



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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 20511/04  
by Maria Elisabeth PURICEL  
against Romania

The European Court of Human Rights (Third Section), sitting on 14 June 2011 as a Chamber composed of:

Josep Casadevall, *President*,

Corneliu Bîrsan,

Alvina Gyulumyan,

Ján Šikuta,

Luis López Guerra,

Nona Tsotsoria,

Mihai Poalelungi, *judges*,

and Santiago Quesada, *registrar*,

Having regard to the above application lodged on 5 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, Ms Maria Elisabeth Puricel, is a Romanian national who was born in 1919 and lives in Anglikon, Switzerland. She was represented before the Court by Mr V. Puricel, a lawyer practising in Anglikon. The Romanian Government (“the Government”) were

represented by their Agent, Mr. Răzvan Horațiu Radu, of the Ministry of Foreign Affairs.

#### **A. The circumstances of the case**

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

3. Ms Puricel practised as a lawyer in Romania until 7 March 1974, when she retired on the ground of having reached pensionable age. She received her pension from the Lawyers' Insurance Fund (LIF) on a monthly basis until 1989, when she decided to leave the country and go to Germany. Pursuant to the national legislation in force at that time (Law no. 3/1977 and Decree no. 251/1978), those who left the country were compelled to give up the social and political rights conferred on them by the Romanian State. The applicant had thus renounced her pension rights while she also gave up her Romanian nationality. Consequently, by a decision of 27 July 1989, the LIF suspended the payment of the applicant's pension rights on the grounds that she was about to move abroad and had given up her Romanian nationality.

4. On an unspecified date the applicant moved to Switzerland, where she resides at present. Upon her request, on 7 December 2001 the Romanian Consulate in Bonn granted the applicant Romanian citizenship.

5. The Romanian legislation applicable to the assessment of pension entitlements, Law no. 3/1977 regulating the national pension system and Decree-Law no. 251/1978 regarding the lawyers' pension system, were repealed on 1 April 2001 and on 28 May 2001 respectively, when the amending Law no. 19/2000 and the Statute of the Lawyers' Insurance Fund were respectively adopted. The new regulations removed the Romanian nationality and residence criteria from the conditions decisive for the payment of a pension.

6. On 1 December 2001 the applicant lodged her application for the resumption of pension payments, which was registered in due form by the LIF on 14 January 2002.

On 26 June 2002 the LIF allowed the above-mentioned application and granted the applicant the payment of her pension, starting from 1 December 2001, as requested.

7. On 16 August 2002 the applicant contested this decision, claiming that she had retroactive entitlement to a pension, which should be calculated and updated for the previous three years (starting from 1999, three years being the general cut-off period for pecuniary claims). The LIF gave a decision on 18 September 2002 allowing the claims in part. The pension was calculated as of 1 June 2001, the reference date when the new legislation became applicable to the applicant's case. The reasoning put forward by the LIF in rejecting the claims from 1999 to 1 June 2001 was that the legislation in force until 28 May 2001 had not provided for payment

of pensions to persons who did not have Romanian citizenship and/or did not reside in Romania. Once the new legislation had come into force, on 28 May 2001, the nationality and/or residence criteria for a person's entitlement to payment of a pension had been removed.

Furthermore, Article 76 of the Statute of the LIF prescribed that pension payments were to resume, on request, the month following the month when the ground for their suspension ceased. Taking into account the entry into force of the Statute, the payment of the applicant's pension would become operative as of 1 June 2001.

The applicant's pension was calculated and updated in accordance with the *lex specialis*, Law no. 19/2000.

8. The applicant contested this decision before the Bucharest County Court on 15 October 2002. On 10 December 2002, she amended her request to claim that she had become entitled to her pension rights on 1 January 1990. She argued that her renunciation of Romanian nationality and residence, and implicitly the payment of her pension, had been determined exclusively by the unfair legislation in force during the communist regime. From 1 January 1990, that legislation had lapsed, hence the suspension of her rights should be considered to have terminated and the payments resumed as of right. In support of this claim, she also invoked Article 8 of the Statute, asserting that lawyers' pension rights were not subject to negative prescription. Consequently, her pecuniary claims were not time-barred, the general cut-off period of three years being inapplicable.

The applicant also contested the LIF's method of recalculating her pension in that she considered that the readjustment should have been made on the basis of the inflation rate and not in accordance with the specific methods stipulated in the pension *lex specialis* no. 19/2000.

Furthermore, the applicant also complained that from June until December 2001 she had had to pay taxes on her newly set income, even though, as she did not reside in Romania, she was not a taxpayer within the meaning of the relevant law, OG no. 73/1999 and under Law no. 29/2002 and Law 60/1994 for avoiding double taxation. Consequently, she requested reimbursement of the money deducted as tax from her pension revenue.

