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

SECOND SECTION

DECISION

Application no. 596/21
Muzafir HUSIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 1 October 2024 as a Committee composed of:

Lorraine Schembri Orland*, President*,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 596/21) against the Republic of Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 16 December 2020 by a Croatian national, Mr Muzafir Husić ("the applicant"), who was born in 1953, lives in Zagreb and was represented by Mr I. Avdagić, a lawyer practising in Zagreb;

the decision to give notice of the applicant's complaint concerning discrimination in the enjoyment of his possessions to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik, and to declare inadmissible the remainder of the application;

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The case concerns the alleged discrimination of the applicant on the basis of his age and years of service in relation to unemployment status and benefits, which were refused to him.

2. After he was dismissed from work in February 2015, the applicant applied to be registered as an unemployed person with the Croatian Employment Fund in order to receive unemployment benefits and seek new employment.

3. His request was dismissed because at the time he lodged his request, he had been 61 years old and had had over 41 years of service. He had thus fulfilled the requirements for the so-called old-age pension on account of long-term service ("*starosna mirovina za dugogodišnjeg osiguranika*") as defined in section 35 of the Pension Insurance Act. Consequently, he could not be considered an unemployed person.

4. The applicant challenged that decision before the administrative authorities, arguing that he did not wish to retire because the long-term service pension was less favourable to him in terms of its conditions and amount of pension, and that instead he wished to work until he turned 65 years old and fulfilled the requirements for a regular old-age pension. His appeals were dismissed by the competent administrative authorities, including the administrative courts. His constitutional complaint was dismissed by the Constitutional Court on 14 July 2020.

5. Concurrently, the applicant also requested payment of unemployment benefits, which was refused to him because, having fulfilled the requirements for an old-age pension for long-term service, he could not be considered an unemployed person or claim unemployment benefits. The applicant's appeals against this decision were to no avail. The Constitutional Court dismissed his constitutional complaint by a decision of 14 July 2020.

6. Meanwhile, on 3 July 2015 the applicant applied for an old-age pension on account of long-term service and his request was granted as of 1 March 2015.

7. The applicant complained, under Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 thereto, that he had been discriminated against on the basis of his age and years of service. He maintained that he had been forced to retire although he had wished to continue working until the compulsory retirement age of 65. In his view, the long-term service pension was only an option, and not an obligation, under domestic law for persons fulfilling the statutory requirements to retire earlier if they wished to do so.

THE COURT'S ASSESSMENT

8. The Court does not consider it necessary to decide on all inadmissibility objections raised by the Government, because the present case is in any event inadmissible for the following reasons.

9. The applicant's complaint concerning the refusal of unemployment status and benefits falls within the ambit of Article 1 of Protocol No. 1 and Article 14 is thus applicable.

10. The general principles related to the prohibition of discrimination have been summarised in *Fábián v. Hungary* ([GC], no. 78117/13, §§ 112-117, 5 September 2017). In particular, in order for an issue to arise under Article 14, the applicant must show that there has been a difference in

the treatment of persons in analogous or relevantly similar situations (ibid., § 113). Moreover, the elements which characterise different situations, and determine their comparability, must be assessed in the light of the subject-matter and purpose of the measure which makes the distinction in question (ibid., § 121).

11. In the present case, the applicant essentially claimed that the administrative authorities wrongly interpreted the notion of "old-age pension" as stipulated in section 10(1) of the Act on Employment Mediation and Unemployment Rights as including both the regular old-age pension as defined in section 33 of the Pension Insurance Act and the so-called old age pension for long-term service as defined in section 35 of the same Act. For his part, the applicant explained that he had wished to obtain the unemployment benefits he believed he had been entitled to as a lump sum in the amount of some EUR 12,000 in order to open a private law office and continue working until he turned 65 and became entitled to a regular old-age pension.

12. At the outset, the Court notes that the applicant's main grievance relates to the national courts' interpretation and application of domestic law to the facts of his case and is of a "fourth instance" nature. The Court reiterates that it is not its function to deal with errors of fact or law allegedly committed by these courts unless and in so far as they may have infringed rights and freedoms protected by the Convention (see, in the context of Article 6 of the Convention, *García Ruiz v. Spain* [GC], no. 30544/96, § 28, ECHR 1999-I).

