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

FOURTH SECTION

DECISION

Application no. 44052/05
Danuta SKROK
against Poland

The European Court of Human Rights (Fourth Section), sitting on 25 March 2014 as a Committee composed of:

Nona Tsotsoria, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 1 December 2005,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Danuta Skrok, is a Polish national, who was born in 1949 and lives in Radom.

A. The circumstances of the case

2. The facts of the case, as submitted by the applicant, may be summarised as follows.

3. The applicant is married and has children. Prior to her application for an EWK pension she had been employed since 1991 at the Social Security Board (*Zakład Ubezpieczeń Społecznych* – "the SSB").

1. Proceedings concerning the grant and discontinuation of payment of the EWK pension

4. On 28 October 1993 the applicant filed an application with the SSB to be granted the right to an early-retirement pension for persons raising children who, due to the seriousness of their health condition, required constant care, the so-called "EWK" pension.

5. Along with her application for a pension, she submitted, among other documents concerning her son's health, a medical certificate issued by a specialist doctor on 28 September 1993. The certificate stated that the applicant's son (born in 1980) suffered from scoliosis (*skrzywienie boczne kręgosłupa*) and was in need of his mother's constant care until he reached the age of eighteen.

6. On 30 November 1993 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of 1,057,100 old Polish zlotys (PLN) per month. The starting date for payment was set for 1 July 1993.

7. On an unspecified date in late-2002 the SSB reviewed the applicant's pension application in the course of supervision of certification of disability (*zwierzchni nadzór nad orzecznictwem o niezdolności do pracy*).

8. Having examined the medical certificate submitted by the applicant along with her application for an EWK pension and other documents related to the course of the child's medical treatment, on 10 January 2003 the Medical Certification Department of the SSB (*Departament Orzecznictwa Lekarskiego Zakładu Ubezpieczeń Społecznych*) stated that the child in question could not be considered as ever having required his parent's permanent care.

9. On 5 March 2003 the SSB issued a decision by virtue of which the payment of the applicant's pension under the scheme provided for by the Cabinet's Ordinance of 15 May 1989 on the right to early retirement of employees raising children who require permanent care (*Rozporządzenie Rady Ministrów z dn. 15 maja 1989 w sprawie uprawnień do wcześniejszej emerytury pracowników opiekujących się dziećmi wymagającymi stałej opieki* – "the 1989 Ordinance") was discontinued starting from 1 April 2003. The decision also stated that it had been issued on the basis of section 134 (1)(4) of the of the Law of 17 December 1998 on retirement and disability pensions paid from the Social Insurance Fund (*Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych* -"the 1998 Law").

10. The applicant appealed against the above-mentioned decision. She submitted that she should receive the benefit because her child required constant care, as confirmed by the medical certificate attached to her original application for a pension.

11. On 4 September 2003 the Radom Regional Court (*Sąd Okręgowy*) quashed the decision of the SSB and granted the applicant the right to an early-retirement pension from 1 April 2003.

The Regional Court referred to an expert report which confirmed that the applicant's son had been suffering from scoliosis when the applicant had been granted the EWK pension but he no longer required his mother's care at the time of the proceedings.

The Regional Court concluded that, as the applicant had obtained the EWK pension on the basis of the medical certificate and not by means of fraud, the discontinuation of payment of the pension was contrary to the principle of vested rights.

12. The SSB appealed against the first-instance judgment. The authority argued that it had acted in accordance with the relevant domestic law, as it was allowed to reopen the proceedings in the applicant's case on the basis of newly acquired evidence i.e. the documents related to the child's treatment. It also questioned the assessment of the evidence by the Regional Court relying on the fact that the experts had altered their conclusions in the course of the proceedings before the court.

13. On 4 November 2004 the Lublin Court of Appeal (*Sąd Apelacyjny*) altered the first-instance judgment and dismissed the applicant's appeal against the decision of the SSB.

The Court of Appeal agreed with the first-instance court's findings of fact. It observed that, according to the medical report obtained by the first instance court, on 5 March 2003, when the payment of the applicant's EWK pension had been discontinued, her son had no longer required her permanent care. The court further noted that according to the medical certificate which the applicant had submitted along with her application for pension, her son had only required her permanent care until he was eighteen years old. The Court of Appeal noted that he had reached that age on 28 January 1998. At the time of the proceedings he was an adult and his health condition only necessitated yearly specialist consultations.

