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

FIRST SECTION

DECISION

Application no. 57242/13
Damir BELOŠEVIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 3 December 2019 as a Chamber composed of:

Krzysztof Wojtyczek, *President,*
Ksenija Turković,
Aleš Pejchal,
Pauliine Koskelo,
Tim Eicke,
Jovan Ilievski,
Raffaele Sabato, *judges,*

and Abel Campos, *Section Registrar,*

Having regard to the above application lodged on 9 August 2013,

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 Damir Belošević, is a Croatian national, who was born in 1961 and lives in Zagreb. He was represented before the Court by Mr B. Makarović, a lawyer practising in Zagreb.

2. The Croatian Government ("the Government") were represented by their Agent, Ms Š. Stažnik.

A. The circumstances of the case

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

1. Events giving rise to the dispute

4. On 3 March 2003, the applicant concluded an employment contract of indefinite duration with company Z. ("the company") for the post of its chief executive office (*direktor* – hereinafter "CEO"). On the same day, the company registered the applicant with the mandatory national pension and health-insurance schemes.

5. On 10 March 2003 the applicant and the company concluded a further contract ("contract on the rights and obligations of the company's CEO") specifying his rights and obligations as the company's CEO. The contract stipulated, *inter alia*, that: (a) the company could at any time remove the CEO, (b) if the contract was terminated at the company's request the applicant had to be offered an employment contract for another job in the company corresponding to his qualifications, and (c) if the applicant refused to conclude such a new employment contract, he would be entitled to a certain basic salary for a period of three months following the termination.

6. On 20 December 2004 the company's General Meeting (*skupština*) adopted a decision removing the applicant from the position of CEO.

7. On 24 December 2004 the applicant went on sick leave.

8. On 20 March 2005 the company deregistered the applicant from the mandatory national pension and health-insurance scheme.

9. On 26 April 2005 the applicant returned to work following sick leave. Upon his return the company gave him back his "employment booklet" (*radna knjižica*) and provided him with a copy of the notice of deregistration from the pension and health-insurance schemes. On the same day he signed a note confirming that he had received those documents. However, he was not served with a written notice of dismissal or otherwise given any reasons for the termination of his employment, as required under the relevant employment legislation.

10. In a letter of 27 April 2005 addressed to the company the applicant wrote:

> "As my sick leave had ended on 25 April 2005, on 26 April I returned to work, and in view of the fact that my employment contract with [the company] has not been terminated, I kindly ask to be assigned a job."

11. On 27 April 2005 the company informed the applicant that, based on the company's redundancy programme, adopted at the company's General Meeting, the applicant had been offered an employment contract of indefinite duration with another employer, where he was to start working on 1 May 2005. Furthermore, the company agreed to pay for his pension and health insurance for the period between 21 March and 30 April 2005.

12. On 28 April 2005 the applicant lodged a request for the protection of employment rights (*zahtjev za zaštitu prava*) with the company. He received no reply.

13. Following a complaint by the applicant alleging breaches of relevant employment, health-insurance and pension-insurance legislation in relation to the termination of his employment, on 16 and 19 May 2005, the labour inspectorate conducted on-site inspection on the company's premises. In its report of 10 June 2005 the labour inspectorate established that the company had committed several employment-related administrative offences in breach of the relevant legislation, one of them being deregistering the applicant from the pension and health-insurance schemes without providing him with a written notice stating the grounds for his dismissal. The applicant was advised that he could contest the lawfulness of the termination of his employment by instituting civil proceedings.

2. Administrative proceedings before the Croatian Employment Bureau

14. Meanwhile, on 2 May 2005 the applicant lodged a request with the Zagreb regional office of the Croatian Employment Bureau (*Hrvatski zavod za zapošljavanje, Područni ured Zagreb*), seeking to be registered as an unemployed person and to be awarded unemployment benefit. He enclosed with his request a copy of his employment booklet and a certificate from the Croatian Health Insurance Fund regarding the salary compensation paid while he had been on sick leave.

15. On 5 May 2005 the Bureau's regional office asked the applicant to provide relevant evidence regarding the grounds for the termination of his employment.

16. On 1 July 2005 the applicant informed the Bureau's regional office that his employment had been terminated against his will by his employer while he had been on sick leave and that he had never been served with a written notice stating the grounds for the termination. He also submitted copies of all the documents in his possession concerning the termination of his employment. Those included, among other documents, a copy of the company's decision removing him from the position of CEO, a copy of the notice of deregistration from the pension and health-insurance schemes, and the labour inspectorate's report of 10 June 2005 (see paragraphs 6, 8 and 13 above).

