CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

CASE OF LUCZAK v. POLAND

(Application no. 77782/01)

JUDGMENT

STRASBOURG

27 November 2007

FINAL

02/06/2008

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Luczak v. Poland,

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

Sir Nicolas BRATZA, *President*,
Mr J. CASADEVALL,
Mr G. BONELLO,
Mr K. TRAJA,
Mr S. PAVLOVSCHI,
Mr L. GARLICKI,
Ms L. MIJOVIĆ, *judges*,
and Mr T.L. EARLY, *Section Registrar*,

Having deliberated in private on 6 November 2007,

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

PROCEDURE

1. The case originated in an application (no. 77782/01) against the Republic of Poland lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a French national, Mr Richard Luczak ("the applicant"), on 8 August 2000.

2. The applicant was represented by Mr M. Bubak, a lawyer practising in Brzeg. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz of the Ministry of Foreign Affairs.

3. The applicant alleged a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 on account of the refusal to admit him to a farmers' social security scheme.

4. In accordance with the provisions of Article 29 § 3 of the Convention and Rule 54A § 3 of the Rules of Court, the Court decided to examine jointly the issues of the admissibility and merits of the application. The applicant and the Government each filed written observations on the admissibility and merits of the case.

5. The French Government were invited to intervene in the proceedings (Article 36 § 1 of the Convention). However, by a letter of 21 February 2006, they informed the Registry that they did not wish to exercise their right to intervene.

6. On 27 March 2007 the Court decided to disapply Article 29 § 3 of the Convention and to examine the admissibility and the merits of the application separately. In a decision adopted on the same date the Court, by a majority, declared the application admissible.

7. On 4 April 2007 the Court asked the parties for further observations on the merits, which it received on 6 July 2007.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

8. The applicant, who is a French national of Polish origin, was born in 1950 and lived in Brzeg.

9. The applicant moved to Poland in about 1984. He was in employment for a number of years and consequently was affiliated to the general social security scheme. The relevant law governing it did not exclude the participation of foreign nationals in the general social security scheme.

10. On 20 January 1997 the applicant and his wife, who is a Polish national, jointly bought a farm. They took possession of it on 20 November 1997. At about that time the applicant terminated his employment and decided to make his living from the farm.

11. On 2 December 1997 the applicant requested the Częstochowa branch of the Farmers' Social Security Fund (*Kasa Rolniczego Ubezpieczenia Społecznego*) to admit him to the farmers' social security scheme.

12. On 16 December 1997 his request was refused on the ground that he was not a Polish national, a condition stipulated in the Farmers' Social Security Act of 20 December 1990 ("the 1990 Act"; *ustawa o ubezpieczeniu społecznym rolników*). As a result, the applicant did not have social security cover in the event of sickness, occupational injury and invalidity. In addition, he could not pay contributions towards his old-age pension.

13. In a decision given on the same date, the applicant's wife was admitted to the farmers' scheme.

14. The applicant appealed against the decision given in his case. He submitted that as a self-employed farmer he was exposed to the risk of work-related accidents. Furthermore, he argued that since he had acquired the farm he had terminated his previous employment and that the farm was intended to provide for his livelihood. The applicant also submitted that when previously employed he had been covered by the general social security scheme despite his foreign nationality. As a result of the refusal, he could not pay his social security contributions, so the relevant time would not be taken into account when calculating his future retirement pension.

15. He also submitted that he had been informed about an obligation to join the scheme by way of a clause in the notarial deed whereby he had acquired the farm. In addition, the applicant stated that he had been living in Poland for 18 years and that he had had a permanent residence permit for 15 years. He also referred to his Polish origin and his willingness to pay the relevant contributions to the scheme.

16. On 30 March 1998 the Częstochowa Regional Court dismissed the applicant's appeal, finding that the applicant could not be admitted to the

farmers' social security scheme as he did not have Polish nationality. On the other hand, it observed that in the event of a serious occupational injury the applicant could be granted a one-off compensation payment as provided in section 10(1)(2) of the 1990 Act. As regards access to health services, the Regional Court noted that the applicant, as a foreign national permanently residing in Poland, would be provided with such access by a law which was to come into force on 1 January 1999.

17. The applicant appealed against that judgment. He submitted that the refusal to admit him to the social security scheme for farmers on the basis of his nationality was discriminatory. He alleged a breach of the principle of equality, relying on the Constitution and the International Covenant on Economic, Social and Cultural Rights ("the ICESC").

