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

FOURTH SECTION

DECISION

Application no. 502/05
Elżbieta PIERÓG
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 9 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 Elżbieta Pieróg, is a Polish national, who was born in 1954 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 on a half-time basis.

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

5. On 19 December 2001 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 1990) suffered from a liver cyst (*torbiel wątroby*) and allergies and was in need of the parent's constant care.

7. On 9 January 2002 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of around 710 Polish zlotys (PLN) per month. The starting date for payment of the pension was set for 1 January 2002.

8. The applicant was employed until 31 December 2001, when she handed down her resignation. One day later, on 1 January 2002 she resumed her employment with her previous employer on a part-time basis (one-third time). She informed the SSB of her employment on 30 April 2002.

9. On 6 September 2002 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 an unspecified date 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 24 September 2002 the SSB reopened the proceedings in respect of the applicant's EWK pension. The SSB 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 effect from 1 October 2002.

11. The applicant appealed against the decision 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 22 October 2003 the Tarnobrzeg Regional Court dismissed the appeal. Medical experts appointed by the court found that the applicant's

daughter was not, and had never been, in need of her parents' constant care. The court also noted that the applicant had continued her employment when receiving the EWK pension.

13. The applicant lodged an appeal against the first-instance judgment, which was dismissed on 10 March 2004 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 employment after the pension had been granted.

14. On 9 July 2004 the Supreme Court refused to entertain the cassation appeal lodged by the applicant. The decision was served on the applicant's lawyer on 18 July 2004

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

15. 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.

16. The applicant submitted that after the revocation of the EWK pension her financial situation had been difficult. She also submitted detailed information concerning her employment and income corresponding generally to the data produced by the Government.

17. The Government maintained that the applicant had been employed continuously when receiving the EWK pension and at the time the pension was revoked. Even though she had been employed on a part-time basis her gross annual income from this employment had been considerable. The applicant had been unemployed from July 2004 and since that date she had been in receipt of a pre-retirement benefit. They submitted that the applicant's gross annual income had amounted to PLN 16,371 (approximately EUR 4,092) in 2002, PLN 20,611 (approximately EUR 5,152) in 2003, PLN 12,926 (approximately EUR in 2004, PLN 10,704 (approximately EUR 2,518) in 2005, PLN 11,527 (approximately EUR 2,881) in 2006, PLN 11,367 (approximately EUR 2,841) in 2007, PLN 11,983 (approximately EUR 2,995) in 2008, PLN 12,721 (approximately EUR 3,180) in 2009. Moreover, the applicant's husband had been employed until 2008 without interruption.

B. Introduction of the application

18. On 9 December 2004 the applicant sent a letter to the Court containing an outline of the facts of her case and her complaints.

19. By letter of 7 January 2005 the Registry of the Court acknowledged receipt of the applicant's letter and advised the applicant that she should return the completed application form without undue delay.

20. On 22 April 2005 the Court received the completed application form. It was signed by the applicant and dated "10 March 2005". It was sent by post on 18 April 2005.

C. 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 2, 6 and 8 of the Convention, Article 2 of Protocol No. 1 to the Convention and, in substance, Article 1 of Protocol No. 1 about the reopening of the social security proceedings which had resulted in the revocation of her right to the EWK pension. The applicant further complained under Article 6 § 1 of the Convention that the length of judicial proceedings in her case had been excessive.

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 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 in the application form she had indicated the date 10 March 2005 as the date of lodging her application with the Court, whereas the decision of the Supreme Court was served on the applicant's lawyer on 18 July 2004.

The applicant disagreed with the Government.

25. As regards non-compliance with the six-month rule, the Court reiterates that, in accordance with its established practice, it normally considers the date of the introduction of an application to be the date of the first communication indicating an intention to lodge an application and giving some indication of the nature of the application. Such first communication will in principle interrupt the running of the six-month period (see *Kemevuako v. the Netherlands* (dec.), no. 65938/09, § 19, 1 June 2010). Accordingly, as in the present case on 9 December 2004 the applicant sent a letter to the Court containing an outline of her complaints (see paragraph 18 above), the Court considers this date to be the date of the introduction of her application. 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 objection regarding abuse of the right of individual application and dismissed it, in the follow-up cases to *Moskal* (see, for instance, *Antoni Lewandowski*, cited above, §§ 45–53, and *Lew v. Poland*, no. 34386/04, §§ 35-40, 4 December 2012). It sees no reason to depart from its previous findings.

27. 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

28. 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 7,542 already paid to her.

29. The Government also underlined that the applicant had stopped working for 1 day only and had been employed while in receipt of the EWK pension. She had continued working for two years after the revocation of the pension and the reason for terminating her employment in July 2004 was unknown. 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.

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

2. The Court's assessment

31. 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).

32. 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).

33. 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).

34. 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 employment with the same employer after a mere 1 day after her resignation (see paragraphs 8, 12, 13 and 17 above). She remained employed for two more years after the revocation of the pension. The fact that she did not keep this job after July 2004 had no link whatsoever with the authorities' decision of 24 September 2002 (see paragraph 17 above).

Moreover, although the applicant was in receipt of both the EWK pension and a salary for a period of eight months, the State did not require her to return the amount of the pension which had been unduly paid (see paragraphs 15 and 28 above).

35. 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.

36. 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*.

37. 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

A. Length of proceedings

38. The applicant complained under Article 6 § 1 of the Convention that the length of judicial proceedings in her case had been excessive.

39. The Court will assess the reasonableness of the length of the proceedings in the light of the particular circumstances of the case and having regard to the criteria laid down in its case-law (see, among other

authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

40. Turning to the facts of the present case, the Court notes that the decision on revocation of the applicant's EWK pension was issued by the Social Security Board on 24 September 2002. The applicant appealed against this decision. On 22 October 2003 the Tarnobrzeg Regional Court, after obtaining a medical expert report, gave the first instance judgment in her case. On 10 March 2004 the Rzeszów Court of Appeal dismissed the applicant's appeal. On 9 July 2004 the proceedings at issue were terminated by virtue of a decision of the Supreme Court (see paragraphs 10-14 above). Therefore, in the applicant's case the proceedings before the courts of three instances lasted less than two years. The Court thus considers that they were not unduly long.

41. In view of the foregoing, the Court finds that the complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention as well.

B. Other issues

42. The applicant also alleged violations of several other provisions of the Convention (see paragraph 22 above).

43. 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 31–37 above).

44. In any event, in all the previous cases examined to date, the Court considered that the complaints under Articles 6 and 8 of the Convention and Article 2 of Protocol No. 1 to 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*, §§ 86-89, cited above; see also paragraph 23 above).

45. 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