

## Summary

The legal situation of an individual within the European legal space is undoubtedly shaped not only by the Convention for the Protection of Human Rights and Fundamental Freedoms, but increasingly also by the case law of the European Court of Human Rights. The ECHR case law provides individuals with effective protection measures against infringements by states parties that breach their international obligations under the Convention. However, in principle, the Convention's system of protection of human rights and fundamental freedoms is subsidiary in nature. The Convention's system also does not operate in line with the principle of direct effect and, therefore, the ECHR judgments do not automatically determine the legal position of individuals under domestic legal systems. In its declaratory decisions the ECHR determines whether there has been a violation of the individual's subjective right guaranteed by the Convention, which at the same time constitutes a breach of the international obligations of a state party to the Convention. However, the ECHR judgments impose international obligations on parties to act on them in good faith and, therefore, they need to be taken into account in the process of interpreting constitutional human rights and freedoms domestically. It is also important to note that whenever the ECHR decides there has been a violation of the Convention by a state party, the judgment would also determine the consequences of the breach, i.e. compensation or damages. In addition, the judgment may prompt the state party to undertake specific actions to restore the status prior to the violation of the Convention, or urge the state party to cease the infringing behaviour.

The ECHR issues its judgments as decisions in specific cases which are declaratory in nature. Therefore, they do not directly affect either the legal force of judgments of domestic courts or national legislation. Nevertheless, they do take certain effects within the framework of domestic law, especially with regard to the protection of individual rights and freedoms. In practice, such effects arise as a result of implementing the ECHR judgments through both individual and general measures that states parties apply to ensure the protection of Convention rights and freedoms for individuals. Therefore, in principle the rationale behind individual measures is to restore, where possible, the status existing prior to the violation of an obligation under the Convention, whereas the purpose of general measures is to prevent the state from further breaches. Effectively, the purpose of applying both individual and general measures is to ensure that the judgment takes the desired effect from the point of view of protecting human rights and fundamental freedoms. From an individual point of view it is important that these judgments take the expected effects in the domestic law and legal process, necessary for the protection of their subjective rights.

These considerations set the context for the present study, the goal of which was to determine the most desirable domestic effects of ECHR judgments in the area of social security in Poland, from the point of view of protecting the interests of individuals. Considering the fact that social security would be too broad and varied to analyse, the research objective was achieved by analysing social insurance, in particular pension insurance. Therefore, it was necessary to analyse how ECHR judgments make it possible to rectify erroneous decisions

on financial benefits issued in the area of social insurance, in particular regarding retirement pensions. The possibilities, premises and legal forms in which this may occur were analysed.

Several important conclusions were drawn in this respect as a result of the research study. In the Polish legal framework, the legal basis for re-establishing the entitlement to social insurance benefits can be found in art. 83a of the Social Security Act (pl. *Ustawa o systemie ubezpieczeń społecznych*) and art. 114 of the Pension Act (pl. *Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*). A final pension decision is rebuttable both before the social security authority and before a common court. In the first scenario, one may apply for the re-establishment of the benefit entitlement, according to art. 114 of the Pension Act. In the second scenario, one may request the re-opening of civil proceedings on the grounds of their invalidity, according to art. 401 of the Code of Civil Procedure. In both scenarios outlined above, a rebuttal of a final decision issued by the Social Insurance Institution (pl. *ZUS - Zakład Ubezpieczeń Społecznych*) based solely on a favourable ECHR decision does not seem to be possible. However, the ECHR case law has significantly changed the approach of domestic courts to examining social security cases. Labour and social insurance courts began to apply the so-called proportionality test, i.e. they started to investigate whether voiding a defective pension decision would not result in too far-reaching negative consequences for the beneficiary. Moreover, ECHR case law has clearly contributed to the so-called pro-Convention interpretation of art. 114 par. 1 of the Pension Act, as evidenced by numerous judgments of the Supreme Court and common courts. These judgments clearly stipulate that the principle of proportionality needs to be applied to balance the benefits of voiding a defective pension decision (in the public interest) against the individual interest of the beneficiary for whom voiding the decision might prove to be too burdensome. Furthermore, ECHR case law triggered the amendment of the provision on the re-establishment of the pension entitlement, which is a special regulation enabling the overturn of a final pension decision. The new wording of art. 114 is in line with the ECHR case law regarding social security. On the other hand, the ECHR case law has brought about a negative consequence too. The verification of pension decisions has been significantly reduced. Under the new legal framework, an individual who has never satisfied the statutory conditions for pension entitlement, but who has been granted a positive declaratory decision by the Social Security Institution (ZUS) may acquire a permanent entitlement, should the verification of the disputed decision be disproportionate or not compliant with the Convention. It should also be noted that the new wording of art. 114 of the Pension Act may cause problems with its application in practice. The article allows the pension authority to examine whether there are any special circumstances occurring in the individual's situation which would make it necessary to refrain from rebutting or amending the decision. The pension authority appears to be insufficiently prepared to carry out the analysis of proportionality, which previously was effectively conducted solely by labour and social security courts. Moreover, if the damage suffered by an individual exceeds the amount of compensation rightfully granted by the ECHR, an individual is entitled to seek supplementary compensation from the state treasury under tort liability. However, it can not be argued that a judgment of the ECHR which is favourable to the applicant would automatically and unconditionally render a civil court's decision unlawful. Due to the ECHR's special functions and the nature of its judgments, it is most reasonable to propose a stance that it is in domestic courts' remit to declare a decision unlawful, having taken into account the ECHR judgment and the overall circumstances of the case.