18. On 22 December 1998 the Katowice Court of Appeal dismissed the applicant's appeal. It found that the applicant could not base his claim for admission to the farmers' social security scheme on the Constitution as the latter provided in Article 37 § 2 for statutory limitations on the rights of aliens. Similarly, the Court of Appeal held that the 1948 bilateral treaty concluded between France and Poland in matters of social security was applicable exclusively to employees. The applicant's claim based on the ICESC was also dismissed. The Court of Appeal noted that Article 9 of the ICESC included a provision on the right of everyone to social security. However, it held that the provisions of the Covenant were not self-executing and left States a margin of discretion as to the manner of their implementation in domestic law.

19. The applicant lodged a cassation appeal against that judgment with the Supreme Court. On 8 February 2000 the Supreme Court dismissed his cassation appeal, relying principally on the same grounds as the Court of Appeal. Additionally, it observed that Article 67 of the Constitution provided that the right to social security was guaranteed only to Polish nationals.

20. In 1998 the applicant requested the President of the Farmers' Social Security Fund to admit him to the farmers' scheme as an exception to the existing rules. On 7 August 1998 the President of the Farmers' Social Security Fund refused and informed the applicant that the 1990 Act expressly excluded the admission of non-Polish nationals to the scheme. That rule was applicable to farmers, their spouses and members of their household.

21. In 1998 the applicant petitioned the Ombudsman. On 16 September 1998 the Ombudsman wrote to the Minister of Agriculture, stating that discrimination on the ground of nationality in respect of the provision of social security to farmers was questionable in view of the obligations specified in the ICESC. He requested the Minister to urgently prepare a relevant amendment to the 1990 Act. On 30 September 1998 the Minister informed the Ombudsman that amendments were being prepared. Those amendments would enable farmers of foreign nationality having permanent

residence status in Poland to join the farmers' scheme. It was envisaged that the amendments would enter into force on 1 January 1999. The applicant was informed of this by the Ombudsman. However, the amendments were not enacted.

22. In 2002, in view of the prolonged uncertainty as to his social security cover, the applicant went to the Netherlands, where he obtained a job. From April 2004 to April 2006 the applicant was on sick leave and subsequently he has been in receipt of a sickness allowance.

23. On 2 April 2004 the 1990 Act was amended in connection with Poland's accession to the European Union (EU). The amendments provided, *inter alia*, that nationals of EU Member States and foreign nationals in possession of a residence permit could join the farmers' scheme.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. The European Social Charter 1961

24. The European Social Charter 1961 ("the Social Charter"), which entered into force in respect of Poland on 25 July 1997, provides, as relevant:

> "The governments signatory hereto, being members of the Council of Europe, ...
>
> Considering that the enjoyment of social rights should be secured without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin; ...
>
> Have agreed as follows: ..."

Part II

> "The Contracting Parties undertake, as provided for in Part III, to consider themselves bound by the obligations laid down in the following articles and paragraphs. ..."

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."

25. In accordance with Article 20 of the Social Charter, the Republic of Poland considered itself bound by a number of substantive provisions of the Charter, including Article 12.

B. Constitutional provisions

26. Article 37 of the Constitution reads:

"1. Any person within the jurisdiction of the Republic of Poland shall enjoy the freedoms and rights guaranteed by the Constitution.

2. Exemptions from this principle with respect to aliens shall be specified by statute."

Article 67 § 1 of the Constitution provides:

"A citizen shall have the right to social security whenever incapacitated for work by reason of sickness or invalidity as well as having attained retirement age. The scope and forms of social security shall be specified by statute."

C. Social security scheme for farmers

27. The social security scheme for farmers is regulated by the Farmers' Social Security Act of 20 December 1990 ("the 1990 Act"; *ustawa o ubezpieczeniu społecznym rolników*). At the relevant time section 1(1) of the 1990 Act provided, in so far as relevant:

"The social security [scheme] for farmers shall cover farmers of Polish nationality and Polish members of their household working with them."

28. The Social Security (Farmers and Members of their Families) Act of 14 December 1982, which predated the 1990 Act, did not lay down a nationality condition.