The Court of Appeal further referred to section 101(1) of the 1998 Law which provided that the right to a social benefit ceased to exist if any of the conditions necessary to be fulfilled in order to qualify for the benefit in question ceased to exist. Accordingly, as the applicant had stopped to satisfy the statutory conditions for the EWK pension and her right to the pension had ceased to exist, the Court of Appeal found that the payment of her pension had been rightfully discontinued by the SSB under section 134 (1)(4) of the 1998 Law.

14. The applicant lodged a cassation appeal with the Supreme Court (*Sąd Najwyższy*).

15. On 18 March 2005 the Supreme Court refused to entertain her cassation appeal. This decision was served on the applicant's lawyer on 21 June 2005.

2. The applicant's financial situation following the discontinuation of the payment of the EWK pension

16. Following the social security proceedings the applicant was not ordered to return her early-retirement benefits paid by the SSB.

17. In the period from 1 April 2003 until 26 January 2004 the applicant was registered as an unemployed person but she was not in receipt of an

unemployment benefit. Afterwards, until 31 December 2004, she was employed on the basis of a private law contract (*umowa zlecenie*). Subsequently, she was again unemployed. On 28 December 2006, as a result of separate social security proceedings, the Radom Regional Court granted the applicant retirement pension in the net amount of 534 Polish zlotys (PLN) monthly, starting from 1 April 2006.

B. Relevant domestic law and practice

18. The legal provisions applicable at the material time and questions of practice are set out in the judgments in the case of *Moskal v. Poland*, no. 10373/05, §§ 31–34, 15 September 2009; and *Antoni Lewandowski v. Poland*, no. 38459/03, §§ 36-43, 2 October 2012.

19. At the time when the applicant had been granted the EWK pension the system of retirement pensions was regulated by the Law of 14 December 1982 on retirement pensions of employees and their families (*Ustawa o zaopatrzeniu emerytalnym pracowników i ich rodzin* – "the 1982 Law").

Section 87(1) of the 1982 Law provided that the right to a benefit ceased to exist *(ustaje*) if any of the conditions necessary to be fulfilled in order to qualify for the benefit in question ceased to be satisfied.

20. The 1982 Law was repealed by the 1998 Law (*ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych*) which entered into force on 1 January 1999 (see also paragraph 9 above).

Under section 101(1) of the 1998 Law the right to a benefit ceases to exist (*ustaje*) if any of the conditions necessary to be fulfilled in order to qualify for the benefit in question ceases to exist.

21. The discontinuation of payment of social benefits is regulated in section 134 (1)(4) of the 1998 Law, which at the relevant time provided that the payment of a benefit should be discontinued if it came to light that the right to a benefit had not existed (*jeżeli okaże się, że prawo do świadczeń nie istniało*).

COMPLAINTS

22. The applicant complained in substance under Article 1 of Protocol No. 1 to the Convention that the discontinuation of payment of her early-retirement pension amounted to an unjustified deprivation of property.

23. She also complained, invoking Article 6 of the Convention, that the judicial proceedings in her case had been unfair and that their length had been excessive.

24. She further invoked Article 13 of the Convention complaining about the refusal of the Supreme Court to entertain her cassation appeal.

25. Lastly, the applicant complained under Article 14 of the Convention, alleging discrimination based on the fact that she had been an employee of the SSB.

THE LAW

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

A. Scope of the case before the Court

26. In the instant case the gist of the applicant's complaints is that the decision to discontinue the payment of her early-retirement pension amounted to an unjustified deprivation of property. Consequently, the application falls to be examined under Article 1 of Protocol No. 1 to the Convention, 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."

B. Article 1 of Protocol No. 1 to the Convention

27. The relevant general principles are set out in paragraphs 49-52 of the *Moskal* judgment, cited above. The Court would nevertheless reiterate that any interference by a public authority with the peaceful enjoyment of possessions should be lawful, must be in the public interest and pursue a legitimate aim by means reasonably proportionate to the aim sought to be realised (see *Moskal*, cited above, §§ 49 and 50)

28. The Court would also reiterate that the reduction or discontinuation of a benefit may constitute an interference with possessions which requires to be justified in the general interest (*Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 40, ECHR 2004-IX). Where, however, the person concerned does not satisfy, or ceases to satisfy, the legal conditions laid down in domestic law for the grant of such benefits, there is no interference with the rights under Article 1 of Protocol No. 1 (*Bellet, Huertas and*

Vialatte v. France, (dec.), no. 40832/98, 27 April 1999, and *Rasmussen v. Poland*, no. 38886/05, § 71, 28 April 2009).