9. On 24 June 2003, the Bucharest County Court dismissed her claims, upholding the LIF's decision and reasoning. The applicant's submission regarding the lapse of the applicable legislation after the fall of the communist regime, that is, Law no. 3/1977 and Decree no. 251/1978, was rejected by the court, which held that the above-mentioned legislation had been officially repealed once the new pension Law no. 19/2000 and the Statute of the LIF had come into force, namely, on 1 April 2001 and 28 May 2001 respectively. Therefore, applying the *tempus regit actum* principle and in so far as the applicant had not complied with the statutory conditions (Romanian citizenship and/or residence), the first-instance court

considered that the applicant had not proved that she had a substantive right to receive a pension for the period of time in question.

With regard to her claims concerning the pension readjustment, the court held that as long as there was a *lex specialis* establishing a specific method of adjusting the amounts of all pensions (*recorelare*), the general principles of adjusting pecuniary claims in line with the inflation rate could not be taken into consideration. The courts further held that the applicant was subject to Romanian taxation as long as she had obtained the income in question in Romania and had not proved that she was actually paying taxes in another country.

10. The applicant filed an appeal on points of law with the Bucharest Court of Appeal. She challenged the lower court's reasoning, asserting that her pension rights had first been acknowledged in 1974 and had never ceased to exist, despite the changes in her nationality and residence and despite the fact that her enjoyment of those rights had been interfered with from 1989 onwards. Consequently, the suspension of the payment of her pension had to be considered as a wrongful act that should have terminated once the communist regime had fallen.

11. By a decision rendered on 10 February 2004, the court dismissed the appeal. It held that since the LIF's Statute removing the citizenship and/or residence requirement had come into force on 28 May 2001, it was only from the next month, in accordance with Article 76, that the applicant was entitled to have the payment of her pension resumed. In so far as the applicable legislation before 28 May 2001 had provided that Romanian nationality and/or residence was a mandatory and decisive condition for pension payments, the applicant had not proved that she was eligible for payment of a pension in respect of the earlier period.

## **B. Relevant domestic law**

12. a) Law no. 3/1977 regarding the pension system and other social security rights and assistance came into force on 1 July 1977; it was repealed on 1 April 2001, once the new "pension law" no. 19/2000 came into force. Section 1 stated that every Romanian citizen who had worked for the system was entitled to pension rights.

b) Decree no. 251/1978 regarding the lawyers' pension system and other relevant social-security rights came into force on 14 July 1978, and was repealed on 28 May 2001. Article 49 provided that payment of the pension and all other relevant rights would be suspended as long as the retired person had his/her residence established in a foreign country.

c) The Lawyers' Insurance Fund Statute came into force on 28 May 2001; Article 78 stipulates that payment of suspended pensions will be resumed on request, starting on the first day of the month following the month in which the ground for the suspension ceased to exist. Article 8 of

the Statute provides that lawyers' social-security rights are not subject to negative prescription.

### C. International law

13. Article 69 of the 1952 International Labour Organisation's Social Security (Minimum Standards) Convention 1952 ("the 1952 ILO Convention") provides that benefits to which a protected person would otherwise be entitled in compliance with the 1952 ILO Convention (including old age benefits) may be suspended, in whole or in part, by national law as long as the person concerned is absent from the territory of the State concerned. The above provision is echoed in Article 68 of the 1964 European Code of Social Security and Article 74(1)(f) of the 1990 European Code of Social Security (Revised).

## COMPLAINTS

14. The applicant complained that she was discriminated against on grounds of nationality and residence in relation to her pension rights, contrary to Article 14 of the Convention and to Article 1 of Protocol No. 1 taken together. In that connection she alleges that the Romanian legislation concerning pension entitlements, in force at that time, made the payment of pension rights conditional on mandatory nationality and/or residence criteria which led to a difference of treatment between persons in the same situation.

15. Under Article 6 § 1, the applicant contested the dismissal of her claims according to the LIF's method of recalculation of her pension, as she considered that the adjustment should be done on the basis of the inflation rate, and not in accordance with the specific methods set out in the pension *lex specialis* no. 19/2000. She also complained, under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, about the outcome of the proceedings in so far as the various courts dismissed her claims for reimbursement of the tax deducted from her pension revenue on the ground that she was a taxpayer within the meaning of the relevant law, OG no. 77/1999.

## THE LAW

16. The applicant complained that she had been deprived of her possessions and discriminated against on account of her not being a Romanian national and not having a Romanian residence permit as a result

of the failure of the Romanian authorities to pay her pension retrospectively, for the period between 1990 and 2001. She relied on Article 1 of Protocol No. 1, taken alone and in conjunction with Article 14 of the Convention.