29. The scheme set out in the 1990 Act provides the following benefits: (1) sickness and maternity benefit, (2) benefit in respect of occupational

injury and disease, and (3) old-age and invalidity pension. It is operated by the Farmers' Social Security Fund (*Kasa Rolniczego Ubezpieczenia Społecznego*), a specialised government agency which is subsidised by the State budget. Depending on the size of their farms, farmers are either required to join the scheme by law or may join at their own request. Each farmer admitted to the scheme is required to pay contributions to it, the amount of which does not depend on the size of the farm or the level of income from it. The precondition for admission to the scheme is to be an owner of a farm, regardless of whether farming is the main source of the farmer's livelihood.

30. On 2 April 2004 the 1990 Act was amended. The relevant amendment, which entered into force on 2 May 2004, broadened the range of farmers who could be admitted to the farmers' social security scheme by, *inter alia*, including nationals of the EU Member States and foreign nationals residing in Poland on the basis of a visa or a residence permit.

D. The general social security scheme for employees

31. At the relevant time the rules governing the operation of the general social security scheme for employees were laid down in the Social Security (Organisation and Financing) Act of 25 November 1986 (*ustawa o organizacji i finansowaniu ubezpieczeń społecznych*). The Act did not provide for any restrictions on admission to the general social security scheme on the basis of an employee's nationality, with the exception of those aliens who did not reside permanently in the country or were employed by foreign diplomatic missions. On 1 January 1999 the Act of 25 November 1986 was repealed and replaced by the Social Security System Act of 13 October 1998 (*ustawa o systemie ubezpieczeń społecznych*). However, the rule in respect of the admission of employees of foreign nationality to the general social security scheme remains the same.

E. The bilateral agreement between Poland and France

32. In 1948 Poland and France concluded the General Convention on Social Security (*Konwencja Generalna pomiędzy Polską a Francją o zabezpieczeniu społecznym*). However, the provisions of that Convention were applicable exclusively to employees and other workers in comparable positions, as opposed to self-employed persons.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1 TO THE CONVENTION

33. The applicant complained under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 that he had been refused admission to the farmers' social security scheme on the ground of his nationality and thus could not receive benefits from that scheme. Article 1 of Protocol No. 1 to the Convention reads:

> "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."

Article 14 provides:

> "The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

34. In its admissibility decision of 27 March 2007 the Court held that the applicant's interests relating to the farmers' scheme and the ensuing right to derive social security benefits fell within the scope of Article 1 of Protocol No. 1, and that Article 14 of the Convention was therefore applicable. It must now consider whether there has been a breach of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

A. The arguments of the parties

1. The applicant

35. The applicant claimed that by depriving him of the possibility of joining the farmers' scheme solely on account of his foreign nationality, despite the fact that he met the other statutory conditions, the authorities had violated the prohibition of discrimination. As a result he was effectively deprived of social security cover in the event of sickness, occupational injury and invalidity. Furthermore, he could not continue making contributions towards his retirement pension, which he had paid for many

years when affiliated to the general social security scheme. In this connection, the applicant had a reasonable expectation of being admitted to the farmers' scheme. That position was supported by the Ombudsman's opinion in his case.

36. The difference in treatment to which the applicant was subjected had no objective and reasonable justification. He submitted that the problem of providing social security cover to foreign nationals under the farmers' scheme was a marginal one. There were only a very limited number of cases of this kind which could not in any way affect the country's economy or its social security system.

37. Furthermore, the applicant emphasised that the relevant law had abolished the nationality criterion in 2004 in respect of certain foreign nationals. In the subsequent period the farmers' social security scheme had not collapsed and nor had the situation of farmers, referred to by the Government as "a socially vulnerable group", changed considerably. In addition, when tabling the relevant bill in Parliament the Government had submitted that the amendments to the 1990 Act would not generate additional budget expenditure.[1]

38. The applicant submitted that the farmers' scheme was also susceptible to abuse in that persons who should otherwise be making higher contributions to the general social security scheme could join the farmers' scheme, which provided them with comprehensive social security cover in exchange for smaller contributions. The authorities had ignored the potential for abuse.

39. The applicant had been prevented from pursuing work on his farm and obtaining income from it, despite having made investments with a view to creating a vineyard. The prolonged uncertainty as to his social security cover had forced him to abandon his work plans and to leave Poland at the age of 52 after having spent 18 years in the country.

2. The Government

40. The Government denied that domestic law gave rise to any discrimination contrary to Article 14. The legislation concerning admission to the farmers' scheme included objective criteria and applied to everyone without any arbitrary exceptions. The distinction between nationals and non-nationals had been introduced in pursuance of the general interest and did not contravene the principle of proportionality.

