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

FOURTH SECTION

DECISION

Application no. 877/05
Alicja GŁOSIŃSKA
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 30 November 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, Ms Alicja Głosińska, is a Polish national, who was born in 1961 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 her application for a pension she had been employed since 1987 by the same employer.

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

5. On 13 December 2000 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 her application for a pension, the applicant submitted, among other documents concerning her son's health, a medical certificate issued by a specialist medical centre. The certificate stated that the child (born in 1986) suffered from allergy, atopic skin, chronic gastritis (*przewlekłe nieżyty żołądkowo-jelitowe*) and bronchitis and other recurring infections and was in need of the parent's constant care.

7. The applicant was employed until 3 January 2001, when she handed down her resignation.

8. On 8 January 2001 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of around 587 Polish zlotys (PLN). The starting date for payment of the pension was set for 1 January 2001.

9. On 1 April 2001 the applicant resumed employment with a new employer.

10. On 26 July 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 2 August 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 8 August 2002 the SSB issued simultaneously 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 August 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 her of the right to an early-retirement pension. She submitted that she should receive the benefit because her 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 her retirement pension was contrary to the principle of protection of vested rights.

13. On 2 October 2003 the Tarnów Regional Court dismissed the appeal. The medical experts appointed by the court found that the applicant's son was not, and had never been, in need of his parent's constant care. The court also pointed out that the applicant had resumed employment on 1 April 2001.

14. The applicant lodged an appeal against the first-instance judgment which was dismissed on 11 March 2004 by the Rzeszów Court of Appeal.

15. On 22 June 2004 the Supreme Court refused to entertain the cassation appeal lodged by the applicant.

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 Social Security Board, despite the revocation of her right to the early-retirement pension.

17. The applicant did not provide any information about her employment during receiving the EWK pension and after it had been revoked. She submitted that as a result of the revocation of her pension she had been deprived of her source of income. She also submitted that she had received nursing benefit for her son in the period from 1 January 1990 until 31 July 2006. The benefit in 2005 (the only data provided) amounted to PLN 144 per month.

18. The Government submitted that the applicant had resumed employment on 1 April 2001 and had been continuously employed during the remaining period when she had been receiving the EWK pension and after its revocation to date. They submitted that the applicant's gross annual income from her employment had amounted to PLN 7,120 (approximately EUR 1,780) in 2001, PLN 7,215 (approximately EUR 1,803) in 2002, PLN 11,022 (approximately EUR 2,755) in 2003, PLN 14,833 (approximately EUR 3,708) in 2004, PLN 17,261 (approximately EUR 4,315) in 2005, PLN 19,728 (approximately EUR 4,932) in 2006, PLN 23,749 (approximately EUR 5,937) in 2007, PLN 25,925 (approximately EUR 6,481) in 2008, PLN 26,040 (approximately EUR 6,510) in 2009. The applicant's husband had also been continuously employed. Moreover, the applicant owned a small farm.

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 her 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 her 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."

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 comply with the six-month rule as the cassation appeal had not been an effective remedy in the instant case.

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 22 June 2004 whereas the applicant lodged her application with the Court on 30 November 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, and dismissed them, in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 45-53). 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. The Government submitted that the interference with the applicant's property rights had been lawful and justified. In particular, divesting the applicant of her 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 14,196 already paid to her.

27. The Government also underlined that the applicant had stopped working for three months only and had been employed while in receipt of the EWK pension. She had continued working after the revocation of the pension. Moreover, the applicant's real intention was to supplement her salary by means of the pension and not to stay at home in order to take care of her son.

28. The applicant submitted that divesting her of her acquired right to an early-retirement pension had amounted to an unjustified deprivation of property. She maintained that it had not been forbidden under the domestic law for an individual to work while in receipt of an EWK pension as the child's care could have been provided by another member of the family or hired help. The applicant claimed that she had borne an excessive burden in that the decision of 8 August 2002 had deprived her of her main source of income with immediate effect.

2. The Court's assessment

29. 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).

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. 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 her 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).

31. 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 *Frączek-Potęga*, cited above).

32. 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 her only source of income as she retained her salary (compare and contrast *Antoni Lewandowski*, cited above, §§ 81-82). Nor did she permanently resign from her job after her right to the EWK pension had been confirmed by the authorities; indeed, she resumed employment after mere three months after her resignation (see paragraphs 9, 13 and 18 above).

Moreover, although the applicant was in receipt of both the EWK pension and a salary for one year and some four months, the State did not require her to return the amount of the pension which had been unduly paid (see paragraphs 16 and 26 above).

33. 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 employed.

34. 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*.

35. 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

36. The applicant also alleged violation of Article 6 of the Convention (see paragraph 20 above).

37. 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 29–35 above).

38. In any event, in all the previous cases examined to date, the Court considered that the complaints under Article 6 of the Convention did not require separate examination (see, among many other examples, *Moskal*, §§ 77-83 and *Antoni Lewandowski*, §§ 86-88, cited above; see also paragraph 21 above).

39. 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