13. Against this background, the Court notes that the applicant firstly complained that he had been discriminated against in relation to "all unemployed persons registered in the relevant register". He later submitted statistical data showing that at the time he was refused registration and the related unemployment benefits in March 2015, there had been almost 16,000 persons in Croatia between the age of 60 and 65 registered as unemployed with the Croatian Employment Fund.

14. In the Court's view, the above information submitted by the applicant is not sufficient to show that there has been a difference in the treatment of persons in analogous or relevantly similar situations in the present case bearing in mind the specific nature of the applicant's complaint, that he has been treated differently on the basis of the combination of two separate characteristics, his age and years of service. There is no doubt that there must have been a number of people between the age of 60 and 65 registered as unemployed at the relevant time. However, the data submitted by the applicant do not show that any of those 16,000 persons who were over 60 years of age and had at the material time been registered as unemployed persons had been in a comparable situation to the applicant's situation in any other respect, and that, in particular, they had a comparable number of years of service. In such circumstances, it cannot be said that the applicant, who

bears the burden of proof in this regard (see paragraph 10 above), has shown *prima facie* that he has been treated differently from other persons in the same or relevantly similar situation to his.

15. The applicant further sought to compare himself with pensioners who had turned 65 years old and were in receipt of the regular old-age pension. He claimed that, unlike them, he could not become employed part-time and keep receiving his long-term service pension. In this connection, the Court notes that on 1 January 2019 – i.e. some five months after the applicant had turned 65 years old – the relevant law was amended so as to allow long-term service pensioners to work part-time under the same conditions as regular old-age pensioners and continue receiving their pensions.

16. In determining whether the applicant has been treated differently from other persons in the same or a relevantly similar situation in this regard, the Court observes that, according to the Government, old age pension for long-term service was a privilege afforded to persons with many years of service, allowing them to retire under the same conditions as regular old-age pensioners but before reaching the requisite age of 65. In other words, unlike early retirement, with old-age pension for long-term service there was no reduction of the amount of pension due to the person retiring before the compulsory retirement age of 65. On the contrary, according to domestic law such persons had additional benefits in the calculation of their pensions for each month which they worked after they met the age requirement for acquiring the old-age pension for long-term service.

17. In the Government's calculation, which was not contested by the applicant, he had received some EUR 19,800 from the State as old-age pension in the period between March 2015 when he requested the pension, and when he turned 65, whereas unemployment benefits during the same period would have amounted to approximately EUR 12,000. In this connection, the Court cannot speculate as to the amount of salary or pension which the applicant would have been entitled to receive had he found another employment or became self-employed until reaching the pensionable age of 65, since ultimately he chose to retire. The Court can only note that the applicant benefitted from a more favourable calculation of his pension according to the rules on long-term service pensions (see paragraph 16 above).

18. Moreover, the Court notes that, contrary to what the applicant maintained, he was not forced to retire. As the Government explained, he could have continued to look for new employment, or indeed opened his own law office as he said he had wished to do. However, he could not obtain unemployment benefits during his search for new employment since, as the Government pointed out, given his age and years of service he was no longer considered an unemployed person as the domestic law had provided him with another avenue of ensuring his social benefits in form of the old-age pension for long-term service, which he ultimately benefitted from (compare in this

respect also the decision of the Constitutional Court no. U-I-3103/2003 of 13 July 2005, relied on by the Government, in which that court did not consider discriminatory the requirement to remove from the relevant register of unemployed persons those who fulfilled the requirements for an early retirement).

19. In light of the above, and in particular bearing in mind the State's wide margin of appreciation in matters concerning general measures of economic or social strategy (see *Savickis and Others v. Latvia* [GC], no. 49270/11, § 184, 9 June 2022, and the cases cited therein), the Court considers that the applicant has not shown that, compared to unemployed persons registered in the relevant register or pensioners who had turned 65 years old and were in receipt of the regular old-age pension, he had been subject to a difference in treatment with an identifiable group in a relevantly similar situation.

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

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 24 October 2024.

Dorothee von Arnim Deputy Registrar	Lorraine Schembri Orland President