41. The Government averred that despite the fact that prior to 2004 it had not been possible for the applicant to join the farmers' scheme, he had nevertheless been entitled to certain social security benefits. They referred to a one-off compensation payment which could have been granted to the

[1] Bill on amendments to the 1990 Act and certain other laws, submitted to the Sejm on 26 March 2003 (no. 1489).

applicant in the event of serious occupational injury as provided under section 10(1)(2) of the 1990 Act and a similar one-off compensation payment which could be granted to the applicant's family in the event of his death as a result of a work-related accident (section 10(1)(4)). In their opinion, the applicant might also have been entitled to a dependant's pension (*renta rodzinna*) in the event of his wife's death (section 29 of the 1990 Act). The Government further pointed out that the applicant had been entitled, as a foreign national with permanent residence status, to a family allowance (*zasiłek rodzinny*) and a nursing allowance (*zasiłek pielęgnacyjny*), subject to certain statutory conditions, and access to health insurance services as from 1 January 1999.

42. Having regard to the social vulnerability of farmers, as well as the tradition of State support for Polish farmers, the Government found no persuasive grounds to believe that they had been bound under the Convention to provide support to foreign nationals by admitting them to the farmers' scheme prior to 1 May 2004. They argued that the limitation of the applicant's right of access to the farmers' scheme had been only temporary as it had been removed on the latter date. However, they underlined that after 1 May 2004 the applicant had not applied to join the farmers' scheme and had simply pursued his application before the Court. On that account, the Government expressed their reservations about the applicant's victim status.

43. The Government asserted that the distinction at issue pursued the legitimate aim of protecting a vulnerable group by allowing its members to have access to and benefit from the scheme on payment of a modest contribution. They observed that the creation of the farmers' scheme was a reflection of the State's policy to support an underdeveloped and economically inefficient sector of the economy. In this connection, the condition of Polish nationality prior to 2004 had played a vital role in directing State support to those in particular need, namely Polish farmers, who had always been financially disadvantaged in comparison to other sectors of society. The Government emphasised that the farmers' scheme was 95% financed from the budget. That constituted a heavy burden on taxpayers and the economy alike. The Government submitted that contributions made by farmers to the scheme constituted only a small fraction of the contributions paid by persons covered under the general social security scheme. It would be unjustified to claim that such an expensive social security scheme should have been opened up to anyone willing to be covered by it.

44. Furthermore, the Government maintained that the Polish State could not be held responsible for attempting to reconcile its budgetary considerations with the social and financial difficulties encountered by the agricultural sector. They submitted that currently about 16% of the population in Poland were classified as being employed in agriculture,

whereas their contribution to the country's GDP did not exceed 3%. It was thus obvious that the State budget and taxpayers were contributing heavily to the farmers' scheme. Moreover, there were sound reasons to believe that expanding the scheme to include foreign nationals would be contrary to the long-term aim of reducing its costs and would unjustifiably favour foreign nationals.

45. In view of the above, the Government argued that the distinction at issue did not go beyond the margin of appreciation enjoyed by the authorities in the sphere of social policy. They claimed that there was a reasonable relationship of proportionality between the conditions of admission to the farmers' scheme and the aim of State support for a socially and economically vulnerable sector of society. Furthermore, the difference in treatment had been of a temporary nature and had been based on important budgetary and social policy considerations. In the Government's submission, there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1 to the Convention.

B. The Court's assessment

1. General principles

46. The applicant complained of a difference in treatment on the basis of nationality, which falls within the non-exhaustive list of prohibited grounds of discrimination in Article 14.

47. For the purposes of Article 14 a difference in treatment between persons in analogous or relevantly similar positions is discriminatory if it has no objective and reasonable justification – in other words, if it does not pursue a legitimate aim or if there is not a reasonable relationship of proportionality between the means employed and the aim sought to be realised. The Contracting State enjoys a margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment (*Van Raalte v. the Netherlands*, judgment of 21 February 1997, *Reports of Judgments and Decisions* 1997-I, § 39; *Larkos v. Cyprus* [GC], no. 29515/95, § 29, ECHR 1999-I; and *Stec and Others v. the United Kingdom* [GC], no. 65731/01, § 51, ECHR 2006-...).

