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

FOURTH SECTION

DECISION

Application no. 19981/05
Józef TARASZKA
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, Mr Józef Taraszka, is a Polish national, who was born in 1955 and lives in Przecław.

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 his application for pension he had been employed.

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

5. On 26 June 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 his application for a pension, the applicant submitted a medical certificate issued on 19 June 2001 by a specialist medical centre. The certificate stated that his son (born in 1993) suffered from chronic gastroenteritis caused by food intolerance, chronic giardiasis, chronic urinary tract infections, nocturnal enuresis, reduced intellectual capacity and psychological problems and was in need of the parent's constant care.

7. On 24 July 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 874 Polish zlotys (PLN).

8. The Social Security Board 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 that his employment had terminated on 31 July 2001 and, consequently, payment of the pension started.

9. The applicant resumed full-time employment on 4 April 2002.

10. On an unknown date the Rzeszów Social Security Board 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 26 August 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 4 September 2002 the Rzeszów Social Security Board 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 September 2002). By virtue of the second decision, the Board 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 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 the applicant's 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.

13. On 16 January 2004 the Tarnobrzeg Regional Court (*Sąd Okręgowy*) dismissed the applicant's appeal.

14. The applicant lodged an appeal against this judgment.

15. On 2 June 2004 the Rzeszów Court of Appeal (*Sąd Apelacyjny*) quashed the first-instance religion and remitted the case.

16. On 3 February 2005 the Tarnobrzeg Regional Court dismissed the applicant's appeal against the SSB's decision. The Regional Court concluded on the basis of the evidence, including expert medical evidence that the applicant's child indeed suffered from respiratory tract infections, gastritis, giardiasis and hyperactivity. However, he did not require his father's permanent care since his health condition did not significantly impair his 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.

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

18. On 25 April 2005 the Rzeszów Court of Appeal dismissed the appeal. The court upheld the findings of the Regional Court.

19. The applicant did not lodge a cassation appeal.

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

21. The applicant submitted in general that his situation after the revocation of the EWK pension had been very difficult.

22. The Government submitted that the applicant had been employed while receiving the EWK pension and after its revocation. He had resumed employment on 4 April 2002 and worked until 13 April 2007. On 18 April 2007 he started another employment. The applicant's wife had worked from December 2007 to May 2010. The couple owns a farm of 2.81 ha. Also the applicant's daughter had worked since 2002.

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 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

25. 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.
>
> 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 application constituted an abuse of the right of individual application and that the applicant had failed to exhaust domestic remedies because he failed to lodge a cassation appeal against the Court of Appeal's judgment.

The applicant did not comment on the Government's submissions.

27. The Court has already examined identical objections regarding abuse of the right of individual application as well as non-exhaustion as regards the applicant's failure to lodge a cassation appeal and dismissed them, in the follow-up cases to *Moskal* (see, for instance, *Lewandowski*, cited above, §§ 45–66 and *Potok v. Poland*, no. 18683/04), §§ 36–44, 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

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 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 a retroactive effect, the applicant had not been required to reimburse the sum of PLN 13,417.28 already paid to him.

29. The Government also underlined that the applicant had stopped working for 7 months only and had resumed full-time employment when he had still been in receipt of the EWK pension. He continued working after the revocation of the pension and remained employed until present. In consequence, the revocation of the pension did not cause any detriment to the applicant. Moreover, the applicant's real intention had been to supplement his salary by means of the pension and not to stay at home in order to take care of his son.

30. The applicant submitted that divesting him of his acquired right to an early-retirement pension had amounted to an unjustified deprivation of property. He 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 asserted that he had borne an excessive burden in that the decision of 4 September 2002 had deprived him of his main source of income with immediate effect.

2. The Court's assessment

31. The relevant general principles are set out in the *Moskal* judgment, cited above in paragraphs 49-52. 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).

32. 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).

33. 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*, cited above, §§ 56-57 and 61-63).

34. 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; Potok*; and *Lew,* cited above).

35. 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 his only source of income since he was again employed at that time (compare and contrast *Lewandowski*, cited above, § 82). Nor did he permanently resign from his job after his right to the EWK pension had been confirmed by the authorities; indeed, he resumed gainful employment within 7 months after his resignation. Moreover, although the applicant had been in receipt of both the EWK pension and salary for five months, the State did not require him to return the amount of the pension which had been unduly paid (see paragraphs 8–9, 11, 20 and 28–29 above).

36. 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.

37. 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*.

38. 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

39. The applicant also alleged a violation of the Article 6 of the Convention.

40. However, the Court considers that the issues raised by the applicant in this regard have already been adequately addressed above (see paragraphs 31-38 above).

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

42. 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