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

FOURTH SECTION

DECISION

Application no. 1541/05
Zbigniew CHMIELOWIEC
against Poland

The European Court of Human Rights (Fourth Section), sitting on 10 September 2013 as a Committee composed of:

David Thór Björgvinsson, *President,*
Vincent A. De Gaetano,
Krzysztof Wojtyczek, *judges,*
and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 13 October 2004,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

1. The applicant, Mr Zbigniew Chmielowiec, is a Polish national, who was born in 1952 and lives in Mielec.

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.

A. The circumstances of the case

3. The facts of the case, as submitted by the parties, may be summarised as follows.

4. The applicant is married and has children. Prior to his application for a pension he had been employed since 1992 by the same employer.

1. Proceedings concerning the grant and revocation of the EWK pension

5. On 23 August 2001 the applicant filed an application with the Rzeszów Social Security Board (*Zakład Ubezpieczeń Społecznych* – "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.

6. Along with his application for a pension, the applicant submitted, among other documents concerning his son's health, a medical certificate issued by a specialist medical centre. The certificate stated that the child (born in 1988) suffered from bronchial asthma, allergies, atopic skin and sinusitis and was in need of the parent's constant care.

7. On 8 November 2001 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of around 1,000 Polish zlotys (PLN) per month. In addition to the EWK pension the applicant received a family allowance and nursing benefit which, together with the pension, amounted to PLN 1,400 net per month.

8. The SSB initially suspended the payment of the pension due to the fact that the applicant was still working on the date of the decision. Shortly afterwards the applicant informed the SSB of his resignation with effect from 29 November 2001. The payment of the pension started on 1 November 2001.

9. On 2 January 2002 the applicant was re-employed by his previous employer on a full-time basis.

10. On an unspecified date the SSB requested 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 15 April 2012 the doctor stated that, on the basis of the medical documents, the child in question could not be considered as ever having required such care.

11. On 26 April 2002 the SSB issued a decision by virtue of which the payment of the applicant's pension was discontinued with effect from 1 May 2002. By virtue of a decision of 29 April 2002 the SSB reopened the proceedings, revoked the initial decision granting a pension and eventually refused to award the applicant the right to an early-retirement 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").

12. 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 applicant's original application for a pension. Moreover, the applicant alleged that the revocation of his

retirement pension was contrary to the principle of protection of vested rights.

13. On 25 May 2004 the Tarnobrzeg Regional Court dismissed the appeal. Medical experts appointed by the court found that the applicant's son was not, and had never been, in need of his parents' constant care. The court also noted that the applicant had been re-employed by his previous employer.

14. The applicant lodged an appeal against the first-instance judgment, which was dismissed on 29 September 2004 by the Rzeszów Court of Appeal. The Court of Appeal pointed out that the applicant had resumed his full-time employment already on 2 January 2002 and that he had continued this employment while receiving the EWK pension.

15. The applicant did not lodge a cassation appeal with the Supreme Court.

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

16. Following the social security proceedings the applicant was not ordered to return the benefits paid by the SSB, despite the revocation of his right to the early-retirement pension.

17. The applicant submitted, in general, that the EWK pension had constituted an important source of his income and that after the revocation of the pension his financial situation had been difficult.

18. The Government submitted that the applicant had been continuously employed while receiving the EWK pension and after its revocation to date. In addition, in 2007 the applicant had been granted a disability pension. The applicant's gross annual income had been PLN 15,400 (approximately EUR 3,850) in 2002, PLN 16,800 (approximately EUR 4,200) in 2003, PLN 17,722 (approximately EUR 4,430) in 2004, PLN 23,486 (approximately EUR 5,871) in 2005, PLN 30,004 (approximately EUR 7,501) in 2006, PLN 27,284 (approximately EUR 6,821) in 2007, PLN 39,227 (approximately EUR 9,806) in 2008, PLN 23,774 (approximately EUR 5,943) in 2009. Moreover, the applicant's wife had been employed until 2004 and afterwards since 2008. The applicant's children had commenced gainful employment in 2004, 2006 and 2007 respectively.

B. Relevant domestic law and practice

19. 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.

COMPLAINTS

20. The applicant complained under Article 6 of the Convention and, in substance, under Article 1 of Protocol No. 1 to the Convention about the reopening of the social security proceedings which had resulted in the revocation of his right to the EWK pension.

THE LAW

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

A. Preliminary issues

1. Scope of the case before the Court

21. In the instant case the gist of the applicant's complaints is that the decision to divest him of his 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."

