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

FIRST SECTION

DECISION

Application no. 77664/14
Neda REIĆ
against Croatia

The European Court of Human Rights (First Section), sitting on 12 September 2017 as a Committee composed of:

Kristina Pardalos, *President,*
Ksenija Turković,
Pauliine Koskelo, *judges,*
and Renata Degener, *Deputy Section Registrar,*

Having regard to the above application lodged on 4 December 2014,

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, Ms Neda Reić, is a Croatian national who was born in 1956 and lives in Split. She was represented before the Court by Ms M. Brčić, a lawyer practising in Split.

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. First set of administrative proceedings concerning the applicant's entitlement to a disability pension

4. On 5 November 2007 the applicant's general practitioner referred her for a medical evaluation to establish her level of disability for the purposes of granting her a disability pension.

5. On 19 December 2007 an expert at the Split Office of the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje, Područna služba Split* - hereinafter "the Split Office") examined the applicant and reported that she had a "professional inability to work" (*profesionalna nesposobnost za rad*). That was confirmed on 9 January 2008 by the Pension Fund's Commission for the Review of Disability Reports (*Stručno povjerenstvo za reviziju nalaza i mišljenja o invalidnosti*) on the basis of the applicant's medical file.

6. On 17 March 2008 the Split Office, relying on the findings of the experts, granted the applicant a disability pension, starting from 19 December 2007. The applicant challenged the decision before the Central Office of the Fund (*Hrvatski zavod za mirovinsko osiguranje, Središnja služba* – hereinafter "the Central Office"), alleging that her condition amounted to a "general inability to work" (*opća nesposobnost za rad*). At the request of the Central Office, one of its experts on 21 August 2008 examined the applicant's medical file and confirmed the initial finding of a professional rather than a general inability to work.

7. On 25 August 2008 the Central Office, relying on the expert reports, dismissed the applicant's appeal and upheld the decision of the Split Office. The applicant did not pursue any further remedies against that decision.

2. Administrative proceedings concerning the applicant's entitlement to an assistance and attendance allowance

8. On 27 August 2008 the applicant sought an assistance and attendance allowance (*doplatak za pomoć i njegu*) from the Split Social Welfare Centre (*Centar za socijalnu skrb Split* – hereinafter "the Centre").

9. At the Centre's request, an in-house expert commission examined the applicant on 26 January 2009 and concluded that she had a "total inability to work" (*potpuna nesposobnost za rad*) under the criteria established in section 43 of the Rules on the composition and work of expert bodies in the process of exercising social welfare and other rights under special regulations (*Pravilnik o sastavu i načinu rada tijela vještačenja u postupku ostvarivanja prava iz socijalne skrbi i drugih prava po posebnim propisima* – "the Rules").

10. On 11 March 2009 the Centre, relying on the expert commission's report, granted the applicant an assistance and attendance allowance, starting from 27 August 2008. The applicant did not challenge that decision.

3. Second set of administrative proceedings concerning the applicant's entitlement to a disability pension

11. On 6 May 2009, at the applicant's request, her general practitioner referred her for another medical evaluation in order to establish that she had a "general inability to work" for the purposes of obtaining a survivor's pension after the death of her mother (*obiteljska mirovina*).

12. On 20 October 2009 an expert at the Split Office examined the applicant and concluded that she had a general inability to work, counting from that date. The Commission for the Review of Disability Reports accepted the expert's report on 28 October 2009.

13. On 10 November 2009 the Split Office, relying on the expert reports, granted the applicant a higher disability pension than the one granted by the decision of 17 March 2008, starting from 20 October 2009. The applicant took no further action as regards that decision.

4. Administrative proceedings concerning the applicant's entitlement to a survivor's pension

14. On 12 May 2009 the applicant sought a survivor's pension from the Fund following the death of her mother. She relied on section 64(3) of the Pension Insurance Act (see paragraph 21 below).

15. On 26 February 2010 the Split Office rejected the applicant's application. It found that the applicant's mother had died on 1 March 2009 and that she had been granted a disability pension on 10 November 2009, backdated to 20 October 2009, owing to a general inability to work. It therefore held that the applicant was not entitled to a survivor's pension.

16. The applicant challenged the decision before the Central Office. She argued that her condition for the purposes of a survivor's pension had been established before her mother's death in the proceedings for the assistance and attendance allowance. In particular, the Centre's decision of 11 March 2009 had found that her total inability to work had arisen as of 27 August 2008.

17. On 31 August 2010 the Central Office dismissed the applicant's appeal and upheld the Split Office's decision.

18. The applicant reiterated her arguments in an administrative action and contended that a survivor's pension was more favourable than the disability pension she had been granted.

19. On 25 April 2013 the High Administrative Court dismissed the applicant's administrative action. It found that her general inability to work for the purposes of the Pension Insurance Act had come about on 20 October 2009, that is after her mother's death. It found that it was irrelevant that she had been granted the assistance and attendance allowance before her mother's death.

