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

FOURTH SECTION

DECISION

Application no. 21490/04
Józef STRYCHARZ
against Poland

The European Court of Human Rights (Fourth Section), sitting on 26 November 2013 as a Committee composed of:

Ledi Bianku, *President,*
Paul Mahoney,
Krzysztof Wojtyczek, *judges*,

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above application lodged on 28 May 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, Mr Józef Strycharz, 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 children. Prior to his application for a pension he had been employed from 1993 by the same employer.

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

5. On 26 September 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 his application for a pension, the applicant submitted, among other documents concerning his daughter's health, a medical certificate issued by Dr Z.L, a urologist, which had been issued on 21 September 2001. The certificate also bore a stamp of the urology centre in Przemyśl (*Poradnia urologiczna Przychodni Specjalistycznej 114 Szpitala Wojskowego w Przemyślu* – "the Centre") and stated that the child (born in 1986) suffered from vesicoureteral reflux, hydronephrosis and chronic urinary tract infection and was in need of the parent's constant care.

7. On 11 October 2001 the SSB issued a decision granting the applicant the right to an early-retirement pension in the net amount of 1,113 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 his resignation with effect from 10 October 2001. The payment of the pension started on 1 October 2001.

9. 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 12 September 2002 the doctor stated, on the basis of the medical records provided to the SSB, that the child could not be considered as ever having required such care.

10. On 19 September 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. 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").

11. The applicant appealed against the decision divesting him of the right to an early-retirement pension. He submitted that he should receive the benefit because his child required constant care, as confirmed by the medical certificate attached to his original application for a pension.

Moreover, the applicant alleged that the revocation of his retirement pension was contrary to the principle of protection of vested rights.

12. On 17 September 2003 the Tarnobrzeg Regional Court (*Sąd Okręgowy*) dismissed the appeal. During the proceedings, the applicant's daughter was examined by a specialist urologist. The expert found that, of the conditions mentioned in the medical certificate of 21 September 2001, she had only suffered from an infection of urinary tract. In his view, the medical documentation did not contain any evidence that the child had ever suffered from, or had been treated for, other diseases as diagnosed by Z.L., in particular vesicoureteral reflux or hydronephrosis. The child's medical records did not mention any examinations in that regard. He also stated that there were no indications that the child had ever suffered from any chronic disease of urinary tract, according to the medical records she was diagnosed with an infection of urinary tract only once.

The Regional Court found that the applicant's child did not require her father's permanent care since her state of health did not significantly impair her body functions. The domestic court held that the applicant had been rightfully divested of his right to a pension under the scheme provided by the 1989 Ordinance as he did not satisfy the requirement of necessary permanent care.

13. The applicant appealed against the first-instance judgment.

14. On 29 January 2004 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) dismissed the appeal.

15. The applicant did not lodge a cassation appeal with the Supreme Court.

2. Criminal proceedings against Dr Z.L.

16. The Government submitted that in 2005 the Rzeszów District Prosecutor filed a bill of indictment against Z.L., a doctor from the specialist urology centre in Przemyśl (see also *Kusina v. Poland* (dec.), no. 28589/05, §§ 16-19, 9 April 2013). He was charged with having issued fourteen fraudulent certificates confirming that fourteen persons (including the applicant's daughter) had been treated in the Centre. The certificates were issued for the purposes of the pension related proceedings. They submitted that the applicant had testified as a witness in the proceedings.

17. On 8 February 2005 the Rzeszów District Court conditionally discontinued the proceedings against Z.L. on the ground that the act committed was of minor significance ("*wypadek mniejszej wagi*"). It further ordered him to pay a fine of PLN 1,000.

18. The applicant only generally submitted that the criminal proceedings against a third person should be considered immaterial in the present case.

3. 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 benefits paid by the Social Security Board, despite the revocation of his right to the early-retirement pension.

20. The applicant submitted, in general, that after the revocation of the EWK pension his financial situation had been difficult.