2. The Government's objections

22. The Government raised several objections to the admissibility of the case. They submitted that the application was incompatible *ratione materia*e and *ratione personae* with the Convention and constituted an abuse of the right of individual application. They also argued that the applicant had failed to exhaust domestic remedies because he failed to make a cassation appeal against the Court of Appeal's judgment. Finally, they submitted that he had suffered no significant disadvantage.

The applicant disagreed with the Government.

23. The Court has already examined identical objections regarding abuse of the right of individual application, non-exhaustion as regards the applicant's failure to lodge a cassation appeal, and no significant

disadvantage and dismissed them, in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 45–66, *Lew v. Poland*, no. 34386/04, §§ 35-62, 4 December 2012). It sees no reason to depart from its previous findings.

24. Moreover, the Court finds that it is not called upon to deal with the remaining admissibility issues as the application is in any event inadmissible for the reasons stated below.

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

1. The parties' submissions

25. The Government maintained that the application was manifestly ill-founded. They submitted 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 public interest. There was also a reasonable relationship of proportionality between the interference and the interests pursued. They further noted that even though the decision to revoke the EWK pension had had a retroactive effect, the applicant had not been required to reimburse the sum of PLN 6,578 already paid to him.

26. The Government also underlined that the applicant had stopped working for one month only and had been employed full-time while in receipt of the EWK pension. He had continued working after the revocation of the pension. Moreover, the applicant's real intention was to supplement his salary by means of the pension and not to stay at home in order to take care of his son.

27. The applicant submitted that divesting him of his acquired right to an early-retirement pension had amounted to an unjustified deprivation of property. He claimed that he had borne an excessive burden in that the decision of 26 April 2002 had deprived him of his main source of income with immediate effect.

2. The Court's assessment

28. The relevant general principles are set out in paragraphs 49-50 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).

It would further reiterate that, as a general principle, public authorities should not be prevented from correcting their mistakes, even those resulting from their own negligence, and that it was open to them to reassess an

applicant's entitlement to a pension (see *Moskal*, cited above, § 73 and *Iwaszkiewicz v. Poland*, no. 30614/06, §§ 53 and 70, 26 July 2011).

29. The Court finds, as it did in previous similar cases, that the decision of the SSB depriving 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 and 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).

30. However, in assessing the proportionality of this interference, the Court considers that the present case differs substantially from the cases it examined in which the applicants resigned from gainful employment in order to obtain the EWK pension, the pension was their only income, and its sudden revocation placed an excessive burden on them as they were left without any resources or perspective to find a new job quickly (see, among many other examples, *Moskal; Antoni Lewandowski* and *Lew* cited above).

31. In contrast, as a result of the revocation of the pension, the applicant in the instant case was not faced with the total and immediate loss of his only source of income as he retained his salary when in receipt of the pension and after its revocation (compare and contrast *Antoni Lewandowski*, cited above, §§ 81–82). Nor did he permanently resign from his job after his right to the EWK pension had been confirmed by the authorities; indeed, he resumed gainful employment after a mere one month after his resignation (see paragraphs 9, 14 and 18 above).

Moreover, although the applicant was in receipt of both the EWK pension and a salary for a period of six months, the State did not require him to return the amount of the pension which had been unduly paid (see paragraphs 16 and 25 above).

32. The principle of good governance is of particular importance and it is desirable that public authorities act with the utmost care and speediness, in particular when dealing with matters of vital importance to individuals, such as welfare benefits and other such rights (see *Antoni Lewandowski*, cited above, § 80). It is true that the authorities, in particular the courts, reviewed the applicant's case over a relatively long period of time. However, as already noted above, throughout these proceedings the applicant was continuously employed.

33. In view of the foregoing, it cannot be said that the authorities' decisions placed on the applicant an excessive burden incompatible with Article 1 of Protocol No. 1 to the Convention (see *Rzepa v. Poland* (dec.), no. 30361/04, §§ 31–37, 9 April 2013). The applicant's case is therefore clearly distinguishable from the facts of the leading case concerning EWK pensions, *Moskal v. Poland*.

34. It follows that 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

35. The applicant also alleged violation of Article 6 of Convention (see paragraph 20 above). However, the Court considers that any issues that may be raised by the applicant under this provision have already been adequately addressed above (see paragraphs 28-34 above).

36. In any event, in all the previous cases examined to date, the Court considered that the complaints under Article 6 did not require separate examination (see, among many other examples, *Moskal*, §§ 77-89, and *Antoni Lewandowski,* §§ 86-88, cited above; see also paragraph 21 above).

37. It follows that the remainder of the application must likewise be rejected under Article 35 § 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President