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

SECOND SECTION

DECISION

Application no. 21371/22
Iva PAVUŠEK RAKARIĆ
against Croatia

The European Court of Human Rights (Second Section), sitting on 4 February 2025 as a Committee composed of:

Jovan Ilievski*, President*,
Péter Paczolay,
Davor Derenčinović*, judges*,
and Dorothee von Arnim, *Deputy Section Registrar,*

Having regard to:

the application (no. 21371/22) 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 23 April 2022 by a Croatian national, Ms Iva Pavušek Rakarić ("the applicant"), who was born in 1981, lives in Sisak and was represented by Mr D. Crnković, a lawyer practising in Sisak;

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

the decision to give priority to the application (Rule 41 of the Rules of Court);

the parties' observations;

Having deliberated, decides as follows:

SUBJECT MATTER OF THE CASE

1. The application concerns proceedings in which the applicant's father, S.P., was partly deprived of his legal capacity.

2. In 2009 S.P. suffered a stroke.

3. In April 2018 the Sisak Social Welfare Centre ("the SWC") initiated proceedings for the assessment of S.P.'s legal capacity at the initiative of M.P., the applicant's brother and S.P.'s son. The latter considered that his father was no longer capable of looking after his needs or protecting his

rights, which, in his view, had been jeopardised due to the applicant's disposal of his property.

4. The SWC social worker and psychologist visited S.P. in the nursing home where he had been placed after his stroke. The SWC also inspected S.P.'s medical and property documents, and interviewed his family members, the applicant and her brother. The SWC expert team concluded that court proceedings to have S.P. partly incapacitated should be instituted in order to adequately protect his rights and interests. It also appointed him a guardian *ad litem*, a lawyer employed with the Zagreb Centre for Guardianship.

5. On 4 July 2018 the SWC lodged a request with the Sisak Municipal Court for a partial deprivation of S.P.'s legal capacity.

6. On 23 July 2018 S.P.'s guardian *ad litem* filed a submission in which she agreed with the SWC's request to take evidence. She also visited S.P. in the nursing home and spoke with him there. Thereafter she agreed with the SWC's request for partial incapacitation submitting that S.P. was unable to take care of his rights and interests. Subsequently, the guardian *ad litem* proposed that S.P. be heard in court, and attended and actively participated in two court hearings at which medical experts and the intervenors were heard. She excused her absence from two further court hearings and did not attend the final hearing for the announcement of the judgment, or lodge an appeal against the first instance decision.

7. During the proceedings, the court obtained two medical expert opinions prepared by a psychiatrist and a neuropsychiatrist, which concluded that S.P. had speech difficulties, neurological and severe mental impairment as well as permanently damaged cognitive abilities resulting from the stroke. Due to his physical and mental condition, he had been unable to independently look after himself or his rights, make decisions or understand the relevance of the court proceedings.

8. The applicant and M.P. both intervened in the proceedings and gave statements. The applicant stated that she had transferred certain amounts of S.P.'s money to her account without explaining why.

9. S.P. was also heard in court in the presence of a neuropsychiatrist. However, in light of his limited communication and mental abilities, the court could not determine his true will regarding his incapacitation.

10. The court further refused to appoint a logopaedist trained in exchanging with persons with disabilities, as proposed by the applicant, to assist in the court's communication with S.P. on the matter. It explained that such an expert was not necessary because S.P. did not only have speech difficulties but also suffered from a number of neurological deficits, as concluded by the relevant experts.

11. On 21 February 2020 the Sisak Municipal Court partly deprived S.P. of his legal capacity, preventing him from making decisions concerning his health and medical treatment, choosing his place of residence or accommodation, undertaking actions before authorities, concluding

agreements or disposing of his property. In its reasoning the court stated that S.P. suffered from a number of cognitive and motoric health problems, that he was unable to read, write, count or efficiently communicate with others or understand the meaning of the proceedings.

12. The applicant's appeal against the first-instance decision was dismissed by the Split County Court on 25 May 2020, and her subsequent constitutional complaint was dismissed by the Constitutional Court on 21 December 2021.

13. The applicant complained, under Article 6 § 1 of the Convention, that her father had not enjoyed equality of arms, in particular in that the court had refused to call a logopaedist trained in exchanging with persons with disabilities in order to facilitate communication with him. She also complained, under Article 8 of the Convention, that her father had not been properly represented by the guardian *ad litem*, who had failed to attend three court hearings and had not represented his interests as a disabled person. Finally, the applicant complained under Article 14 of the Convention that her father had been discriminated against in the proceedings on account of his inability to speak.

THE COURT'S ASSESSMENT

14. Even though the Government did not raise any objection concerning the applicant's victim status or standing to act on her father's behalf, that issue is a matter which goes to the Court's jurisdiction and which the Court must examine of its own motion (compare *Buzadji v. the Republic of Moldova* [GC], no. 23755/07, § 70, ECHR 2016 (extracts)).

