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

FOURTH SECTION

DECISION

Application no. 1110/05
Maria GRYGLAK
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 3 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, Ms Maria Gryglak, is a Polish national, who was born in 1958 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 two sons. Prior to her application for a pension she had been employed since 2000 by the same employer.

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

5. On 24 November 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 1990) suffered from chronic sinusitis and strabismus and was in need of the parent's constant care.

7. On 21 February 2001 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of 651 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 her full-time employment, the payment of the EWK pension did not start.

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 25 July 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 31 July 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 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.

13. On 5 May 2004 the Tarnobrzeg Regional Court dismissed the applicant's 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 established that the applicant had not resigned from her work and remained employed at the time of the court's proceedings.

14. The applicant lodged an appeal against the first-instance judgment which was dismissed on 6 October 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 her constant care was supported by the fact that she had continued her full-time employment after the pension had been granted.

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

17. The applicant submitted, in general, that the revocation of the EWK pension divested her of financial security which the grant of this social benefit had provided her with.

18. The Government submitted that the applicant had been continuously employed while receiving the EWK pension and after its revocation to date. The applicant's gross annual income had been PLN 23,787 (approximately EUR 5,846) in 2001, PLN 20,302 (approximately EUR 5,075) in 2002, PLN 24,328 (approximately EUR 6,082) in 2003, PLN 26,840 (approximately EUR 6,710) in 2004, PLN 26,048 (approximately EUR 6,512) in 2005, PLN 32,568 (approximately EUR 8,142) in 2006, PLN 39,072 (approximately EUR 9,768) in 2007, PLN 41,347 (approximately EUR 10,336) in 2008, PLN 40,672 (approximately EUR 10,168) in 2009. In addition, the applicant's husband 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, in substance, under Article 6 of the Convention and 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 that it constituted an abuse of the right of individual application. They also argued that the applicant had failed to exhaust domestic remedies because she had not lodged a cassation appeal with the Supreme Court.

The applicant disagreed with the Government.

23. The Court has already examined identical objections regarding non-exhaustion as regards the applicant's failure to lodge a cassation appeal and abuse of the right of individual application and dismissed them, in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 45–66, and *Lew v. Poland*, no. 34386/04, §§ 35-40, §§ 56–61, 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 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 initial decision had not produced any effects for the applicant as the payment of her pension had never commenced.

26. The Government underlined that the applicant had continued her full-time employment despite having been granted the EWK pension. She had also continued working after the revocation of the pension to date.

27. The applicant submitted that divesting her of her acquired right to an early-retirement pension had amounted to an unjustified deprivation of property. She claimed that she had borne an excessive burden in that the decision of 31 July 2002 had deprived her of her right to the early-retirement pension 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. Turning to the facts of the present case, the Court notes that by virtue of the decision of the SSB of 21 February 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 she continued her employment (see paragraph 9 above), the decision of 21 February 2001 nevertheless provided her with an enforceable claim to receive the early-retirement pension in a particular amount, payable as soon as she resigned from her 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 her entitlement to the pension and in thinking that unless there was a change in the condition of her 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).

30. 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 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 *Lew*, 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 source of income as she retained her salary (compare and contrast *Antoni Lewandowski*, cited above, §§ 81–82). Nor did she resign from her job after her right to the EWK pension had been confirmed by the authorities; indeed, exactly for that reason the payment of her pension was suspended and, at the time of the revocation, the EWK pension was not a source of her income (see paragraphs 9, 13, 16 and 25 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 continuously employed.

34. In view of the foregoing, it cannot be said that the authorities' decisions in the circumstances of the instant case 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 28–35 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 a 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