

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

FOURTH SECTION

CASE OF KRUSZYŃSKI v. POLAND

(Application no. 22534/05)

JUDGMENT

STRASBOURG

28 January 2014

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



In the case of Kruszyński v. Poland,

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

Ledi Bianku, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having deliberated in private on 7 January 2014,

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

PROCEDURE

1. The case originated in an application (no. 22534/05) 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 Polish national, Mr Eugeniusz Kruszyński ("the applicant"), on 8 June 2005.

2. The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

3. The applicant alleged, in particular, that the *ex officio* reopening of the social security proceedings concerning his right to an early-retirement pension, which resulted in the quashing of the final decision granting him a right to a pension, was in breach of Article 1 of Protocol No. 1 to the Convention.

4. On 20 May 2010 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1952 and lives in Mielec.

6. The applicant is married with two children. Prior to his early retirement he had been employed for seven years and had paid his social security contributions to the State.

A. Proceedings concerning the grant and the revocation of an EWK pension

7. On 9 January 2001 the applicant filed an application with the Rzeszów Social Security Board *(Zakład Ubezpieczeń Społecznych)* 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.

8. Along with his application for a pension, the applicant submitted, among other documents concerning his son's health condition, a medical certificate issued by a specialist doctor. The certificate stated that the child (born in 1990) suffered from chronic inflammation of upper respiratory tract and that he was in need of his parent's constant care.

9. On 19 January 2001 the Rzeszów Social Security Board issued a decision granting the applicant the right to an early-retirement pension. The pension amounted to PLN 1,155.05 brut which at that time constituted about 54% of the average brut salary in Poland.

10. The Social Security Board initially suspended the payment of the pension until 26 January 2001 due to the fact that the applicant was still working on the date of the decision. The applicant's employment relationship was terminated with effect from 26 January 2001 and the pension was paid as of that date.

11. The applicant was issued with a pensioner's identity card marked "valid indefinitely" and he continued to receive his pension without interruption until the date of the revocation of the right.

12. On an unspecified date the Rzeszów Social Security Board asked the Main Social Security Board's doctor *(Główny Lekarz Orzecznik)* to inform it whether the applicant's son required the permanent care of a parent. On 6 June 2002 the doctor stated that, on the basis of the medical documents, the child could not be considered as ever having required such care.

13. On 10 and 11 June 2002 the Rzeszów Social Security Board issued two decisions in respect of the applicant.

14. By virtue of one decision, the payment of the applicant's pension was discontinued with immediate effect. By virtue of the other decision, the Social Security Board revoked the initial decision granting a pension and eventually refused to grant the applicant the right to an early-retirement pension under the scheme provided for by the 1989 Ordinance.

15. On 24 June 2002 the applicant appealed against the respective decisions divesting him of the right to an early-retirement pension. He submitted that he should receive the benefit because his child required constant care, as confirmed by the medical certificate attached to the original application for a pension. Moreover, the applicant alleged that the revocation of his retirement pension was contrary to the principle of vested rights.

16. On 4 December 2003 the Tarnobrzeg Regional Court *(Sąd Okręgowy)* amended the challenged decisions and granted the applicant the right to the EWK payment with effect from 1 June 2002.

17. The Social Security Board appealed against the first-instance judgment.

18. On 22 April 2004 the Rzeszów Court of Appeal allowed the Board's appeal, amended the challenged judgment and dismissed the applicant's appeals lodged against the Social Security Board's decisions. The domestic court held that the applicant had been rightfully divested of his right to a pension under the scheme provided by the 1989 Ordinance as he had not satisfied the requirement of necessary permanent care.

19. On 14 December 2004 the Supreme Court refused to examine the cassation appeal.

B. The applicant's financial situation

20. Following the social security proceedings the applicant was not ordered to return his early-retirement benefits paid by the Social Security Board, despite the revocation of his right to an early-retirement pension.

21. Throughout the whole period of receiving the EWK pension the applicant did not work.

22. On 1 August 2002 the applicant started to work in a publishing house where he continued work until 4 February 2004. The applicant subsequently worked between 23 February and 22 September 2004, 2 and 17 October 2004, 1 February and 30 April 2006, 4 August 2006 and 18 July 2008. Between 18 October 2004 and 31 January 2006 the applicant worked on the basis of a civil law contract. Between 23 May and 3 August 2006 he remained unemployed.

