted by the domestic courts, for the applicant's claim to a disability allowance to qualify as an "asset" for the purposes of the applicability of Article 1 of Protocol No. 1. In this respect, the decisive issue in our opinion is whether the applicant could be said to have satisfied the requirements for the disability allowance, as laid down in domestic law (see, *mutatis mutandis*, *Koivusaari and Others v. Finland* (dec.), no. 20690/06, 23 February 2010).

35. The applicant brought two requests based on the law on disability allowances (Act no. CXCI of 2011). As indicated above, that law made the entitlement to a disability allowance dependent on two conditions: a health

condition and a – now stricter – contribution condition (see § 30 above). The first request was rejected on 5 June 2012 on the ground that she did not fulfil the new contribution condition (see paragraph 19 of the judgment). The second request was also rejected, by a decision taken on 23 November 2012 and confirmed by an appellate body on 27 February 2013, and the applicant's challenge to that decision was rejected by the Nyíregyháza Administrative and Labour Court on 20 June 2013, again on the ground that the applicant did not fulfil the new contribution condition (see paragraphs 21-23 of the judgment). The applicant does not argue that the interpretation or the application of the new law by the domestic authorities was arbitrary or manifestly unreasonable, and we see no reason to conclude that they were. As indicated above, the Court has consistently held that no legitimate expectation for the purpose of Article 1 of Protocol No. 1 can be said to arise where there is a dispute as to the correct interpretation and application of domestic law and where, as here, the applicant's submissions are subsequently rejected by the national courts (see § 10 above). Thus, the conclusion to be drawn from the fact that the applicant's requests were rejected on the ground that she did not fulfil one of the conditions laid down by the applicable law on disability allowances is that her claims had no basis in the new law or, in other words, that she had no "enforceable claim" under that law.

36. The applicant argues, however, that she was entitled to a disability allowance on the basis of the former Hungarian Constitution, as interpreted by the Constitutional Court, as well as on the basis of Article 12 § 2 of the European Social Charter, referring to ILO Convention No. 102, and the United Nations Convention on the Rights of Persons with Disabilities.

37. We are not convinced by the applicant's argument that the provisions of the former Constitution had been interpreted by the Constitutional Court as obliging the State to provide for payment of a social allowance to the extent that is required for basic subsistence. In this regard, we would like to point to the reasoning in the Constitutional Court's decision no. 40/2012 (XII.6.) AB (see paragraph 33 of the judgment), where it held that the Fundamental Law which replaced the former Constitution as of 1 January 2012 provides for general State objectives, rather than for rights conferred on individuals, as far as its Article XIX on social security is concerned. Moreover, the legislature was already expressly entitled to reduce, transform into a social allowance or terminate disability pensions under the former Constitution, as from 6 June 2011. The Constitutional Court also referred to its well-established case-law, which does not interpret the State's obligation to guarantee basic subsistence as a source of specific, directly enforceable constitutional rights. We are therefore not persuaded that the constitutional principles relied on by the applicant created an enforceable right, to be implemented by the legislature.

38. Furthermore, we are unable to accept that the international-law norms referred to by the applicant constitute a basis for an enforceable right to the impugned Hungarian disability allowance. Hungary has not accepted to be bound by the parts of the European Social Charter or the Revised European Social Charter relied on (see paragraph 36 of the judgment). Neither has it ratified the European Code of Social Security or ILO Conventions Nos. 102 and 128 (see paragraphs 38, 40 and 41 of the judgment): it has thus not accepted the undertaking to secure at least a reduced invalidity benefit for those persons who have completed a period of five years of contribution prior to the contingency (see paragraph 42 of the judgment). In addition, the relevant provisions of the United Nations Convention on the Rights of Persons with Disabilities (see paragraph 39 of the judgment), although ratified by Hungary, do not contain any specific obligation that would entitle the applicant to a disability benefit.

39. The conclusion we draw from the foregoing is that the applicant's claim had no basis in domestic law as it stood on the dates when her requests for a disability allowance were rejected. There was thus no claim under domestic law that could be considered an asset protected by Article 1 of Protocol No. 1. In our opinion, therefore, the applicant did not have a "possession" within the meaning of Article 1 of Protocol No. 1, and the guarantees of that provision do not apply in the present case.

40. Accordingly, we would allow the Government's objection based on the incompatibility *ratione materiae* of the complaint with the Convention and the Protocols thereto. Accordingly, there can be no violation of Article 1 of Protocol No. 1.

B. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION

41. In the event that the Court were to find Article 1 of Protocol No. 1 inapplicable, the applicant, for the first time in her memorial of 30 September 2015 to the Grand Chamber, requested the Court to examine separately whether her right to respect for private life as guaranteed by Article 8 of the Convention had been infringed on account of the loss of her only source of income, resulting from the amendment of the eligibility criteria for the disability pension.

42. Since we find that Article 1 of Protocol No. 1 is indeed inapplicable, we consider that we should give our views on the complaint based on Article 8 of the Convention.

43. According to the Court's case-law, the "case" referred to the Grand Chamber, within the meaning of Article 43 of the Convention, is the application as it has been declared admissible (see, among many other authorities, *K. and T. v. Finland* [GC], no. 25702/94, § 141, ECHR 2001-VII, and *Blokhin v. Russia* [GC], no. 47152/06, § 91, ECHR 2016). In

the present case, the question whether the impugned decision could be regarded as a failure to comply with the applicant's right to respect for private life for the purposes of Article 8 of the Convention is a matter that was not covered by the decision declaring the application admissible, and ought to be viewed as a separate complaint.

44. In our opinion, therefore, the Grand Chamber should have concluded that it lacks jurisdiction to examine the complaint under Article 8 (see, *mutatis mutandis*, *Herrmann v. Germany* [GC], no. 9300/07, § 39, 26 June 2012, and *Pentikäinen v. Finland* [GC], no. 11882/10, § 81, ECHR 2015).

C. FINAL REMARK

45. We would like to end with a final remark. We are very well aware of the applicant's difficult situation. She fell through the holes of the social-security net when it was reformed. But nevertheless we consider that hard cases do not make good law. Such cases cannot be a reason to change the Court's long-standing and well-entrenched approach to the interpretation of "possessions" and "legitimate expectations" within the meaning of Article 1 Protocol No. 1 to the Convention.