48. The scope of this margin will vary according to the circumstances, the subject matter and the background (see *Petrovic v. Austria*, judgment of 27 March 1998, *Reports* 1998-II, § 38). As a general rule, very weighty reasons would have to be put forward before the Court could regard a difference of treatment based exclusively on the ground of nationality as compatible with the Convention (see *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1142, § 42, and *Koua Poirrez v. France*, no. 40892/98, § 46, ECHR 2003-X). On the other hand, a wide margin is usually allowed to the State under the Convention when it comes

to general measures of economic or social strategy (see, for example, *James and Others v. the United Kingdom*, judgment of 21 February 1986, Series A no. 98, § 46, and *National and Provincial Building Society and Others v. the United Kingdom*, judgment of 23 October 1997, *Reports* 1997-VII, § 80). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (ibid.).

2. Application of these principles to the present case

49. The Court notes that the 1990 Act established a difference in treatment in respect of admission to the farmers' scheme on the basis of the nationality condition. It considers that the applicant could claim to be in a relevantly similar position to other persons who were Polish nationals and applied for admission to the farmers' scheme. In this connection, the Court attaches importance to the fact that the applicant was permanently resident in Poland, had previously been affiliated to the general social security scheme and had contributed as a taxpayer to the funding of the farmers' scheme.

50. The Court notes the Government's argument that even prior to 1 May 2004 the applicant had been entitled to certain social security benefits, such as a one-off compensation payment in the event of a serious occupational injury, a dependant's pension, a family allowance and a nursing allowance. However, it observes that the domestic courts found that the applicant had been entitled to only one of those benefits as provided under the farmers' social security scheme (see paragraph 16 above). The Court does not find it necessary to determine whether the applicant was in fact entitled to all or some of the benefits referred to by the Government as, in any event, the applicant was undoubtedly deprived of core elements of social security cover regarding provision for sickness (*zasiłek chorobowy*) and invalidity (*renta inwalidzka*). Furthermore, he could not continue making his contributions towards his retirement pension.

51. The Court observes that the respondent Government have sought to justify the difference in treatment between Polish nationals and foreign nationals by pointing to their policies in the agricultural sector, a sector which they considered underdeveloped and economically inefficient. They claimed that the creation of the farmers' scheme and the particular rules governing it served to protect Polish farmers, being a vulnerable group. Furthermore, the farmers' scheme was heavily subsidised from the budget, reflecting the State's policy to support Polish farmers financially.

52. The Court reiterates that very weighty reasons would have to be put forward by the respondent Government in order to justify a difference of treatment based, as in the present case, exclusively on the ground of

nationality. It considers that the creation of a particular social security scheme for farmers that is heavily subsidised from the public purse and provides cover to those admitted to it on more favourable terms than a general social security scheme could be regarded as pursuing an economic or social strategy falling within the State's margin of appreciation. On the other hand, legislation regulating access to such a scheme must be compatible with Article 14 of the Convention. Where it is shown that there are reasonable and objective grounds for excluding an individual from the scheme, the principle of proportionality will then come into play. In particular, even where weighty reasons have been advanced for excluding an individual from the scheme, such exclusion must not leave him in a situation in which he is denied any social insurance cover, whether under a general or a specific scheme, thus posing a threat to his livelihood. Indeed, to leave an employed or self-employed person bereft of any social security cover would be incompatible with current trends in social security legislation in Europe.

53. The Court notes that in *Stec and Others v. the United Kingdom* (cited above) it examined the alleged inequality arising out of entitlement to a social security benefit (the reduced earnings allowance) which was linked to the age of eligibility to the State pension. In that case the Court (Grand Chamber) held that the policy adopted by the legislature in deferring equalisation of the pension age for men and women until 2020 fell within the State's margin of appreciation and that, consequently, there had been no violation of Article 14 taken in conjunction with Article 1 of Protocol No. 1.

54. The present case, in contrast to the *Stec and Others* judgment which concerned a difference in treatment on the grounds of sex, involves discrimination on the grounds of nationality. However, the Court considers that there are a number of arguments in the present case which enable it to reach an opposite conclusion to that reached in *Stec and Others*.

55. Firstly, the Court notes that in the instant case, the applicant was refused admission to the farmers' scheme solely on the ground of his nationality, whereas for all practical purposes he was in a comparable position to Polish nationals who, having previously been affiliated to the general social security scheme, applied for admission. It underlines that the applicant, when in employment, supported the farmers' scheme through the payment of taxes, as did any Polish national.

56. Secondly, the Minister of Agriculture recognised the problem of discrimination underlying the present case, but failed to remedy it by January 1999 as proposed. In this connection, the Court observes that the 1982 Act which predated the 1990 Act did not lay down a nationality condition in respect of social security cover for farmers.

