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

FOURTH SECTION

DECISION

Application no. 2981/05
Jan KOKOSZKA
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 31 December 2004,

Having regard to the declaration submitted by the respondent Government on 29 April 2013 requesting the Court to strike the application out of the list of cases and the applicant's reply to that declaration,

Having deliberated, decides as follows:

THE FACTS

The applicant, Mr Jan Kokoszka, is a Polish national, who was born in 1956 and lives in Żarówka.

The Polish Government ("the Government") were represented by their Agent, Mr J. Wołąsiewicz, succeeded by Ms J. Chrzanowska, of the Ministry of Foreign Affairs.

The facts of the case, as submitted by the parties, may be summarised as follows.

On 29 October 2001 the Social Security Board (*Zakład Ubezpieczeń Społecznych* – "the SSB") granted the applicant the right to an early-retirement pension for persons raising children who required constant care (the so-called "EWK" pension) in the net amount of around 1059 Polish zlotys (PLN).

On 5 September 2002 the SSB reopened the proceedings, revoked the initial decision granting a pension and eventually refused to award the

applicant the right to the EWK pension. The payment of the pension was discontinued with immediate effect.

The applicant lodged an appeal against these decisions which was dismissed by the Rzeszów Regional Court (*Sąd Okręgowy*) on 29 July 2003.

On 21 January 2004 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) dismissed the applicant's appeal against the first instance judgment.

On 17 June 2004 the Supreme Court (*Sąd Najwyższy*) refused to entertain the cassation appeal lodged by the applicant.

COMPLAINTS

The applicant complained under Articles 6 and 8 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.

He also made a general complaint under Article 6 § 1 of the Convention that the proceedings in his case had been unfair.

Lastly, he complained invoking Article 14 in conjunction with Article 6 of the Convention that the Supreme Court's refusal to entertain his cassation appeal amounted to discrimination.

THE LAW

A. Revocation of the applicant's right to the EWK pension

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."

By letter dated 29 April 2013 the Government informed the Court that they proposed to make a unilateral declaration with a view to resolving the issue raised by the application. They further requested the Court to strike out the application in accordance with Article 37 of the Convention.

The declaration provided as follows:

> "(...) the Government hereby wish to express – by way of the unilateral declaration – their acknowledgement of the violation of Article 1 of Protocol No. 1 to the Convention stemming from the sudden revocation of the applicant's EWK pension which placed an excessive burden on the applicant incompatible with that provision.
>
> Consequently, the Government are prepared to pay to the applicant the sum of EUR 10,000 (ten thousand euro) which they consider to be reasonable in the light of the Court's case law. The sum referred to above, which is to cover any pecuniary and non-pecuniary damage as well as costs and expenses, will be free of any taxes that may be applicable. It will be payable within three months from the date of notification of the decision taken by the Court pursuant to Article 37 § 1 of the European Convention on Human Rights. In the event of failure to pay this sum within the said three-month period, the Government undertake to pay simple interest on it, from expiry of that period until settlement, at a rate equal to the marginal lending rate of the European Central Bank during the default periods plus three percentage points.
>
> The Government would respectfully suggest that the above declaration might be accepted by the Court as 'any other reason' justifying the striking out of the case of the Court's list of cases, as referred to in Article 37 § 1 (c) of the Convention (...)"

In a letter of 31 May 2013 the applicant expressed the view that the sum mentioned in the Government's declaration was unacceptably low. Moreover, he stressed that in his application to the Court he had also alleged a violation of Articles 6 and 8 of the Convention on account of the reopening of the proceedings concerning his right to the EWK pension.

The Court recalls that Article 37 of the Convention provides that it may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to one of the conclusions specified under (a), (b) or (c) of paragraph 1 of that Article. Article 37 § 1 (c) enables the Court in particular to strike a case out of its list if:

> "for any other reason established by the Court, it is no longer justified to continue the examination of the application".

It also recalls that in certain circumstances, it may strike out an application under Article 37 § 1 (c) on the basis of a unilateral declaration by a respondent Government even if the applicant wishes the examination of the case to be continued.

To this end, the Court will examine carefully the declaration in the light of the principles emerging from its case-law, in particular the *Tahsin Acar* judgment (*Tahsin Acar v. Turkey* [GC], no. 26307/95, §§ 75-77, ECHR 2003-VI; *WAZA Spółka z o.o. v. Poland* (dec.), no. 11602/02, 26 June 2007; and *Sulwińska v. Poland* (dec.), no. 28953/03).

The Court has established in a number of cases brought against Poland its practice concerning complaints 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 the applicant's right to the so called "EWK" pension (see, among other examples, *Moskal v. Poland*,

no. 10373/05, 15 September 2009; *Antoni Lewandowski v. Poland*, no. 38459/03, 2 October 2012).

As regards the issues raised by the applicant under other provisions of the Convention, in all the previous similar cases examined to date the Court has held that the complaints under Articles 6 and 8 of the Convention did not require a separate examination (see, for example, *Moskal*, cited above, §§ 83 and 94; *Antoni Lewandowski*, cited above, § 88). It sees no reason to depart from this conclusion in the present case.

Having regard to the foregoing and to the nature of the admissions contained in the Government's declaration, as well as the amount of compensation proposed – which is consistent with the amounts awarded in similar cases – the Court considers that it is no longer justified to continue the examination of the application (Article 37 § 1 (c)).

Moreover, in light of the above considerations, and in particular given the clear and extensive case-law on the topic, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

Accordingly, it should be struck out of the list.

B. Remaining complaints

The applicant further complained under Article 6 of the Convention that the proceedings in his case had been unfair and that the domestic courts had wrongly assessed the evidence. He also relied on Article 14 of the Convention while alleging that he had been discriminated against as the Supreme Court had refused to entertain his cassation appeal whereas it had examined cassation appeals in other similar cases concerning the revocation of EWK pensions.

In the light of all the material in its possession, and in so far as the matters complained of are within its competence, the Court finds no appearance of a violation of the rights and freedoms set out in the Convention or its Protocols arising from these complaints (see also *Moskal*, cited above, §§ 86-88 and 100).

It follows that this part of the application is manifestly ill-founded and must be rejected pursuant to Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Takes note of the terms of the respondent Government's declaration under Article 1 of Protocol No. 1 to the Convention and of the modalities for ensuring compliance with the undertakings referred to therein;

Decides to strike the application out of its list of cases in so far as it relates to the above complaint in accordance with Article 37 § 1 (c) of the Convention;

Declares the remainder of the application inadmissible.

Fatoş Aracı
Deputy Registrar

David Thór Björgvinsson
President