29. Turning to the present case, the Court finds, as it did in previous cases concerning the EWK pensions, that the decision of the SSB discontinuing the payment of the applicant's pension could be considered as an interference with her possessions within the meaning of Article 1 of Protocol No. 1 to the Convention (see *Moskal*, cited above, §§ 41-46 and § 53). It further finds that this interference was provided for by law and pursued a legitimate aim, as required by this Article (see *Moskal*, cited above, §§ 56-57 and §§ 61–63, and *Wieczorek v. Poland*, no. 18176/05, § 63, 8 December 2009).

30. However, in assessing the proportionality of this interference, the Court considers that the present case differs substantially from the *Moskal* case and from the other cases concerning EWK pensions previously examined by the Court (see, for instance, *Antoni Lewandowski*, cited above, §§ 78–85). In those cases the SSB, when revoking the applicants' rights to the EWK pension, sought to rectify its own previous mistakes made when assessing their applications for pension. The level of disability of the child was disputed between the parents and the SSB whereas the parents could rely on the initial official assessment in this respect.

In the instant case the domestic courts finally established that the applicant had rightfully acquired her pension but, due to a change in her circumstances, had ceased to satisfy the statutory requirements for the benefit as her son no longer required her constant care (see paragraph 13 above). The applicant did not contest this finding.

The Court observes in this connection that the applicant must have been at all times aware that her pension was subject to discontinuation or revocation if her child no longer required her permanent care. The applicant did not have any legitimate expectation to receive the pension after the state of health of the child had significantly improved. The provision regarding cessation of rights to benefits was in force already at the time when she had been granted the EWK pension and it remained virtually unchanged (see paragraphs 19-20 above; compare and contrast *Wieczorek*, cited above, §§ 25-26 and § 67).

31. As it was established by the domestic courts, at least from 1998, when the applicant's son reached the age of eighteen, he stopped to require her permanent care (see paragraph 13 above). On 5 March 2003 the SSB discontinued the payment of the applicant's pension (see paragraph 9 above). The Court cannot but note that the delay on the part of the domestic authorities in reassessing the applicant's situation did not have any detrimental effects on her pecuniary rights. On the contrary, although she continued to receive the pension for further five years, the State did not require her to return the amount of the pension which had been unduly paid (see paragraph 16 above).

32. Having regard to the above considerations, the Court considers that the State was justified in discontinuing the payment of the applicant's benefit.

33. It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

II. OTHER ALLEGED VIOLATIONS OF THE CONVENTION

34. Invoking Article 6 § 1 of the Convention the applicant complained about the length of the proceedings in her case.

The Court notes that the proceedings in issue were terminated by the decision of the Supreme Court of 18 March 2005 and the applicant failed to avail herself of the domestic remedies available under the Law of 17 June 2004 on complaints about a breach of the right to a trial within a reasonable time (*ustawa o skardze na naruszenie prawa strony do rozpoznania sprawy w postępowaniu przygotowawczym prowadzonym lub nadzorowanym przez prokuratora i postępowaniu sądowym bez nieuzasadnionej zwłoki*) (see *Charzyński v. Poland* (dec.), no. 15212/03, 1 March 2005).

Accordingly, this complaint must be rejected under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

35. In so far as the applicant invoked Article 6 (fairness of the proceedings) and Article 14 of the Convention, in the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

36. Lastly, the applicant complained about the Supreme Court's decision refusing to examine her cassation appeal.

The Court notes that in the light of its case law a refusal to examine an unmeritorious cassation appeal or cassation appeal in which no serious issue of law arises is not incompatible with the general obligation to secure an effective remedy under Article 13 of the Convention (see *Zmalinski v. Poland*, decision of 16 October 2001, application no. 52039/99).

Accordingly, this complaint is inadmissible as being manifestly ill-founded within the meaning of Article 35 § 3 (a) and must also be rejected pursuant to Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı Deputy Registrar	Nona Tsotsoria President