15. The Court reiterates that in order to be able to lodge a petition in pursuance of Article 34, a person must be able to claim "to be the victim of a violation ... of the rights set forth in the Convention ...". In order to claim to be a victim of a violation, a person must be directly affected by the impugned measure. The Convention institutions have made an exception to this principle and have accepted that a third party has, in exceptional circumstances, standing to act in the name and on behalf of a vulnerable person notably if there is a the risk that the direct victim will be deprived of effective protection of his or her rights, and in the absence of a conflict of interests between the victim and the applicant (see *Lambert and Others v. France* [GC], no. 46043/14, §§ 89-95 and 102, ECHR 2015 (extracts)).

16. In the present case, the applicant alleged a violation of her father's rights in proceedings which led to her father being partially deprived of legal capacity and in which the latter had been represented by a guardian *ad litem*. Allegations of a conflict of interests between the applicant and her father have been raised before the domestic authorities (see paragraphs 3 and 8 above). However, the Court does not consider it necessary to take a final stance on the applicant's standing to submit an application on her father's behalf or

victim status, as the present application is in any event inadmissible for the following reasons.

17. In view of the facts of the case and the Court's relevant case-law (see, for example, *Ivinović v. Croatia*, no. 13006/13, § 50, 18 September 2014), the Court considers that the present case falls to be examined under Article 8 of the Convention alone.

18. The general principles related to the compliance with Article 8 of proceedings for deprivation of legal capacity have been summarised in *Ivinović* (cited above, §§ 35-37). In particular, depriving a person of his or her legal capacity, even in part, interferes with the right to respect for private life of the person concerned and is a very serious measure which should be reserved for exceptional circumstances. For such a measure to be necessary in a democratic society, the Court requires the courts dealing with such cases to carefully examine all relevant factors to ensure that the requirements of Article 8 of the Convention, notably those relating to the fairness of the decision-making process, have been complied with (ibid., §§ 35-36 and 38).

19. As regards the relevance and sufficiency of the reasons adduced for partly depriving the applicant's father of his legal capacity, the domestic courts mainly relied on S.P.'s serious health problems following his stroke and, in that respect, the findings of two experts who, having personally examined S.P. and his medical history, unanimously concluded that, apart from communication difficulties, S.P. suffered from severe and permanent neurological deficits (see paragraph 7 above).

20. Moreover, it appears from the case file that the SWC informed S.P. in advance of its intention to institute the proceedings to partly deprive him of his legal capacity, visited him in the nursing home and gave him an opportunity to comment (see paragraph 4 above, and contrast *M.S. v. Croatia*, no. 36337/10, §§ 102-03, 25 April 2013).

21. It further transpires that the applicant had a power of attorney to dispose of S.P.'s income and that during the domestic proceedings she admitted that she had transferred certain amounts of money to her account without explaining the reasons for doing so (see paragraph 8 above).

22. Given S.P.'s diagnosis and his personal circumstances as described above, the Court is satisfied that the national court's decision carefully balanced all relevant factors in order to assess the proportionality of the measure to be taken and provided adequate reasons for its conclusions. It also considers that the domestic court gave relevant and sufficient reasons why it had not been necessary to appoint a logopaedist trained in exchanging with persons with disabilities in the circumstances (see paragraph 10 above).

23. Turning to the decision-making process, the Court notes that S.P. was represented by a guardian *ad litem*. Unlike in previous cases against Croatia, the applicant's father's guardian was not merely an employee of the SWC which had instituted proceedings against him, nor did she remain completely passive in the proceedings (contrast *Ivinović*, cited above, § 45, and *M.S.*

v. Croatia, cited above, § 104). While it is regrettable that the guardian did not attend two court hearings at which the court took evidence, the Court notes that she visited S.P. in his nursing home, attended a number of other court hearings at which she put questions to witnesses and filed court submissions including those proposing the taking of evidence (see paragraph 6 above; also compare, for factual similarities, *Tepavac v. Croatia* (dec.) [Committee], no. 14028/20, § 24, 13 December 2022). It thus cannot be said that she failed to fulfil her legal role of effectively protecting the applicant's father's rights and interests in the proceedings.

24. The Court further notes that the applicant intervened in the proceedings on her father's side with her own lawyer, who also lodged an appeal, a constitutional complaint and, ultimately, an application with the Court.

25. In view of the foregoing, the Court considers that, in partially depriving the applicant's father of his legal capacity, the national courts followed a procedure which was in conformity with the guarantees under Article 8 of the Convention.

26. It follows that the present application is inadmissible under Article 35 § 3 (a) of the Convention for being manifestly ill-founded and that it must therefore be rejected pursuant to Article 35 § 4 thereof.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 6 March 2025.

Dorothee von Arnim Deputy Registrar	Jovan Ilievski President