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

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ECHR 172 (2013)
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Complaints about reductions in pensions of ex-employees of Polish communist secret police are inadmissible

In its decision in the case of **Cichopek and 1,627 other applications v. Poland** (application nos. 15189/10, 16970/10, 17185/10, 18215/10, 18848/10, 19152/10, 19915/10, 20080/10, 20705/10, 20725/10, 21259/10, 21270/10, 21279/10, 21456/10, 22603/10, 22748/10 and 23217/10) the European Court of Human Rights has unanimously declared the application inadmissible. The decision is final.

The Court found that generally the pension reduction scheme did not impose an excessive burden on the applicants: they did not suffer a loss of means of subsistence or a total deprivation of benefits and the scheme was still more advantageous than other pension schemes. It also found that the applicants' service in the secret police, created to infringe the very human rights protected under the European Convention, should be regarded as a relevant circumstance for defining and justifying the category of persons to be affected by reductions of pension benefits. The Polish authorities did not extend the personal scope of these measures beyond what was necessary to achieve the legitimate aim pursued; putting an end to pension privileges enjoyed by members of former communist political police, in order to ensure the greater fairness of the pension system.

Principal facts

The 1,628 applicants, one of whom is Adam Cichopek, are Polish nationals. They currently live in Poland. All the applicants were functionaries of the former State security service, the equivalent of the secret police, at various times between 1944 and 1990 during the communist regime in Poland. This political police was patterned on the KGB and had its counterparts in other communist countries, such as STASI in East Germany or *Securitate* in Romania.

In 2009 an Act ("the 2009 Act") was introduced by Polish Parliament making amendments to the law on old-age pensions of professional soldiers, the police and of the State security service. As a result of this legislation, a less favourable coefficient was used for the determination of their pensions in so far as they had been acquired through employment in the communist State security authorities in 1944-1990 and the applicants' pensions were reduced. The preamble to the 2009 Act states, among other things, that employment or service in the communist State security authorities was "inextricably linked with violations of human and civil rights committed in the name of the Communist totalitarian regime".

Most applicants appealed against the Social Security decisions reducing their pensions to Warsaw Regional Court and made subsequent appeals to the Court of Appeal or Supreme Court which were either unsuccessful or were still pending at the time that the applicants lodged their application with the European Court of Human Rights.

In February 2009 a group of members of Parliament belonging mostly to the Democratic Left Alliance asked the Constitutional Court to declare that the 2009 Act was incompatible with the Constitution, in particular with the principles of the rule of law, presumption of innocence, social justice, right to social security, proportionality, separation and balance of powers and protection of acquired rights. On 24 February 2010 the Constitutional Court rejected their application.

Complaints, procedure and composition of the Court

The 1,628 applications were lodged with the European Court of Human Rights on various dates between March 2010 and April 2013.

Relying on Article 1 of Protocol No. 1 (protection of property) to the European Convention on Human Rights, the applicants complained that the 2009 Act had arbitrarily reduced their pensions to levels that could not be justified by any legitimate aim pursued in the public interest. They stated that the reductions had been disproportionate, unfair and imposed an excessive burden on them. Relying on Article 14 (prohibition of discrimination) of the European Convention, in conjunction with Article 1 of Protocol No.1, the applicants further complained that they had been subjected to discrimination on the ground of their past employment in the former State security service.

Relying on Article 6 §§ 1 and 2 (right to a fair trial/presumption of innocence) of the Convention the applicants also complained that the 2009 Act referred to "crimes" they had committed. Relying on Article 7 (no punishment without law), the applicants further argued that this reference to "crimes" had been tantamount to punishing them for crimes which they had not been proven to have committed.

The applicants also complained under Article 8 (right to respect for private and family life) that the 2009 Act in a general but unequivocal manner assigned to them full responsibility for the crimes, wrongs and injustices of the communist system, failing to respect their right to reputation. They further argued, relying on Article 14 in conjunction with Article 8, that they had been discriminated against on the ground of their past employment by the collective attribution of negative personal characteristics in the preamble to the 2009 Act.

