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

FOURTH SECTION

DECISION

Application no. 7443/05
Krystyna JURASZ
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 7 January 2005,

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 Krystyna Jurasz, is a Polish national, who was born in 1955 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 1999 by the same employer.

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

5. On 28 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 daughter's health, a medical certificate issued by a specialist medical centre. The certificate stated that the child (born in 1991) suffered from eye disorders (strabismus, astigmatism) and was in need of the parent's constant care.

7. On 29 December 2000 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of around 640 Polish zlotys (PLN) 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 her resignation with effect from 26 January 2001. The payment of the pension started on 1 January 2001.

9. One month after her resignation the applicant resumed her employment with the same employer.

10. On 1 September 2001 the payment of the applicant's EWK pension was suspended because the income she achieved from her employment exceeded 130% of the average salary at that time.

11. 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. On 15 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.

12. On 24 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").

13. 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 raised the issue that under the relevant provisions of domestic law the reopening of the proceedings concerning the benefit in question should be based on new relevant circumstances or evidence and not on a different assessment of evidence attached to the application for a pension.

14. On 19 September 2003 the Tarnobrzeg Regional Court altered the SSB's decisions and held that the applicant was eligible for an EWK pension. The court considered that the SSB could not have reopened the proceedings *ex officio*. The SSB appealed.

15. On 28 January 2004 the Rzeszów Court of Appeal altered the first instance judgment and dismissed the applicant's appeal against the decisions of the SSB. The Court of Appeal first stated that the proceedings had been reopened in accordance with domestic law as the SSB had relied on new evidence concerning the treatment of the applicant's daughter. The court further held on the basis of the evidence collected by the Regional Court, including expert medical evidence, that the applicant's daughter was not, and had never been, in need of her parent's constant care.

16. On 17 June 2004 the Supreme Court refused to entertain the cassation appeal lodged by the applicant. The decision was served on the applicant's lawyer on 8 July 2004.

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

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

18. The Government submitted that the applicant had been continuously employed while receiving the EWK pension and after its revocation to date. Moreover, on 1 September 2001 the payment of the applicant's EWK pension had been suspended under section 104(7) of the Law of 17 December 1998 on retirement and disability pensions from the Social Insurance Fund (*Ustawa o emeryturach i rentach z Funduszu Ubezpieczeń Społecznych* – "the 1998 Law") as the income she had achieved from her employment exceeded 130% of the average salary at that time.

19. In addition, the Government submitted that the applicant's gross annual income had been PLN 23,261 (approximately EUR 5,815) in 2001, PLN 22,041 (approximately EUR 5,510) in 2002, PLN 21,871 (approximately EUR 5,467) in 2003, PLN 21,911 (approximately EUR 5,477) in 2004, PLN 21,665 (approximately EUR 5,416) in 2005, PLN 22,665 (approximately EUR 5,666) in 2006, PLN 28,873 (approximately EUR 7,218) in 2007, PLN 30,197 (approximately EUR 7,549) in 2008, PLN 33,365 (approximately EUR 8,341) in 2009. The applicant's husband had also been continuously employed. In addition, since 1999 the applicant had been gaining some

income from an unspecified business activity (*działalność gospodarcza*). Moreover, she was an owner of a small plot of agricultural land.

20. The applicant failed to supply any information with regard to her employment or to comment on the Government's submissions. She only submitted, in general, that after the revocation of the EWK pension her financial situation had been difficult.

B. Relevant domestic law and practice

21. 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

22. 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 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

23. 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

24. The Government raised several objections to the admissibility of the case. They submitted that the application constituted an abuse of the right of individual application. They considered that the applicant had failed to exhaust domestic remedies because she had failed to contest the final ruling by means of a constitutional complaint. They also argued that she 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 she had suffered no significant disadvantage.

The applicant disagreed with the Government.

25. 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 17 June 2004 and served on the applicant's lawyer on 8 July 2004 whereas the applicant lodged her application with the Court on 7 January 2005. 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.

26. 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.

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. 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 5,337 already paid to her.

28. 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. At the time of the revocation of the pension its payment was even suspended due to the above average income the applicant was achieving from her employment. She had also continued working after the revocation of her pension. Moreover, the real intention of the applicant was 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 24 July 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 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*, *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 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 resumed full-time employment with the same employer after a mere one month after her resignation (see paragraphs 9 and 18 above). Moreover, at the time the pension was revoked its payment was suspended due to above average income the applicant was achieving from her employment (see paragraphs 10 and 18 above).

Lastly, 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 her to return the amount of the pension which had been unduly paid (see paragraphs 17 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 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* (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 22 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 30-36 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 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 23 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