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

FIRST SECTION

DECISION

Application no. 47520/16
Vlajko KOMLENAC
against Croatia

The European Court of Human Rights (First Section), sitting on 8 November 2022 as a Committee composed of:

Péter Paczolay*, President*,
Alena Poláčková,
Davor Derenčinović*, judges*,
and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 47520/16) 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 5 August 2016 by a Serbian national, Mr Vlajko Komlenac, who was born in 1949 and lives in Sremska Mitrovica ("the applicant") who was represented by Mr S. Gatarić, a lawyer practising in Sremska Mitrovica;

the decision to give notice of the application to the Croatian Government ("the Government"), represented by their Agent, Ms Š. Stažnik;

the parties' observations;

the decision of the Serbian Government not to make use of their right to intervene in the proceedings (Article 36 § 1 of the Convention);

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns the refusal of the Croatian authorities to grant the applicant an old-age pension because he continued to work as an attorney in Serbia.

2. The applicant worked in Croatia for 20 years and then in Serbia for another 16 years. Pension rights of persons who had worked in both countries are regulated by the Agreement between the Republic of Croatia and the Federal Republic of Yugoslavia on Social Insurance (Serbia having

succeeded to this Agreement, published in Official Gazette, International Agreements, no. 14/2001; hereinafter: "the Social Insurance Agreement"). According to Article 2(1) point 2 of that Agreement, as interpreted by the Croatian courts, all requests for pension based on the years of service in that country are to be decided on the basis of Croatian legislation.

3. On 25 September 2013 the applicant applied for an early old-age pension with the competent Serbian authorities, who forwarded the documents necessary for the calculation of his pension for the period he had worked in Croatia to the Croatian Pension Insurance Fund in Osijek (hereinafter: "the Fund"). Form 205 entitled "notice of pension insurance period" containing the applicant's years of service stated that as of 1 September 2013 the applicant had still been insured in Serbia, i.e. that he was still paying contributions on account of professional activity in that country. He subsequently withdrew his application and at a later date applied for an old-age pension on the basis of the same documents.

4. The applicant was granted an old-age pension in Serbia on 22 March 2014. Under Serbian law, he was able to continue working as an attorney while receiving his pension.

5. Meanwhile, in respect of his years of service in Croatia, his request for pension was refused by the Fund because he was self-employed in Serbia and had not submitted evidence that his pension insurance in that country had been terminated, thereby failing to meet the statutory requirements set out in section 37 of the Croatian Pension Insurance Act, which required termination of pension insurance. Specifically, the requisite form 205 submitted to the Fund stated that he had still been insured in Serbia (see paragraph 4 above), and a document the applicant subsequently submitted to the Croatian authorities – entitled "life certificate and statement of the beneficiary" of 13 February 2014 – also stated that he was self-employed.

6. On appeal, on 11 February 2015 the Central Office of the Croatian Pension Fund upheld the first-instance decision.

7. On 10 March 2015 the applicant brought an action for judicial review before the Osijek Administrative Court claiming that he was self-employed but that he was no longer insured because he was not under the obligation to pay pension contributions under Serbian law. The court held a hearing at which the applicant did not submit or propose any further evidence.

8. On 30 September 2015 the court dismissed his action, holding the administrative authorities' decision lawful and not contrary to the Social Insurance Agreement between Croatia and Serbia.

9. On appeal, on 28 January 2016 the High Administrative Court upheld the first-instance judgment, holding that since under Croatian law a person was eligible for retirement only after they were no longer insured, and the applicant claimed throughout the proceedings that he was self-employed in Serbia, he did not fulfil the requirements to be awarded a pension under Croatian law.

10. The Constitutional Court dismissed the applicant's subsequent constitutional complaint on 1 June 2016 stating that the administrative courts' decisions were sufficiently reasoned and not arbitrary.

11. The applicant complained, under Article 1 of Protocol No. 1 to the Convention, about the refusal of the Croatian administrative authorities to grant him an old-age pension. He submitted that, since his granting of the pension in Serbia on 22 March 2014, he had no obligation to pay any pension insurance contributions in that country according to Serbian law, and that consequently he fulfilled all conditions for being granted the part of his old-age pension in Croatia, regardless of the fact that he had continued his professional activity in Serbia. The applicant also complained, under Article 1 of Protocol No. 12 to the Convention, that he had been discriminated against in comparison to a Croatian national who continued being self-employed while being retired in Serbia.

THE COURT'S ASSESSMENT

A. Alleged violation of Article 1 of Protocol No. 1 to the Convention

12. The Court considers that it is not necessary to examine all the preliminary objections raised by the Government, since the present case is in any event inadmissible for the following reasons.

13. The Court reiterates that Article 1 of Protocol No. 1 does not guarantee the right to a pension of a particular amount (see, among other authorities, *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X). In order to ascertain whether the applicant had a "possession" within the meaning of the said provision, the Court needs to examine whether he satisfied the legal conditions laid down in domestic law for the grant of his pension (compare *Richardson v. the United Kingdom* (dec.), no. 26252/08, § 17, 10 April 2012).