17. On 8 July 2005 the Bureau's regional office asked the company to provide evidence regarding the applicant's termination of employment, as he had failed to do so.

18. In a letter of 14 July 2005 the company informed the Bureau's regional office that the applicant had been removed from his position as the company's CEO in a decision of 20 December 2004 (see paragraph 6 above). It furnished a copy of that decision. It did not give reasons for the applicant's removal.

19. In a decision of 4 August 2005 the Bureau's regional office dismissed the applicant's request for unemployment benefit, finding that he had not submitted relevant evidence regarding the grounds for the

termination of his employment or provided an explanation as to why he had been unable to do so.

20. On 19 September 2005 the applicant informed the Bureau's regional office that he had been reinstated on 29 August 2005 by virtue of the Zagreb Municipal Court's (*Općinski sud u Zagrebu*) decision of 18 July 2005 (see paragraphs 29-30 below). He thus asked to be awarded the unemployment benefit only for the period between 21 March and 28 August 2005.

21. On 31 October 2005 the applicant was served with the decision of the Bureau's regional office of 4 August 2005 dismissing his request for unemployment benefit (see paragraph 19 above).

22. On 11 November 2005 the applicant lodged an appeal with the Bureau's central service (*Hrvatski zavod za zapošljavanje, Središnja služba Zagreb*).

23. In a decision of 8 December 2005 the Bureau's central service dismissed the applicant's appeal, endorsing the reasons given by the regional office (see paragraph 19 above).

24. On 10 January 2006 the applicant brought an action for judicial review in the Administrative Court (*Upravni sud Republike Hrvatske*).

25. By a judgment of 27 January 2010 the Administrative Court dismissed the applicant's action endorsing the reasons given by the Bureau (see paragraphs 19 and 23 above).

26. On 18 August 2010 the applicant lodged a constitutional complaint against the Administrative Court's judgment, complaining, *inter alia*, of a violation of his right to fair proceedings guaranteed by the Croatian Constitution.

27. In a decision of 14 February 2013 the Constitutional Court (*Ustavni sud Republike Hrvatske*) dismissed the applicant's constitutional complaint. That decision was served on the applicant's representative on 25 February 2013.

3. Civil proceedings for wrongful dismissal

28. Meanwhile, on 18 May 2005, the applicant brought a civil action for wrongful dismissal against the company in the Zagreb Municipal Court (*Općinski sud u Zagrebu*). He also requested that the court issue a provisional measure ordering the company to reinstate him until the conclusion of those proceedings.

29. In a decision of 18 July 2005 the Zagreb Municipal Court allowed the applicant's request for provisional measure and ordered the company to reinstate him.

30. On 29 August 2005 the applicant was reinstated and assigned to another job within the company.

31. On 3 October 2005 the applicant and the company concluded an out-of-court settlement (*nagodba*) whereby (a) the company set aside its

decision terminating his employment, (b) the parties, by mutual agreement, rescinded the contract of 10 March 2005 (see paragraph 5 above), (c) the parties concluded a new employment contract for the job in which the applicant had been working since 29 August 2005 (see the previous paragraph), and (d) the company acknowledged the continuity of the applicant's employment from 3 March 2005 onwards. Furthermore, under the said settlement the company agreed to (a) pay the applicant 57,000 Croatian kunas (HRK) on account of salary arrears for the period between 21 March and 28 August 2005, (b) pay him HRK 2,500 on account of a benefit, stipulated by the relevant collective agreement, belonging to employees who had been on sick leave for more than ninety days, and (c) pay him HRK 4,697 on account of the incurred litigation costs. In return the applicant agreed to withdraw his civil action and forfeit the statutory default interest accrued on salary arrears.

32. On 31 October 2005, the applicant withdrew his action.

33. In a decision of 8 May 2007 the Municipal Court declared that the plaintiff had withdrawn his action.

B. Relevant domestic law

34. Section 55(2) of the Job Placement and Unemployment-Related Rights Act (*Zakon o posredovanju pri zapošljavanju i pravima za vrijeme nezaposlenosti*, Official Gazette, no. 32/02 with subsequent amendments), which was in force between 5 April 2002 and 1 March 2017, reads as follows:

> "If on the basis of a final court decision or the employer's decision an employee has been reinstated and has started to work and his or her employment-related rights in respect of the period during which he or she was unemployed have been restored, the employee shall pay back to the Bureau the unemployment benefit received."

