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

FIRST SECTION

DECISION

Application no. 10490/16
László HORVÁTH
against Hungary

The European Court of Human Rights (First Section), sitting on 6 September 2022 as a Committee composed of:

Alena Poláčková*, President,*
Péter Paczolay*,*
Davor Derenčinović*, Judges,*

and Liv Tigerstedt, Deputy Section Registrar,

Having regard to:

the application (no. 10490/16) against Hungary lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 27 January 2016 by a Hungarian national, Mr László Horváth, who was born in 1964 and lives in Budapest ("the applicant"), who was represented by Mr A. Cech, a lawyer practising in Budapest;

the decision to give notice of the application to the Hungarian Government ("the Government"), represented by their Agent, Mr Z. Tallódi, Ministry of Justice;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the suspension of payment of the 'service allowance' (previously, before a legislative amendment, 'service pension') of the applicant, a retired police officer with 26 years of service, because his income from post-retirement private employment reached a statutory threshold in the years 2012 to 2016. This threshold was attained, according to former section 83/B of the Pensions Act 1997, if the accrued pension-base (related to the post-retirement employment) reached eighteen times the amount of the statutory minimum monthly salary. In such cases the

disbursement of the allowance is suspended for the rest of the year concerned. The scheme applies until the general age of retirement is reached, after which a pension is paid under the general rules.

2. The applicant's legal recourses to the ordinary courts and the Constitutional Court were to no avail. In particular, the latter held in decisions nos. 3061/2015. (IV.10.) and 3112/2016. (VI.3.) that the allowance in question was a social benefit corresponding to indigence, rather than an acquired right, and thus the constitutional right to property was not infringed. The court further held that the allowance was designed to compensate the loss of income and therefore if a beneficiary had income from other sources which exceeded a certain amount, then there was no reasonable need for compensation. It was true that the law made distinctions, since only certain types of income had to be taken into consideration regarding the suspension. However, this distinction relied on the source of the income. Consequently, any differential treatment was between different incomes rather than persons.

3. The applicant complained that this state of affairs amounted to an unjustified interference with his property rights, in breach of Article 1 of Protocol No. 1. Moreover, relying of Article 14 read in conjunction with Article 1 of Protocol No. 1, he also argued that the impugned measure was discriminatory.

THE COURT'S ASSESSMENT

4. Under Article 1 of Protocol No. 1, the applicant complained of the transformation of the service pension, tax free and protected in the former Constitution, into service allowance, which was taxable and no longer enjoyed protection under the Fundamental Law. Moreover, in his submissions, the recurrent suspension of the allowance amounted to an unlawful and unjustified interference with his property rights.

5. The Government disagreed.

6. As regards the transformation of the service pension into service allowance, the Court has already held that this was a lawful measure which did not represent an excessive individual burden (see *Markovics and Others v. Hungary* (dec.), nos. 77575/11 and 2 others, §§ 34 and 42, 24 June 2014). The Court sees no reason to depart from this conclusion.

7. Concerning the suspension itself, the Court notes that the parties differ as to whether the allowance constituted a "possession" for the purposes of Article 1 of Protocol No. 1: whereas the applicant argued in the affirmative, the Government endorsed the position of the Constitutional Court to the contrary. The Court, for its part, does not find it necessary to decide this question, because this complaint is in any event inadmissible for the following reasons.

8. At the outset, the Court finds that the measure was prescribed by law (the Pensions Act 1997) and can be taken as having aimed at serving the

general interest of economic and social policies (see *Markovics and Others*, cited above, § 34).

9. Turning to its proportionality, the Court accepts the Government's suggestion that the allowance as such aimed to substitute for an income which the beneficiary, due to the specific circumstance of no longer being in active police service, cannot generate. For the Court, this hypothesis is valid so long as the beneficiary is not present on the labour market. Should the retiree decide to take up an employment, the rationale of the allowance evolves. The lawmaker stipulated that once the beneficiary's income in a given year reached eighteen times the amount of the statutory minimum monthly salary, the situation of indigence ceased to exist in that year. Given the national authorities' wide margin of appreciation in socio-economic matters and in protecting the public purse, the Court accepts this threshold, rather high, as not being unreasonable, especially since the suspension only concerns one calendar year at a time and, moreover, the threshold amount increases every time the statutory minimum salary changes. Furthermore, the impugned scheme is, importantly, only valid until a person reaches the ordinary retirement age, after which pension is disbursed in full, under the general rules.

10. These considerations are sufficient for the Court to find that the applicant did not have to bear an excessive individual burden (see also, in the context of section 83/C of the Pensions Act 1997 containing a similar rule of prohibition of double compensation, *Fábián v. Hungary* [GC], no. 78117/13, § 84, 5 September 2017). It follows that there is no indication of a violation of his rights under Article 1 of Protocol No. 1. This complaint is therefore manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

11. Moreover, the applicant submitted that the measure complained of was discriminatory from various angles, in that (i) it applied only if the secondary activity was performed in Hungary, rather than abroad; (ii) it applied only to persons in receipt of service allowance who were younger than 57 years of age on 1 January 2012; and (iii) persons who signed a voluntary contract of reservist with the armed forces were exempted.

12. Again, the Government disagreed, arguing *inter alia* that the applicant misconstrued the law.

13. The Court recalls that only differences in treatment based on an identifiable characteristic, or "status", are capable of amounting to discrimination within the meaning of Article 14. However, the list of characteristics set out in Article 14 is illustrative and not exhaustive. For an issue to arise under Article 14, there must be a difference in the treatment of persons in analogous, or relevantly similar, situations. An applicant must demonstrate that, having regard to the particular nature of his or her complaint, he or she was in a relevantly similar situation to others treated

differently (see, among many authorities, *Valkov and Others v. Bulgaria*, nos. 2033/04 and 8 others, §§ 115-16, 25 October 2011).

14. It must therefore be ascertained whether the applicant has been able to demonstrate that, for the purposes of suspension of service allowance, he was in a relevantly similar situation to other retirees benefiting from the exemptions (i) to (iii) (see paragraph 11 above). The applicant's main argument in support of his assertion that he was in such a situation is in essence that it is impossible to draw a valid distinction, for pension purposes, between the characteristics of the respective groups. However, the Court is not prepared to draw conclusions based on the pension/benefit implications of domestic or foreign employment, on the imminency of general retirement age, or on the existence of reservist contracts. It is not for an international court to make pronouncements on such matters. Those are policy judgments that are in principle reserved for the national authorities, which are better placed than an international court to evaluate local needs and conditions (see, *mutatis mutandis*, *Valkov*, cited above, § 117).

15. The Court therefore concludes that, for want of a relevantly similar situation, there is no indication of a violation of the applicant's rights under Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 (see also, *mutatis mutandis* and in the context of public and private employments, *Fábián*, cited above, § 133).

16. It follows that this part of the application is likewise manifestly ill-founded within the meaning of Article 35 § 3 (a) and must be rejected, pursuant to Article 35 § 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 29 September 2022.

Liv Tigerstedt Deputy Registrar	Alena Poláčková President