23. On 8 July 2008 the applicant was granted a disability pension until 31 August 2011. The pension amounted to approx. 40% of the average net salary.

24. The Government submitted that the applicant's gross annual income was PLN 3,690 (approx. EUR 971) in 2002, PLN 10,168 (approx. EUR 2,365) in 2003, PLN 8,801 (approx. EUR 1,956) in 2004, PLN 10,404 (approx. EUR 2,600) in 2005, PLN 11,349 (approx. EUR 2,910) in 2006, PLN 19,494 (approx. EUR 5,118) in 2007, PLN 14,137 (approx. EUR 4,040) in 2008, PLN 33,306 (approx. EUR 7,570) in 2009 and PLN 9,399 (approx. EUR 2,350) in 2010.

25. The Government further submitted that the applicant's wife had a gainful employment. In the years 1999-2007 she earned around 100% of the average gross salary in Poland. As of 2007 she acquired the right to an old-age pension but she continued to work, so her income after 2007 rose to 110-120% of the average gross salary.

26. The applicant has a daughter who also worked since 2004. She earned between 40 and 60% of the average gross salary in Poland in the years 2004-2009.

II. RELEVANT DOMESTIC LAW AND PRACTICE

27. 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).

THE LAW

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

28. The applicant complained that divesting him, in the circumstances of the case, of his acquired right to an early-retirement pension amounted to an unjustified deprivation of property. This complaint 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."

A. Admissibility

1. The Government's preliminary objections

(a) Abuse of the right of an individual application

29. The Government submitted that the present application constituted an abuse of the right of individual application under Article 35 § 3 of the Convention in that the applicant had misrepresented to the Court his current social security status and the financial situation of his family.

30. In particular, the Government noted that the applicant had informed the Court that after the revocation of his EWK pension his family and he had been left without any means to live. In fact, the main source of income of the applicant's family, both when the applicant had been in receipt of his

EWK pension and after its revocation, had been the salary of the applicant's wife, which represented around 100% of the average income in Poland.

31. The applicant submitted that he had not worked at the time when he was receiving the EWK pension. He resumed employment when the pension was revoked because his family had no means to live. He also noted that his salary prior to revocation of his EWK pension had amounted to 86.92% of the average gross salary in 1998, 79.53% in 1999 and 74.80% in 2000. His income after the revocation of the EWK pension was 14.42% of the average gross salary in 2002, 38.49% in 2003, 32.04% in 2004 and 36.42% in 2005. The applicant concluded that his and his family's financial situation considerably worsened following revocation of the pension and that the conditions in which he had to work affected the state of his health. He produced a copy of a decision given by the Mayor of Mielec District *(starosta powiatu)* dated 3 July 2002 by which he was declared unemployed without a right to any unemployment benefit.

32. The applicant also argued that his wife and older daughter's income were irrelevant for the case.

33. The Court considers that, except in extraordinary cases, an application may only be rejected as abusive if it was knowingly based on untrue facts (see the *Akdivar and Others v. Turkey* judgment of 16 September 1996, Reports of Judgments and Decisions 1996-IV, p. 1206, §§ 53-54; *I.S. v. Bulgaria* (dec.), no. 32438/96, 6 April 2000; *Varbanov v. Bulgaria*, no. 31365/96, § 36, ECHR 2000-X; or *Rehak v. the Czech Republic*, (dec.), no. 67208/01, 18 May 2004).

34. The Court notes that in the present case the gist of the Government's arguments does not actually concern "untrue facts" allegedly adduced by the applicant before the Court. Rather, their objection is based on their own perception of the applicant's possible intentions behind his decision to take advantage of the EWK early-retirement pension scheme and/or on their assessment of his and his family's overall financial situation after the revocation of the pension. It has not been disputed that the applicant quit his job when he was officially judged eligible to obtain an EWK pension and only resumed employment after his pension had been withdrawn.