14. According to section 37(1) of the Croatian Pension Insurance Act, an old-age pension may be granted when age conditions are fulfilled and after termination of insurance, that is to say after the person ceases to pay compulsory pension insurance contributions. All employees or self-employed persons in Croatia must pay compulsory pension insurance contributions. The insured person's insurance status is terminated by the cessation of the circumstances which gave rise to the acquisition of such status, which in the case of self-employed insured persons means termination of their independent activity and insurance deregistration, including the removal from the relevant register (section 121 of the same Act). Finally, in Croatia it is not possible to remain self-employed as an attorney and to receive a pension.

15. According to Serbian law, persons can be granted an old-age pension and continue to be self-employed even without terminating their pension insurance (section 82a(4) of the Serbian Old-Age Pension and Disability Act).

16. However, such an exemption does not exist under Croatian law and those two different legal systems can be combined only to the extent provided by the Social Insurance Agreement, which has been interpreted as stipulating that for granting rights provided in Croatia, Croatian laws are to be applied (see Article 2(1)2 of the Social Insurance Agreement).

17. In other words, the applicant could be granted part of his pension for the years of service in Croatia only if he fulfilled the requirements under the Croatian Pension Insurance Act, including termination of insurance (see paragraph 14 above), which the Croatian authorities established that he did not satisfy.

18. The applicant maintained that, under Serbian law, he was no longer obliged to pay pension insurance contributions as a retired attorney. However, the Court cannot but note that the applicant failed to specify the legal provision on the basis of which he enjoyed such an exemption, nor was the Court able to identify one.

19. However, even assuming that this was the case, the Court cannot accept the applicant's allegation that he had no means of proving his allegations in this respect before the competent Croatian authorities. As the Government rightly pointed out, he could have requested the competent Serbian authority to submit an updated form 205 to their Croatian counterparts at any point during the administrative proceedings. Alternatively, he could have provided the Croatian authorities with the requisite form showing his deregistration from pension insurance in Serbia, or he could have requested the Serbian authorities to issue him an excerpt from the official register in accordance with section 142(1) of the Serbian Old-Age Pension and Disability Act, which would contain detailed information on the amount of his pension insurance contributions paid over the years. However, the applicant does not appear to have resorted to any of these possibilities and instead stated at the hearing held before the Osijek Administrative Court that he had no further evidence proposals (see paragraph 7 above).

20. In these circumstances, the Court considers that the applicant failed to demonstrate that he fulfilled the conditions for being awarded an old-age pension in Croatia, and therefore the existence of an assertable right under domestic law to the benefit claimed so as to attract the applicability of Article 1 of Protocol No. 1 to the Convention (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 51, ECHR 2005-X).

21. Accordingly, this complaint is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 (a) and must be rejected in accordance with Article 35 § 4.

B. Alleged violation of Article 1 of Protocol No. 12 to the Convention

22. General principles concerning alleged discrimination in pension-related cases have recently been summarised in *Milivojević v. Serbia* ((dec.), no. 11944/16, §§26-30, 5 July 2022).

23. In particular, in order for an issue to arise under Article 1 of Protocol No. 12, there must be a difference in treatment of persons in analogous, or relevantly similar, situations, based on an identifiable characteristic, or "status". The elements which characterise different situations and determine the comparability of the two groups that are being compared must be assessed in the light of the subject matter and purpose of the measure which makes the distinction in question (see *Fábián v. Hungary* [GC], no. 78117/13, § 121, 5 September 2017, and *Špoljar and Dječji vrtić Pčelice v. Croatia* (dec.), no. 68320/13, § 39, 22 September 2020).

24. The applicant sought to compare himself with persons, and specifically Croatian nationals, who retired under Serbian law and were able to continue being self-employed. Such persons would then be allowed to pursue their professional activity while continuing to receive their pensions.

25. However, in the Court's view, the applicant cannot compare himself to a person who retired under the laws of another country, irrespective of that person's nationality. It has already ascertained that Serbian law on this very point is different from the Croatian law (see paragraph 16 above). The consequent difference in rights of a pensioner under the laws of another country cannot be construed as any sort of difference in treatment by the Croatian authorities. To the contrary, the applicant was treated as any other pensioner in Croatia, who would also not be able to continue receiving their pension while being a self-employed attorney (see paragraph 14 above).

26. In sum, the Court finds that the applicant has not succeeded in showing that he was in a relevantly similar or analogous position to the group he sought to compare himself with, or that he was treated differently from a group that he had been in an analogous position with.

27. It follows that this complaint is manifestly ill-founded within the meaning of Article 35 § 3 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 1 December 2022.

Liv Tigerstedt Deputy Registrar	Péter Paczolay President