21. The Government submitted that the applicant had resumed his employment in June 2004 and he remained employed until present. They submitted that his gross annual income had been PLN 3,940 (approximately EUR 985) in 2004, PLN 8,284 (approximately EUR 2,071) in 2005, PLN 6,126 (approximately EUR 1,531) in 2006, PLN 18,318 (approximately EUR 4,579) in 2007, PLN 20,702 (approximately EUR 5,175) in 2008, PLN 22,461 (approximately EUR 5,615) in 2009. The applicant's wife had been in receipt of a pre-retirement benefit and she had been employed. Moreover, the applicant 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).

COMPLAINTS

23. 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 his 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 him of his right to an 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 application constituted an abuse of the right of individual application. They argued the applicant had failed to exhaust domestic remedies because, first, he 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. Finally, they argued that he had suffered no significant disadvantage.

26. The Court has already examined identical objections regarding abuse of the right of individual application, non-exhaustion as regards the applicant's failure to lodge a cassation appeal and 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). The Court 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 his 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 retroactive effect, the applicant had not been required to reimburse the sum of PLN 15,912 already paid to him.

28. The applicant submitted that divesting him of his right to an early-retirement pension had amounted to an unjustified deprivation of property. The applicant claimed that he had borne an excessive burden in that the decision of 19 September 2002 had deprived him of his main source of income with immediate effect.

2. The Court's assessment

29. 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).

30. 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 his 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*, *Antoni Lewandowski* and *Lew*, cited above).

31. Accordingly, it remains for the Court to assess the proportionality of the impugned interference.

In the above cited cases the Court, examining whether the decision to rectify the mistake by revoking the EWK pension struck a fair balance between the public interest at stake and the property rights of an individual, considered that the circumstances of each applicant's case were decisive in this connection. In particular, it took into account the fact that the applicants had applied in good faith for 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 prospects of finding a new job quickly.

Furthermore, in those cases the Court observed that, as a general principle, public authorities should not be prevented from correcting their mistakes. To hold otherwise would be contrary to the doctrine of unjust enrichment. It would also be unfair to other individuals contributing to the social security fund, in particular those denied a benefit because they failed to meet the statutory requirements. Lastly, it would amount to sanctioning an inappropriate allocation of scarce public resources, which in itself would be contrary to the public interest (ibid.).

32. However, the present case differs from the cases cited above. The applicant, when applying for a EWK pension submitted a medical certificate signed by Dr Z.L., urologist, which also bore a stamp of a specialist urology centre in Przemyśl (see paragraph 6 above). It was subsequently established that the certificate was fraudulent and that the applicant's daughter had not been treated in that centre (see paragraph 17 above). The domestic courts also later confirmed that the child suffered from minor urological problems and that her state of health had at no stage significantly impaired her body functions (see paragraph 12 above).

In the circumstances of the present case the Court cannot assume, as it did in the previously examined *Kusina* case (see *Kusina v. Poland*, § 35, cited above), that the applicant did not act in good faith when lodging the application for an EWK pension. However, it cannot be overlooked that the authorities based their decision granting the applicant the EWK pension on the medical certificate which had subsequently been found to be fraudulent by the domestic courts. Having regard to this fact, the Court considers that the State was justified in reopening the proceedings as to the applicant's pension and, upon discovering that his child only suffered from minor medical problems which did not require the applicant's constant care, revoking the applicant's benefit.

33. 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

34. The applicant also alleged violation of Article 6 of Convention (see paragraph 23 above). However, the Court considers that any issues that may be raised by the applicant under this provision have already been adequately addressed above (see paragraphs 29-33 above).

35. In any event, in all the previous cases examined to date, the Court considered that the complaints under Article 6 did not require a separate examination (see, among many other examples, *Moskal*, §§ 77-89, and *Antoni Lewandowski,* §§ 86-88, both cited above; see also paragraph 26 above).

36. 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	Ledi Bianku
Deputy Registrar	President