35. The Government's preliminary objection should therefore be dismissed.

(b) Non-compliance with the six-month rule

36. The Government also submitted that the applicant had failed to comply with the six-month rule.

37. The applicant did not make any comment on this objection.

38. As regards non-compliance with the six-month rule, the Court has already considered in other EWK cases that the applicants should not be penalised for having tried to file a cassation appeal with the Supreme Court in order to avoid any risk of having their case rejected by the Court for

non-exhaustion of domestic remedies (see, for example, *Frączek-Potęga v. Poland*, no. 39430/04, § 55, 4 December 2012). Accordingly, the final decision in the case under consideration was given by the Supreme Court on 14 December 2004, whereas the applicant lodged his application with the Court on 6 June 2005. That being so, the Court concludes that the applicant complied with the six-month term laid down in Article 35 § 1 and the Government's objection should therefore be dismissed.

(c) Non-exhaustion of domestic remedies

39. The Government further submitted that the applicant had failed to exhaust domestic remedies because he had failed to contest the final ruling by means of a constitutional complaint.

40. The applicant did not make any comment as regards this objection.

41. The Court has already examined identical objections regarding non-exhaustion as regards the applicant's failure to lodge a constitutional complaint and dismissed it in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 54–72, *Potok v. Poland*, no. 18683/04), §§ 36-44, and *Lew v. Poland*, no. 34386/04, §§ 56-62, 4 December 2012). It sees no reason to depart from its previous findings.

2. Conclusion on admissibility

42. The Court also notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

43. The applicant submitted that divesting him, in the circumstances of the case, of his acquired right to an early-retirement pension had amounted to an unjustified deprivation of property.

(b) The Government

44. The Government claimed that the interference with the applicant's property rights had been lawful and justified. In particular, divesting the applicant of his right to the early-retirement pension had been provided for by law and was in the general interest. There was also a reasonable relationship of proportionality between the interference and the interests pursued.

2. The Court's assessment

(a) General principles

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

(b) Application of the above principles to the present case

(i) Whether there has been an interference with the applicant's possessions

46. The parties agreed that the decisions of the Rzeszów Social Security Board of 10 and 11 June 2002, subsequently validated by two court instances (the regional court and the court of appeal), which deprived the applicant of the right to receive the EWK pension, amounted to an interference with his possessions within the meaning of Article 1 of Protocol No. 1 to the Convention. The Court sees no reason to hold otherwise.

(ii) Lawfulness of the interference and legitimate aim

47. As in the *Moskal* case the Court considers that this interference was provided for by law and pursued a legitimate aim, as required by Article 1 of Protocol No. 1 to the Convention (see *Moskal*, cited above, §§ 56, 57 and 61-63 and also *Iwaszkiewicz v. Poland*, no. 30614/06, §§ 47, 48, 26 July 2011).

(iii) Proportionality

48. In the instant case, a property right was generated by the favourable evaluation of the applicant's dossier attached to the application for a pension, which was lodged in good faith, and by the Social Security Board's recognition of the right (see paragraph 9 above). Before being invalidated the decision of 19 January 2001 had undoubtedly produced effects for the applicant.

49. It must be stressed that the delay with which the authorities reviewed the applicant's dossier was relatively long. The decision of 19 January 2001 was left in force for eighteen months before the authorities became aware of their error. On the other hand, as soon as the error was discovered, the decision to discontinue the payment of the benefit was issued relatively quickly and with immediate effect (see paragraphs 13 and 14 above). Even though the applicant had an opportunity to challenge the Social Security Board's decisions of 10 and 11 June 2002 in judicial review proceedings,

his right to the pension was eventually determined by the courts only two and a half years later (see paragraphs 16-19 above).

