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

FOURTH SECTION

DECISION

Application no. 43078/05
Marta SOŁTYS
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 Marta Sołtys, is a Polish national, who was born in 1951 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 children. Prior to her application for pension she had been employed.

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

5. On 7 December 2001 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 a medical certificate issued on 19 November 2001 by a specialist medical center. The certificate stated that her daughter (born in 1986) suffered from chronic allergic rhinitis, chronic sinusitis, recurrent infections of urinary tracts and goitre, and was in need of the parent's constant care.

7. On 11 December 2001 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 758 Polish zlotys (PLN).

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 taking effect on 31 December 2001 and the payment of the pension started.

9. On 1 January 2002 the applicant was re-employed by her previous employer on a half-time basis.

10. On an unknown 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 18 September 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 24 September 2002 the SSB issued simultaneously 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 October 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. Moreover, the applicant alleged that the revocation of her retirement pension was contrary to the principle of protection of vested rights.

13. On 22 September 2003 the Tarnobrzeg Regional Court (*Sąd Okręgowy*) modified the 24 September 2002 decision and restored the applicant's EWK pension. The court held that there had been no grounds for re-opening of the pension proceedings.

14. The SSB lodged an appeal against this judgment.

15. On 18 February 2004 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance judgment and remitted the case.

16. On 19 August 2004 the Tarnobrzeg Regional Court dismissed the applicant's appeal against the decisions of 24 September 2002. The Regional Court concluded on the basis of the evidence, including expert medical evidence, that while the applicant's child indeed suffered from bronchial asthma, allergic rhinitis and conjunctivitis, atopic dermatitis, chronic sinusitis, hearing impairment and recurrent infections of urinary tracts, she did not require her mother's permanent care since her health condition did not significantly impair her body functions. The domestic court held that the applicant had been rightfully divested of her right to a pension under the scheme provided by the 1989 Ordinance as she did not satisfy the requirement of necessary permanent care.

17. The applicant again appealed against the first-instance judgment.

18. On 16 December 2004 the Rzeszów Court of Appeal dismissed the appeal. The court upheld the findings of the Regional Court. Moreover, it considered important the fact that the applicant had worked half-time throughout receipt of the EWK pension.

19. On 3 June 2005 the Supreme Court (*Sąd Najwyższy*) refused to entertain the cassation appeal lodged by the applicant.

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

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

21. The Government submitted that the applicant had been continuously employed when receiving the EWK pension and after its revocation. Her earnings in 2003 had exceeded PLN 800 per month. She had also started a second job as of 1 July 2003. Since 1 July 2009 she had been receiving an ordinary retirement pension and her monthly income had been growing constantly, to achieve PLN 1,360 in 2005 and more than PLN 2,000 in 2007.Her husband had also worked continuously during the entire period in question. The applicant's two children had also worked.

22. The applicant submitted that after the revocation of the EWK pension her financial situation had been very difficult. The employment commenced on 1 January 2002 had been only on a half-time basis. On 1 July 2003 she had also started a second job in which she had worked on a 19%-basis. Her husband had earned very little and her daughter, due to her health problems, had likewise worked only part-time.

B. Relevant domestic law and practice

23. 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

24. The applicant complained under Article 6 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

25. 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

26. The Government raised several objections to the admissibility of the case. They submitted that the applicant had failed to exhaust domestic remedies, comply with the six-month rule and, lastly, had suffered no significant disadvantage.

The applicant disagreed with the Government.

27. As regards non-compliance with the six-month rule, in other EWK cases the Court has already held that the applicants should not be penalized 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 3 June 2005, whereas the applicant lodged her application with the Court on 23 November 2005. That being so, she complied with the six-month term laid down in Article 35 § 1 and the Government's objection should therefore be dismissed.

28. The Court has already examined identical objections regarding non-exhaustion in respect of 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, *Lewandowski*, cited above, §§ 45–72 and *Lew v. Poland*, no. 34386/04, §§ 35-62, 4 December 2012). The Court sees no reason to depart from its previous findings.

29. Moreover, the Court 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

30. 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 7,996.04 already paid to her.

31. The Government also underlined that the applicant had handed down her resignation on 31 December 2001 but had resumed the same employment the next day, on 1 January 2002. She had continued her employment when in receipt and after the revocation of the EWK pension. On 1 July 2003 she had taken up an additional job. On 1 July 2009 she had started receiving an ordinary retirement pension. Accordingly, the revocation of the EWK pension had not caused any significant detriment to the applicant. After the revocation the applicant earned more than PLN 800 per month. Moreover, the applicant's real intention had been to supplement

her salary by means of the pension, not to stay at home in order to take care of her daughter.

32. The applicant contested these submissions. She argued that her situation had worsened significantly after she had been divested of her benefit. She stressed that she had worked only half-time when in receipt of the pension and that, in particular, only after its revocation she had taken up another job on a 19% part-time basis.

33. The applicant asserted 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

34. 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).

35. 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).

36. 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*; *Lewandowski; Frączek-Potęga*; and *Lew,* cited above).

37. 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 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 handed down her resignation in order to be eligible for the EWK benefit and immediately resumed half-time employment with the same employer. Moreover, although the applicant was in receipt of both the EWK pension and salary for some nine months, the State did not require her to return the amount of the pension which had been unduly paid. Since 1 July 2009 she has received an ordinary retirement pension (see paragraphs 7–9, 11, 20–21 and 30-33 above).

38. 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 *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.

39. 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*.

40. 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. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

41. The applicant also alleged a violation of the Article 6 of the Convention (see paragraph 24 above)

42. However, the Court considers that the issues raised by the applicant in that regard have already been adequately addressed above (see paragraphs 34–40 above).

43. In any event, in all the previous similar cases examined to date, the Court held that the complaints under this Article did not require a separate examination (see, among many other examples, *Moskal* §§ 77-99 and *Lewandowski* §§ 86-88, cited above; see also paragraph 25 above).

44. 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