Invoking Article 6 § 1 and Article 1 of Protocol No. 1, the applicant also contested the LIF's method of recalculating her pension and the fact that from June until December 2001 she had had to pay taxes on her newly set income.

**Article 6 § 1 reads as follows:**

“In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ...”

**Article 1 of Protocol No. 1 provides:**

“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.”

**Article 14 provides:**

“The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.”

## **A. Preliminary objections**

### *1. Ratione temporis*

17. The Government highlighted that in 1989 the applicant had renounced her pension rights at her own will and without any pressure from the authorities. The Government considered that the period prior to 20 June 1994, when Romania ratified the European Convention on Human Rights, was not subject to scrutiny by the Court under the *ratione temporis* criteria.

The applicant contested this argument, stating that the Court did have jurisdiction *ratione temporis* for the period 1990-2001 due to the fact that the national laws provided that pension rights were not subject to negative prescription. At the same time, she stated that for the purpose of determining the Court's jurisdiction *ratione temporis* the relevant date was that of the disputed judgment, namely, 10 February 2004.

18. In the present case the applicant complains of having been discriminated against as a result of the domestic courts' refusal to order that

her pension be paid with retrospective effect, starting on 1 January 1990.

The Court notes in this respect that in doing so, the national courts interpreted the applicable law, which, according to the *tempus regit actum* principle, was the law that came into force in 1977, which was explicitly abrogated only in 2001; according to this law, the applicant was not entitled to receive her monthly pension between 1 January 1990 and 28 May 2001, as she did not have Romanian citizenship and did not reside in Romania.

The Court further notes that the issue of whether the domestic courts have interpreted and applied the relevant law in compliance with the European Convention of Human Rights can only be assessed with reference to the period that followed the ratification of the Convention by Romania on 20 June 1994.

19. It follows that the application is incompatible *ratione temporis* regarding the period from 1 January 1990 until 20 June 1994.

## 2. *Incompatibility ratione materiae*

20. The Government argued that under Article 1 of Protocol No. 1 to the Convention, the application was incompatible *ratione materiae* as the applicant did not have any “possessions”, nor a legitimate expectation of payment of a pension from 1 January 1990 until 2001, as firstly she had waived her right to receive a pension and secondly she had not met the legal conditions prescribed by the applicable law.

The applicant reiterated her arguments that she had been forced to give up her pension rights by the abusive communist legislation in force at the time of her departure from Romania, and that her rights were thus never extinguished, also bearing in mind the fact that they were not subject to negative prescription.

21. The Court reiterates that Article 1 of Protocol No. 1 only applies to a person’s existing possessions and does not guarantee the right to acquire possessions (see *Marckx v. Belgium*, 13 June 1979, § 50, Series A no. 31). It follows that there is no right under Article 1 of Protocol No. 1 to receive a social security benefit or pension payment of any kind or amount, unless national law provides for such an entitlement (see *mutatis mutandis, Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 55, ECHR 2005-II).

22. In the present case, the national law, before being amended in 2001, explicitly prescribed that unless one had Romanian citizenship and/or Romanian residence, one was not entitled to pension rights.

When the applicant decided to leave the country she signed a declaration in which she renounced her Romanian citizenship, with the direct legal consequence, prescribed by the law, of her losing her civil and social rights, including the right to receive an old-age pension.

The fact that the applicant paid contributions to the LIF, from which the retirement pension was funded, did not in itself provide her with the right to

continue to receive a pension once she no longer fulfilled all the conditions prescribed by the law for the payment of pensions. It is why the domestic courts have concluded that the applicant did not prove to have a substantive right to receive a pension for the impugned period of time (see paragraphs 9 and 10 above).

As the Court has already stated, “the hope that a long-extinguished property right may be revived cannot be regarded as a “possession” within the meaning of Article 1 of Protocol No. 1; nor can a conditional claim which has lapsed as a result of the failure to fulfil the condition” (*Gratzinger and Gratzingerova v. the Czech Republic* (dec.), no. 39794/98, § 69, ECHR 2002-VII).

23. It follows that the applicant’s complaint under Article 1 of Protocol No. 1 taken alone must be rejected as incompatible *ratione materiae*, pursuant to Article 35 §§ 3 and 4 of the Convention.