50. In examining the conformity of these events with the Convention, the Court reiterates the particular importance of the principle of good governance. It requires that where an issue pertaining to the general interest is at stake, especially when it affects fundamental human rights, including property rights, the public authorities must act promptly and in an appropriate and above all consistent manner (see *Beyeler v. Italy* [GC], no. 33202/96, § 120, ECHR 2000-I; *Öneryıldız v. Turkey* [GC], no. 48939/99, § 128, ECHR 2004-XII; *Megadat.com S.r.l. v. Moldova*, no. 21151/04, § 72, 8 April 2008; and *Rysovskyy v. Ukraine*, no. 29979/04, § 71, 20 October 2011). It is desirable that public authorities act with the utmost care, in particular when dealing with matters of vital importance to individuals, such as welfare benefits and other such rights. In the present case, the Court considers that having discovered their mistake, the authorities failed in their duty to act speedily and in an appropriate and consistent manner (see *Moskal*, cited above, § 72).

51. Moreover, in the Court's opinion, the fact that the State did not ask the applicant to return the pension which had been unduly paid (see paragraph 20 above) did not mitigate sufficiently the consequences for the applicant flowing from the interference in his case. The Court notes in this connection that the applicant, after his right to the EWK pension had been confirmed by the authorities, decided to resign from his gainful employment (see paragraph 10 above).

52. It should also be observed that as a result of the impugned measure, the applicant was faced, without any transitional period enabling him to adjust to the new situation, with the total loss of his early-retirement pension, which constituted his only source of income at that time. Moreover, the Court is aware of the potential risk that, in view of his age and the economic reality in the country, particularly in the undeveloped Podkarpacki region, the applicant might have had considerable difficulty in securing new employment. Indeed, it took the applicant more than four years after finding a job to earn the equivalent of the amount of his former EWK pension that is, approximately 50% of the average brut salary per month (see paragraphs 9 and 24 above).

53. The Government submitted that the applicant's wife had been continuously employed. However, the Court considers that this fact is not decisive for the matter at hand, namely whether the revocation of the EWK pension placed an excessive burden on the applicant as an individual in his own right irrespective of third-party financial support.

54. In view of the above considerations, the Court does not see any reason to depart from its ruling in the leading case concerning EWK pensions, *Moskal v. Poland*, and finds that in the instant case a fair balance has not been struck between the demands of the general interest of the

public and the requirements of the protection of the individual's fundamental rights and that the burden placed on the applicant was excessive.

55. It follows that there has been a violation of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION ON ACCOUNT OF EXCESSIVE LENGTH OF PROCEEDINGS

56. The applicant also complained of the excessive length of the proceedings for his EWK pension. He relied on Article 6 § 1 of the Convention.

57. The Court notes that the proceedings in question started on 24 June 2002 that is on the day when the applicant appealed against the decisions divesting him of his EWK pension (see paragraph 15 above) and terminated on 14 December 2004 that is on the day on which the Supreme Court refused to examine the applicant's cassation appeal (see paragraph 19 above). They thus lasted two years, five months and twenty days at three levels of jurisdiction. Taking into consideration its jurisprudence under Article 6 § 1 of the Convention, the Court considers that this period cannot be found "excessive".

58. It follows that the complaint under Article 6 § 1 of the Convention is manifestly ill-founded and therefore must be declared inadmissible.

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

59. 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

60. The applicant claimed 90,000 euros (EUR) in respect of pecuniary and non-pecuniary damage.

61. The Government considered the applicant's claim groundless. They submitted that since the application is inadmissible, the just-satisfaction claims should be dismissed.

62. The Court finds that the applicant was deprived of his income in connection with the violation found and must take into account the fact that he undoubtedly suffered some pecuniary and non-pecuniary damage (see *Moskal*, cited above, § 105 with a further reference). Making an assessment

on an equitable basis, as required by Article 41 of the Convention, the Court awards the applicant EUR 2,500 to cover all heads of damage.

B. Costs and expenses

63. The applicant did not make any claim in respect of costs and expenses.

C. Default interest

64. 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, UNANIMOUSLY,

1. *Declares* the complaint under Article 1 of Protocol No. 1 to the Convention admissible and the remainder of the application inadmissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months, EUR 2,500 (two thousand five hundred euros), to be converted into the currency of the respondent State at the rate applicable at the date of settlement, in respect of pecuniary and non-pecuniary damage, plus any tax that may be chargeable to the applicant;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

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

Done in English, and notified in writing on 28 January 2014, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Fatoş Aracı	Ledi Bianku
Deputy Registrar	President