Relying on Article 3 (prohibition of inhuman and degrading treatment), the applicants maintained that the statements in the preamble to the 2009 Act and the Constitutional Court's judgment had been degrading, notably stating that the former secret police had received their pensions not because they had worked but "in exchange for preservation of an inhumane regime".

Finally, under Article 13 (right to an effective remedy) read alone and in conjunction with Articles 3, 6 §§ 1 and 2, 8 and Article 1 of Protocol No. 1, the applicants complained that they had no effective remedy to contest collective responsibility and morally reprehensible conduct attributed to them by the preamble to the 2009 Act and the resultant restrictions on their pension rights.

The decision was given by a Chamber of seven, composed as follows:

Ineta **Ziemele** (Latvia), *President*,
Päivi **Hirvelä** (Finland),
George **Nicolaou** (Cyprus),
Ledi **Bianku** (Albania),
Zdravka **Kalaydjieva** (Bulgaria),
Krzysztof **Wojtyczek** (Poland),
Faris **Vehabović** (Bosnia and Herzegovina)*, Judges*,

and also Françoise **Elens-Passos**, *Section Registrar.*

Decision of the Court

Article 1 of Protocol No. 1 of the Convention

The Court, having regard to the fact that the applicants made nearly identical complaints, although differently phrased, decided to join the applications and deal with all the cases by means of one "global decision" addressing and resolving all the Convention issues. To this end, the Court selected 10 cases as examples demonstrating the actual impact of the 2009 Act on pension rights and the pattern that applies to all the applicants across the board.

The Court first made clear that if a Contracting State has in force legislation providing for payment as of right of a pension, that legislation must be regarded as generating a proprietary interest under Article 1 of Protocol No.1. The reduction or the discontinuance of a pension may therefore constitute interference with possessions that needs to be justified.

In respect of the applicants' pensions, the Court found that the measures applied under the 2009 Act resulted in divesting the applicants irrevocably of part of the pensions they had received before and until 1 January 2010. They therefore constituted an interference with the applicants' property rights protected by Article 1 of Protocol No. 1. As those measures had been applied under legislation that was adopted by Polish Parliament, the interference with the applicant's property rights had been lawful.

However, the Court decided that the measures complained of could not be considered as impairing the very essence of the applicants' pension rights. It did not share the applicants' view that their pension rights, once acquired, were untouchable and could never be altered. Under Article 1 of Protocol No. 1, the legislative power of a State extends to reducing or varying the amount of benefits provided under a social security scheme.

Furthermore, the applicants did not suffer a loss of means of subsistence or a total deprivation of benefits. Although the contested measures had reduced pension privileges especially created for those employed in communist State institutions that served the undemocratic regime, they nevertheless maintained for such persons a scheme which was more advantageous than the general one. Accordingly, it could not be said that the Polish State had made the applicants bear a disproportionate and excessive burden.

Indeed, the applicants' service in the secret police, created to infringe human rights protected under the Convention, should be regarded as a relevant circumstance for defining and justifying the category of persons to be affected by the contested reductions of pension benefits. The Polish authorities did not extend the personal scope of these measures beyond what was necessary to achieve the legitimate aim pursued; putting an end to pension privileges enjoyed by members of former communist political police, in order to ensure the greater fairness of the pension system.

The Court therefore decided that the complaints were manifestly ill-founded within the meaning of Article 35 § 3(a) (admissibility criteria) and declared the applications inadmissible.

Other articles

The Court found that complaints under Article 6 §§ 1 and 2 and Article 7 had been incompatible with the provisions of the Convention, since the specific fair trial guarantees relied on by the applicants, such as the presumption of innocence, only applied to criminal proceedings. Therefore the complaints did not fall within the scope of the Convention and so were inadmissible.

The Court made clear that Article 13 guarantees a domestic remedy to deal with the substance of an "arguable complaint" under the Convention. As the Court had found all the applicants' complaints to be manifestly ill-founded or incompatible with the provisions of the Convention, there were no arguable complaints. Therefore, the Court decided that Article 13 was not applicable.

The decision is available only in English.

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