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

FOURTH SECTION

DECISION

Application no. 45405/04
Andrzej DOMAGAŁA
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 5 December 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 Andrzej Domagała, is a Polish national, who was born in 1957 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 one child. Prior to his application for a pension he had been employed since 1993 by the same employer.

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

5. On an unspecified date 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 and chronic sinusitis and was in need of the parent's constant care.

7. On 31 October 2001 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of 924 Polish zlotys (PLN) per month.

8. The SSB suspended the payment of the pension due to the fact that the applicant was still working on the date of the decision.

9. As the applicant did not resign from his full-time employment, the payment of the EWK pension did not start.

10. On 21 October 2002 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 22 October 2002 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 29 October 2002 the SSB simultaneously issued two decisions in respect of the applicant. By virtue of the first decision, the payment of the applicant's pension was discontinued with immediate effect (1 November 2002). By virtue of the second decision, 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 12 February 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.

14. The applicant lodged an appeal against the first-instance judgment, which was dismissed on 2 July 2004 by the Rzeszów Court of Appeal. The Court of Appeal stressed that the first-instance court's conclusion that the applicant's child did not require his constant care was supported by the fact that he had continued his employment after the pension had been granted.

15. On 14 December 2004 the Supreme Court (*Sąd Najwyższy*) refused to entertain the cassation appeal lodged by the applicant.

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

16. Although the applicant had been granted the EWK pension, the payment of the benefit never commenced as he chose to continue his employment.

17. The applicant submitted, in general, that after the revocation of the EWK pension his financial situation had been difficult. In particular he submitted that his employment had been terminated on 31 January 2003 and he had not found employment until 2006. While unemployed, from February 2003 until August 2003 he had been in receipt of an unemployment allowance, but in the period from August 2003 until April 2004 he had not received any social benefits. In the period from April 2004 until July 2006 he had received a disability pension in the net amount of about PLN 740 per month which was lower than the amount of the EWK pension (PLN 924).

18. The Government submitted that the applicant had been employed continuously while receiving the EWK pension and at the time the pension was revoked. The applicant's employment had been terminated on 31 January 2003 i.e. three months after the revocation of his pension on the grounds attributable to his employer (*przyczyny występujące po stronie pracodawcy*). They submitted that since 2006 he had again been employed. The applicant's gross annual income had amounted to PLN 3,193 (approximately EUR 798) in 2003, PLN 9,655 (approximately EUR 2,413) in 2004, PLN 15,296 (approximately EUR 3,824) in 2005, PLN 16,506 (approximately EUR 4,126) in 2006, PLN 14,290 (approximately EUR 3,572) in 2007 and PLN 19,200 (approximately EUR 4,800) in 2008 and 2009. Moreover, the applicant's wife had been continuously employed.

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 Articles 6, 8 and 14 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 considered that the applicant had failed to exhaust domestic remedies because he failed to contest the final ruling by means of a constitutional complaint. They also argued that he had failed to comply with the six-month rule as the cassation appeal had not been an

effective remedy in the instant case. Finally, they argued that he had suffered no significant disadvantage.

The applicant disagreed with the Government.

23. 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 5 December 2004. 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.

24. The Court further notes that it has already examined identical objections regarding abuse of the right of individual application, non-exhaustion as regards the applicant's failure to lodge a constitutional complaint and no significant disadvantage and dismissed them, in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 45-72 and *Lew v. Poland*, no. 34386/04, §§ 35-62, 4 December 2012). It sees no reason to depart from its previous findings.

25. 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

26. 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 initial decision had not produced any effects for the applicant as the payment of his pension had never commenced.

27. The Government underlined that the applicant continued his full-time employment despite having been granted the EWK pension. He continued working for three months after the revocation of his pension and the reason for terminating his employment in January 2003 was attributable to his employer.

28. 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 30 July 2002 had deprived him of his right to the early-retirement pension with immediate effect.

2. The Court's assessment

29. 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).

30. Turing to the facts of the present case, the Court notes that by virtue of the decision of the SSB of 31 October 2001 the applicant's entitlement to the early-retirement pension was confirmed by the authorities (see paragraph 7 above). While it is true that the payment of the applicant's pension was suspended due to the fact that he continued his employment (see paragraph 9 above), the decision of 31 October 2001 nevertheless provided him with an enforceable claim to receive the early-retirement pension in a particular amount, payable as soon as he resigned from his job (see, *mutatis mutandis*, *Moskal*, cited above, § 45). Even though the payment of the pension was suspended, the applicant was justified in relying on the decision confirming his entitlement to the pension and in thinking that unless there was a change in the condition of his child, this decision would not lose its validity. The Court therefore finds, as it did in previous similar cases, that the applicant may be regarded as having a substantive interest protected by Article 1 of Protocol No. 1 to the Convention (see *Moskal*, cited above, §§ 44-46).

31. The Court also finds that the decision of the SSB depriving the applicant of the right to 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).

32. 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*, *Frączek-Potęga* and *Lew*, cited above).

33. 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 source of income as he retained his salary (compare and contrast *Antoni Lewandowski*, cited above, §§ 81-82). Nor did he resign from his job after his right to the EWK pension had been confirmed by the authorities; indeed, exactly for that reason the payment of his pension was suspended and, at the time of the revocation, the EWK pension was not a source of his income (see paragraphs 9, 14, 16 and 26 above).

Moreover, the applicant continued his employment for three more months after the revocation of the pension and the fact that he did not keep his job after January 2003 had no link whatsoever with the authorities' decision of 29 October 2002 (see paragraphs 18 and 27 above).

34. 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 for the most part either employed or in receipt of either unemployment allowance or disability pension.

35. 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*.

36. 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

37. The applicant also alleged violations of several other provisions of the Convention (see paragraph 20 above)

38. However, the Court considers that any issues that may be raised by the applicant under those provisions have already been adequately addressed above (see paragraphs 29-36 above).

39. In any event, in all the previous cases examined to date, the Court considered that the complaints under Articles 6, 8 and 14 of the Convention either did not require a separate examination or should be dismissed as

manifestly ill-founded (see, among many other examples, *Moskal*, §§ 77-99 and *Antoni Lewandowski*, §§ 86-88, cited above; see also paragraph 21 above).

40. 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