



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

THIRD SECTION

DECISION

Application no. 14307/05  
Viorica PRINTZ  
against Romania

The European Court of Human Rights (Third Section), sitting on 12 March 2013 as a Committee composed of:

Alvina Gyulumyan, *President*,  
Kristina Pardalos,  
Johannes Silvis, *judges*,  
Marialena Tsirli, *Deputy Section Registrar*.

Having regard to the above application lodged on 31 March 2005,  
Having regard to the observations submitted by the Romanian Government and the observations in reply submitted by the applicant,  
Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Viorica Printz, is a Romanian national who was born in 1947 and lives in Clinceni.

The Romanian Government (“the Government”) were represented by their Agent, Ms Irina Cambrea, from the Ministry of Foreign Affairs.

**A. The circumstances of the case**

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

The applicant retired on 31 December 1999. Her pension was determined on the basis of the Pension Act in force at the time, namely Law no. 3/1977.

Following the entry into force of the new Pension Act on 1 March 2001, namely, Law no. 19/2000, the applicant lodged an action with a view to having her pension recalculated in accordance with the provisions of the new legislation.

By a final decision of 4 October 2004, the Alba Iulia Court of Appeal dismissed the applicant's action.

### **B. Relevant domestic law and practice**

The relevant extracts of the domestic law and practice are described in the case of *Tivodar v. Romania* (no. 43502/04, §§ 8-10, 2 October 2012).

## COMPLAINTS

Invoking Article 6 § 1 of the Convention, the applicant complains that similar actions have been allowed by the same court of appeal, whereas her claim was dismissed. Under Article 1 of Protocol No. 1 to the Convention, the applicant complains that as a result of a wrongful interpretation of the law, the Court of Appeal of Alba Iulia has deprived her of her right to have her pension recalculated.

## THE LAW

The applicant complained that the same court of appeal had applied conflicting case-law to identical claims and that it has decided her case wrongly; thus, she was deprived of her right to have her pension recalculated. She relied on Articles 6 § 1 of the Convention and 1 of Protocol No. 1 to the Convention which, in so far as relevant read:

### **Article 6 § 1**

“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**

“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.”

The Government contended that the legal issue raised in the present case did not relate to a conflicting case-law *per se*. In this regard, the Government referred to the 246 decisions submitted in *Tivodar* case (cited above), in which the Alba Iulia Court of Appeal held that for persons who retired during the period concerned, the new law did not impose an obligation to the Pension Authority to recalculate their pension on the basis of the New Pension. The applicant contended that she knows of some 100 other decisions with an outcome different than hers, but had submitted only one decision.

The Court recalls that in order to assess the conditions in which conflicting decisions of domestic courts ruling at last instance are in breach of the fair trial requirement enshrined in Article 6 § 1 of the Convention, the Court will first of all examine whether “profound and long-standing differences” exist in the case-law of the domestic courts (see, for instance, *Albu and Others v. Romania*, nos. 34796/09 and 63 other applications, § 34, 10 May 2012).

Turning to the present case, the Court notes that the applicant had submitted only one copy of a conflicting decision of the same court of appeal, while the Government referred to the submitted copies of 246 decisions in the case of *Tivodar* delivered on the relevant period by the same court of the appeal dismissing similar requests for the recalculation of the pension rights.

Therefore, the Court considers that the decision invoked by the applicant could be considered as an exception to the case-law, rather than the other way round. In such circumstances, it cannot be said, that there had been “profound and long-standing differences” in the relevant case-law (see *Frimu and others v. Romania*, no. 45312/11, § 51, 13 November 2012).

The Court observes that the applicant’s complaint in the present case, concerning the diverging solutions adopted by the same court of appeal for the recalculation of pension rights, is similar, respectively identical to those which were rejected in the above cited *Frimu* and *Tivodar* cases.

Indeed the present case raises no new issue and brings no new information allowing the Court to reach a different conclusion than that reached in the above cases.

Thus, with reference to the detailed reasoning set out in *Frimu* and *Tivodar*, the Court finds that the above complaint under Article 6 § 1 of the Convention is similarly manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected under Article 35 § 4 of the Convention.

Furthermore, concerning the applicant’s complaint about being deprived of her right to have her pension recalculated, there is no indication that, by the time the applicant’s action was dismissed, there was a settled case-law

supporting her claim. It follows that the applicant did not have a possession within the meaning of Article 1 of Protocol No. 1 (see *Albu and Others*, cited above, § 47).

The above complaint is therefore inadmissible as being incompatible *ratione materiae*, in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

*Declares* the application inadmissible.

Marialena Tsirli  
Deputy Registrar

Alvina Gyulumyan  
President