COMPLAINTS

35. The applicant complained under Article 6 § 1 of the Convention that the domestic authorities had imposed on him an impossible burden of proof and had dismissed his request for unemployment benefit in an excessively formalistic manner.

36. He also complained about the domestic authorities' refusal to grant his claim for unemployment benefit.

THE LAW

37. The applicant complained that he had legitimate expectations that his claim for unemployment benefit would have been granted as that claim had had a sufficient basis in national law. The domestic authorities' decision to

dismiss his claim based on his alleged failure to submit evidence he could not have possibly submitted constituted excessive formalism in breach of his right to a fair hearing. He relied on Article 6 § 1 of the Convention, the relevant part of which reads as follows:

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

38. Being master of the characterisation to be given in law to the facts of the case (see *Guerra and Others v. Italy*, 19 February 1998, § 44, *Reports of Judgments and Decisions* 1998‑I, and *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 124, 20 March 2018), and having regard to the applicant's arguments (see the previous paragraph), when giving notice of the application to the respondent Government, the Court considered that the case should also be examined under Article 1 of Protocol No. 1 to the Convention. It thus invited the parties to submit observations under that Article, 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."

39. The Government disputed the admissibility of the application. They argued that the application was manifestly ill-founded because the applicant had withheld crucial information. In the alternative, they argued that the applicant had not been a victim of a violation of either Article 6 § 1 of the Convention or of Article 1 of Protocol No. 1 thereto.

40. The Court finds it appropriate to first examine the Government's contention that the applicant withheld crucial information.

A. The parties' arguments

1. The Government

41. The Government submitted that in his application to the Court the applicant had failed to state relevant information relating to the very substance of the case, specifically that he had failed to mention the out-of-court settlement of 3 October 2005 (see paragraph 31 above), which had remedied all the negative consequences related to the termination of his employment. In this connection the Government pointed out that pursuant to section 55(2) of the Job Placement and Unemployment-Related Rights Act unemployed persons who had received unemployment benefit were bound to return them if they had been reinstated and all their employment-related

rights in respect of the period during which they had been out of work had been restored (see paragraph 34 above).

42. By withholding that crucial information the applicant had presented the Court with an incomplete and misleading picture of the facts, thus making it impossible for the Court to make an informed decision on the admissibility and merits of the case, that is to say to reach a decision based on the complete knowledge of the facts.

43. The Government further argued that the applicant had consciously omitted the said information, as he had been aware that his application would otherwise be manifestly ill-founded. He had thereby attempted to influence the Court to decide his case based on incomplete facts.

2. The applicant

44. The applicant asserted that the Government's arguments had not called into question the admissibility of his application and its being well-founded. He reiterated that he had lodged the application with the Court because the Croatian Employment Bureau, in an excessively formalistic manner, had denied him unemployment benefit in the period during which he had indeed been unemployed.

45. The fact that he had later on managed to reach a settlement with his employer could not have erased the fact that he had unjustifiably been denied unemployment benefit in the period between 20 March and 29 September 2005 during which he had been jobless and without any income. That had taken a hard toll on him and had caused him pain and suffering because he had had "nothing to live off" and had had to make do in different ways (for example, by borrowing money). The purpose of unemployment benefit was timely assistance to those whose employment had been terminated, regardless of the possibility that they might later on be reinstated by a court decision or by the employer itself, in which case they would have to return the unemployment benefit received (see paragraph 34 above). Precisely because he had been reinstated, in his application to the Court he had not sought compensation for pecuniary damage corresponding to the denied unemployment benefit to which he had been entitled. Rather, he sought only compensation for non-pecuniary damage sustained.

46. Lastly, the applicant explained that, had he been paid unemployment benefit, he would have been in a better position when negotiating the terms of the settlement with his employer. Since he had been denied those benefits, he had been in a weaker position and thus forced to forfeit the statutory default interest accrued on his salary arrears (see paragraph 31 above).