#### **B. Alleged discrimination in the payment of pension rights**

24. Assuming that Article 14 was applicable to the facts of the present case, the Government called upon the Court to declare the applications manifestly ill-founded. Referring to the merits of the case the Government considered that the legislative and judiciary actions taken in this case were compatible with the margin of appreciation that member States have under the Convention. Having in mind the reform that Romania underwent from a totalitarian regime to a democratic state, the Government estimated that it was a proportional decision to award pension rights for the future only, starting with the moment when the new legislation came into force, as the new state needed to take into consideration various social, political and economic circumstances (see *Păduraru v. Romania*, no. 63252/00, § 89, ECHR 2005-XII (extracts)).

The applicant stated that her consent to have her pension rights suspended had not been genuine, as it had been given under duress; she was therefore entitled to be awarded her pension retroactively, starting with 1990, any other solution leading to her being discriminated against in comparison with other pensioners.

25. The Court reiterates that Article 14 complements the other substantive provisions of the Convention and the Protocols. It has no independent existence since it has effect solely in relation to “the enjoyment of the rights and freedoms” safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall “within the ambit” of one or more of the Convention Articles (see *Stec and Others* (dec.), § 39, and *Burden v. the United Kingdom* [GC], no. 13378/05, § 58, ECHR 2008).

While there is no obligation on a State under Article 1 of Protocol No. 1 to create a welfare or pension scheme, the Court has held that if a Contracting State does decide to enact legislation providing for the payment as of right of a welfare benefit or pension – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (*Stec and Others* (dec.), cited above, § 54).

26. In the present case, the Court notes that the Romanian pension legislation provided for the pension payment to the applicant, upon condition that she fulfilled specific requirements; the proprietary interest thus generated is self-evident, rendering the facts of the case to fall within the scope of Article 1 of Protocol No. 1. This is also sufficient to render Article 14 of the Convention applicable (see also *Zubczewski v. Sweden* (dec.), no. 16149/08, § 18, 12 January 2010 and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 71, ECHR 2010-...).

27. According to the Court's settled case-law, discrimination means treating differently, without an objective and reasonable justification, persons in similar situations.

28. In the present case, the applicant contended that she was in a relevantly similar position to Romanian lawyer pensioners living in Romania and having Romanian citizenship, as she had spent the same amount of time working in Romania and had similarly contributed to the LIF and, secondly, that both she and the others had the same need for a reasonable standard of living in their old age.

29. However, as the Court has already held in the *Carson* judgment cited above, the payment of National Insurance contributions alone is not sufficient to place the applicant in a relevantly similar position to all other pensioners, regardless of their country of residence. Moreover, in relation to the comparison with pensioners living in the respective country, it cannot be ignored that social security benefits, including State pensions, are part of a system of social welfare which exists to ensure certain minimum standards of living for residents of that country (see *Carson*, cited above, § 85), with a view also to the undeniable fact that non-residents do not contribute to the state's economy.

The essentially national character of the social security system is itself recognised in the relevant international instruments, the 1952 ILO Convention and the 1964 European Code of Social Security, which allow the suspension of benefits to which a person would otherwise be entitled for as long as the person concerned is absent from the territory of the State concerned (see *Carson*, cited above, § 85).

In summary, therefore, the Court does not consider that the applicant was in a relevantly similar position to residents of Romania, even if all of them had contributed to the LIF.

30. Moreover, the Court cannot ignore that a wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy. The Contracting State also enjoys a broad margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify different treatment (*Burden v. the United Kingdom* [GC], no. 13378/05, § 60, ECHR 2008-).

Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (*Stec and Others v. the United Kingdom*, [GC], nos. 65731/01 and 65900/01, § 52, ECHR 2006 *Tarkoev and Others v. Estonia*, nos. 14480/08 and 47916/08, § 58, 4 November 2010).

The Court therefore accepts that the difference in treatment complained of in the present case pursued at least one legitimate aim which is broadly compatible with the general objectives of the Convention, namely, the protection of the country's economic system (see, *mutatis mutandis*, *Andrejeva v. Latvia* [GC], no. 55707/00, § 86, ECHR 2009-...), especially in the context of the country's transition to a democratic system. Bearing in mind also that as of 2001 once the legislation had been amended the applicant was allowed her request and started to receive her monthly pension, the measure concerning her alleged pension rights between 1994 and 2001 appears reasonably justified and well founded.

31. Accordingly, the Court finds that the application of the national legislation as it was to the situation in the present case did not involve a violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 to the Convention.

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

### **C. Outcome of proceedings regarding the amount of pension**

32. As to the applicant's complaints regarding the outcome of the proceedings terminated by the judgment of 10 February 2004 and in particular the amount of the pension she received, the Court finds that the domestic courts' interpretation of the law in force at the time when they were seised and their reasoning is not manifestly arbitrary or unreasonable.

Therefore, 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 that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

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

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Santiago Quesada  
Registrar

Josep Casadevall  
President