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

FOURTH SECTION

DECISION

Application no. 14147/05
Grażyna GRZEBYK
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 deliberated, decides as follows:

THE FACTS

1. The applicant, Ms Grażyna Grzebyk, is a Polish national, who was born in 1959 and lives in Rzeszów. She was represented before the Court by Mr W. Pajdak, a lawyer practising in Rzeszów.

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 has one child. Prior to her application for a pension she had been employed.

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

5. On 30 November 1998 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.

6. Along with her application for a pension, the applicant submitted, among other documents concerning her daughter's health condition, a medical certificate issued by a specialist medical centre. The certificate stated that the child (born in 1983) suffered from bronchial asthma and pollinosis and was in need of the parent's constant care.

7. On 9 December 1998 the Rzeszów Social Security Board ("the SSB") issued a decision granting the applicant the right to an early-retirement pension in the net amount of 185 Polish zlotys (PLN). The starting date for payment of the pension was set for 1 November 1998.

8. The applicant was employed at the SSB until 21 June 2000, when she handed down her resignation. On 23 June 2000, she resumed the employment at the SSB.

9. On an unspecified date the SSB requested the Main Social Security Board's doctor (*Główny Lekarz Orzecznik*) to inform it whether the applicant's daughter required the permanent care of a parent. 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.

10. On 30 April 2002 the SSB issued a decision in respect of the applicant by virtue of which it 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"). The payment of the applicant's pension was discontinued with immediate effect (1 June 2002).

11. 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.

12. On 30 June 2003 the Rzeszów Regional Court (*Sąd Okręgowy*) quashed the decision of 30 April 2002 and held that the applicant was eligible for an EWK pension. The SSB appealed.

13. On 27 November 2003 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case to the SSB.

14. By a decision of 4 March 2004 the SSB refused to grant the EWK pension to the applicant. In a report obtained during the proceedings the SSB's medical expert had found that the applicant's daughter was not, and had never been, in need of her parents' constant care.

15. The applicant lodged an appeal against this decision.

16. On 28 September 2004 the Rzeszów Regional Court dismissed the applicant's appeal. Medical experts appointed by the court confirmed the opinion of the SSB's expert. The court also pointed out that the applicant had worked full time during the entire period and her daughter had attended kindergarten and then school. She was also cared for by the applicant's mother.

17. The applicant lodged an appeal against the first-instance judgment, which was dismissed on 17 December 2004 by the Rzeszów Court of Appeal.

18. The applicant did not lodge a cassation appeal.

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

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

20. The applicant did not comment on her financial situation after the revocation of the EWK pension.

21. The Government submitted that the applicant had been continuously employed while receiving the EWK pension and after its revocation to date. The applicant's daughter, in respect of whom the applicant had been awarded the EWK pension, had started working in 2007 and still remained employed. The applicant also owned a small farm.

B. Relevant domestic law and practice

22. 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.

COMPLAINT

23. The applicant complained under Articles 6, 7 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 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

24. 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

25. The Government raised several objections to the admissibility of the case. They submitted that the applicant had failed to exhaust domestic remedies because, first, she had failed to make a cassation appeal against the Court of Appeal's judgment and, second, to contest the final ruling by means of a constitutional complaint. They also argued that she had suffered no significant disadvantage.

The applicant disagreed with the Government.

26. The Court has already examined identical objections regarding non-exhaustion as regards the applicant's failure to lodge a cassation appeal and constitutional complaint, and no significant disadvantage, and dismissed them 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.

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

1. The parties' submissions

27. 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 applicant had not been required to reimburse the sum of PLN 25,669.93 already paid to her.

28. The Government also underlined that the applicant had stopped working for 2 days only and had been employed full-time while in receipt of the EWK pension. She had continued working after the revocation of the pension. Moreover, the applicant's real intention had been to supplement her salary by means of the pension and not to stay at home in order to take care of her daughter.

29. 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 30 April 2002 had deprived her of her main source of income with immediate effect.

2. The Court's assessment

30. 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, consequently, 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).

31. 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).

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; Potok*; 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 her only source of income as she retained her salary when in receipt of the pension and after its revocation (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 quit in order to be eligible for the EWK benefit and resumed full-time employment with the same employer – the SSB – within a mere 2 days after her resignation. Moreover, although the applicant was in receipt of both the EWK pension and salary for some three years and seven months, the State did not require her to return the amount of the pension which had been unduly paid (see paragraphs 8, 16, 19, 21 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 social 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.

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*, 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 23 above).

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 30-36 above).

38. In any event, in all the previous similar cases examined to date, the Court considered that the complaints under other Articles of the Convention either did not require a separate examination or should be dismissed as manifestly ill-founded (see, among other examples, *Moskal* §§ 77-99 and *Lewandowski* §§ 86-88, cited above; see also paragraph 24 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