B. The Court's assessment

47. The Court reiterates that a failure on the part of an applicant to inform it at the outset of a fact essential for the examination of the case could, in principle, lead to the application being declared inadmissible for abuse of the right of application within the meaning of Article 35 § 3 of the Convention (see, for example, *Gross v. Switzerland* [GC], no. 67810/10, §§ 35-36, ECHR 2014; *Al-Nashif v. Bulgaria*, no. 50963/99, § 89 20 June 2002; and *Kerechashvili v. Georgia* (dec.), no. 5667/02, ECHR 2006 V). In order for the Court to reach such a conclusion, the misleading information should concern the very core of the case (see, for example, *J.B. v. Poland*, no. 57675/10, § 44, 3 November 2015; *Mitrović v. Serbia*, no. 52142/12, §§ 33-34, 21 March 2017; and *Shalyavski and Others v. Bulgaria*, no. 67608/11, § 45, 15 June 2017). Moreover, an intention to mislead the Court must always be established with sufficient certainty (for example, *Gross*, cited above, § 28, and *S.L. and J.L. v. Croatia*, no. 13712/11, §§ 48-49, 7 May 2015).

48. The Court further reiterates that whenever an applicant omits, contrary to Rule 44C § 1 of the Rules of Court, to divulge relevant information of his or her own motion, depending on the particular circumstances of the case, the Court may draw such inferences as it deems appropriate, including striking the application out under either of the three sub-paragraphs of Article 37 § 1 of the Convention (see, for example, *Turava and Others v. Georgia* (dec.), [Committee], nos. 7607/07 and 8710/07, 27 November 2018).

49. The Court therefore finds it appropriate to first ascertain whether the fact which the applicant omitted from his application and which the Government brought to its attention, namely the settlement of 3 October 2005 (see paragraph 31 above), may lead it to conclude that it is no longer justified to continue the examination of the application, and that the case may consequently be struck out of its list of cases in accordance with Article 37 § 1 (c) of the Convention, the relevant part of which reads as follows:

> "1. The Court may at any stage of the proceedings decide to strike an application out of its list of cases where the circumstances lead to the conclusion that
>
> ...
>
> (c) for any other reason established by the Court, it is no longer justified to continue the examination of the application.
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> However, the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires.

50. The Court reiterates that it enjoys a wide discretion in identifying grounds capable of being relied upon in striking out an application on this basis, it being understood, however, that such grounds must reside in the

particular circumstances of each case (see, for example, *Oya Ataman v. Turkey* (striking out), no. 47738/99, § 24, 22 May 2007).

51. In the Court's opinion, the out-of-court settlement of 3 October 2005 (see paragraph 31 above) is the fact which, in view of the relevant domestic law (see paragraph 34 above), undoubtedly constituted relevant, if not the key information for the purposes of deciding the admissibility and merits of the present application. The Court takes due note of the applicant's arguments as to why he did not disclose that information (see paragraphs 44-46 above). However, while there admittedly may be different views as to whether the information in question was of crucial importance, the Court finds that the applicant, who was represented by an advocate, must have been aware that the information was of such relevance for the proper administration of justice that it had to be disclosed. The Court therefore considers that, by not divulging that information when lodging his application, the applicant failed to comply with his procedural obligations under Rule 44C § 1 of the Rules of Court.

52. Furthermore, the said out-of-court settlement had the practical effect of remedying to a large extent the applicant's grievances related to the termination of his employment. In addition, it would be difficult to argue that the applicant acted under duress when he waived his claim to statutory default interest accrued on salary arrears (see paragraph 31 above; see also, *mutatis mutandis*, *Calì and Others v. Italy* (striking out), no. 52332/99, § 25, 19 May 2005, and *La Rosa and Alba v. Italy (no. 1)* (striking out), no. 58274/00, § 25, 28 June 2005).

53. Having regard to the terms of that settlement, the Court considers that the appropriate inference, within the meaning of Rule 44C § 1 *in fine*, to be drawn from the applicant's failure to divulge the existence of the settlement, is that it is no longer justified to continue the examination of the application within the meaning of Article 37 § 1 (c) of the Convention (see, for example, *Turava and Others*, § 39, cited above). Furthermore, the Court is satisfied that respect for human rights as defined in the Convention and the Protocols thereto does not require it to continue the examination of the application (Article 37 § 1 *in fine*).

54. Accordingly, it is appropriate to strike the case out of the list.

55. In view of this conclusion the Court does not find it necessary to examine the Government's inadmissibility objections. Likewise, the Court finds that there is no need to examine, of its own motion, the issue of whether the applicant's failure to inform the Court of the aforesaid settlement amounted to an abuse of the right of application.

For these reasons, the Court, unanimously,

Decides to strike the application out of its list of cases.

Done in English and notified in writing on 9 January 2020.

Abel Campos
Registrar

Krzysztof Wojtyczek
President