57. Thirdly, the Court notes that the Government argued that the difference in treatment at issue was justified by the social and economic policies pursued prior to 2004, when Poland was obliged to change the

relevant law following its accession to the European Union. The Government have not, however, explained why their public policy goals in respect of the farmers' scheme suddenly lost their relevance after 2004.

58. Fourthly, in contrast to its finding in the *Stec and Others* judgment, the Court does not find it established that the continuation of the distinction at issue in the present case was justified because of the allegedly far-reaching and serious implications for the State's economy if that distinction were to be discontinued. In this connection, the Court observes that according to the Government's own estimate, the amendments to the 1990 Act providing for the admission to the farmers' scheme of, *inter alia*, nationals of EU Member States would not generate additional budget expenditure (see paragraph 37 above).

59. Having regard to the foregoing, while the Court accepts that a measure which has the effect of treating differently persons in a relevantly similar situation may be justified on public-interest grounds, it considers that in the instant case the Government have not provided any convincing explanation of how the general interest was served by refusing the applicant's admission to the farmers' scheme during the period in question (see, *mutatis mutandis*, *Larkos*, cited above, § 31). In conclusion, the Court finds that the Government have not adduced any reasonable and objective justification for the distinction such as to meet the requirements of Article 14 of the Convention, even having regard to their margin of appreciation in the area of social security.

60. There has accordingly been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

61. 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

62. The applicant claimed an overall amount of 71,100 euros (EUR) in respect of both heads of damage. He claimed EUR 50,000 in respect of financial loss for the period from 1997 to 2002. This claim was related to his being deprived of the possibility of working on his farm and receiving income from it. That amount related also to the lack of social security cover and the deterioration of his health during the relevant period. The applicant also claimed EUR 1,000 for his medical treatment and EUR 1,000 for the

maintenance of his house. He further claimed EUR 19,100 in respect of the loss of his future retirement income since he had been deprived of the possibility of making contributions towards it for a period of five years.

63. The Government submitted that there was no causal link between the alleged violation and the pecuniary damage claimed. In respect of the claim for non-pecuniary damage, the Government observed that it was not substantiated and was, in any event, exorbitant. If the Court were to find a violation in the present case, the Government requested it to rule that that finding constituted in itself sufficient just satisfaction.

64. The Court does not discern any causal link between the violation found and the pecuniary damage sought in respect of loss of profit in the period from 1997 to 2002. However, the Court finds that the applicant was deprived of the possibility of making contributions towards his retirement pension in connection with the violation found. Without wishing to speculate as to the amount of the future retirement pension to which the applicant would have been entitled and the date on which he could have claimed it, the Court must nonetheless take into account the fact that he undoubtedly suffered some pecuniary and non-pecuniary damage (see *Koua Poirrez*, cited above, § 70). Making an assessment on an equitable basis, as is required by Article 41 of the Convention, the Court awards him EUR 5,000 to cover all heads of damage.

B. Costs and expenses

65. The applicant also claimed EUR 7,200 plus value-added tax (VAT) for the costs and expenses incurred before the domestic courts and for those incurred before the Court. He submitted a copy of a contract with his lawyer.

66. The Government argued that the costs and expenses claimed were exorbitant and speculative. The applicant had not produced invoices in support of this claim. In the Government's submission, a copy of the contract between the applicant and his lawyer and the invoice issued by the translator were private documents. Lastly, they requested that any award should be limited to those costs and expenses which had actually and necessarily been incurred and were reasonable.

67. According to the Court's case-law, an applicant is entitled to reimbursement of his costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and were reasonable as to quantum. In the present case, regard being had to the information in its possession and the above criteria, the Court considers it reasonable to award the sum of EUR 5,000 covering costs and expenses under all heads, in addition to any VAT that may be payable.

C. Default interest

68. The Court considers it appropriate that the default interest should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

2. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts, to be converted into the national currency of the respondent State at the rate applicable at the date of settlement:
      (i) EUR 5,000 (five thousand euros) in respect of pecuniary and non-pecuniary damage;
      (ii) EUR 5,000 (five thousand euros) in respect of costs and expenses;
      (iii) any tax that may be chargeable on the above amounts;
   (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;

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

Done in English, and notified in writing on 27 November 2007, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

T.L. EARLY
Registrar

Nicolas BRATZA
President