20. On 28 May 2014 the Constitutional Court dismissed a constitutional complaint by the applicant. The decision was served on her on 5 June 2014.

B. Relevant domestic law

21. The relevant provisions of the Pension Insurance Act (*Zakon o mirovinskom osiguranju*, Official Gazette no. 102/98, with subsequent amendments), which was in force between 1 January 1999 and 31 December 2013, read as follows:

Section 34

"(1) Disability exists where, owing to changes in health that cannot be treated, an insured person's ability to work is permanently reduced by more than half in comparison to a physically and mentally healthy insured person of the same or similar education and capability (a professional inability to work). ...

(2) Disability also exists where an insured person, owing to changes in his or her health condition which cannot be treated, suffers a permanent loss of the ability to work (a general inability to work)."

Section 64

"(3) A child for whom a general inability to work came about ... before the death of an insured person or pension beneficiary shall be entitled to receive a survivor's pension in the event that the deceased insured person or pension beneficiary supported the child until that person's death."

22. The relevant provision of the Rules on the composition and work of expert bodies in the process of exercising social welfare rights and other rights under special regulations (*Pravilnik o sastavu i načinu rada tijela vještačenja u postupku ostvarivanja prava iz socijalne skrbi i drugih prava po posebnim propisima*, Official Gazette no. 64/2002, with subsequent amendments), which was in force between 12 June 2002 and 8 July 2014, reads as follows:

Section 43

"A total inability to work exists when owing to the type, degree and severity of a physical or mental disability, or the type and severity of a psychological illness, a person is not capable of performing enough work to sustain the basic needs of life."

COMPLAINTS

23. The applicant complained under Article 6 § 1 of the Convention that the decisions of the domestic authorities dismissing her claim for a survivor's pension had been arbitrary and had lacked reasons with respect to the central issue of the case. She also complained, under Article 1 of

Protocol No. 1 to the Convention, that the impugned decisions had violated her right to the peaceful enjoyment of her possessions.

THE LAW

24. The applicant relied on Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 thereto. Those provisions, in so far as relevant, read as follows:

Article 6

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

Article 1 of Protocol No. 1

"1. 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."

A. The parties' arguments

25. The Government submitted that the decisions by the domestic authorities to dismiss the applicant's claim for a survivor's pension had been neither arbitrary nor manifestly unreasonable. Moreover, they had provided sufficient reasons with respect to the central issue of the case. The Government stated that over the years the domestic authorities had conducted several proceedings at the initiative of the applicant in order to assess her health condition and her related social security entitlements. In those proceedings the applicant had undergone various expert examinations which had resulted in her being found to have, on 19 December 2007, a professional inability to work, a total inability to work on 27 August 2008 and a general inability to work on 20 October 2009 (see paragraphs 5, 9, 10 and 12 above). According to the Government, a total inability to work and a general inability to work were two distinct legal concepts (see paragraphs 21 and 22 above).

26. The Government noted further that the second set of proceedings concerning the applicant's disability pension had found that her general inability to work had come about on 20 October 2009. However, the applicant had never appealed against the first-instance decision and had thus never tried to prove that her general inability to work had arisen earlier (see paragraphs 12 and 13 above). Accordingly, the domestic authorities had had no choice but to dismiss her claim in the proceedings complained of, where the date of her general inability to work had been crucial to the

granting of a survivor's pension. Moreover, the domestic authorities had clearly stated in their decisions that the applicant had not been entitled to a survivor's pension since her general inability to work had arisen after her mother's death (see paragraphs 15 and 19 above).

27. The applicant replied that she had satisfied all the criteria to be granted the survivor's pension after the death of her mother. She argued that the fact that her general inability to work had only been established on 20 October 2009 did not mean that her condition had not existed before. In particular, she had been found on 27 August 2008 to have a total inability to work (see paragraphs 9 and 10 above). According to the applicant, there was no difference between a total inability to work and a general inability to work because owing to her impaired health she was in any event unable to work and thus unable to provide for herself. The applicant therefore submitted that the decisions by the domestic authorities to dismiss her claim for a survivor's pension had been arbitrary, lacked reasons and had violated her right to the peaceful enjoyment of her possessions.

B. The Court's assessment

1. As regards Article 6 § 1 of the Convention

28. The Court reiterates that it is primarily for the national authorities, notably the courts, to interpret domestic legislation. The Court's role is confined to ascertaining whether the effects of such an interpretation are compatible with the Convention (see, for example, *Tejedor García v. Spain*, 16 December 1997, § 31, *Reports of Judgments and Decisions* 1997-VIII, and *Pérez de Rada Cavanilles v. Spain*, 28 October 1998, § 43, *Reports* 1998-VIII). Normally, issues such as the weight attached by the national courts to particular evidence or to findings or assessments of issues before them for consideration are not for the Court to review. The Court should not act as a fourth instance and will not therefore question under Article 6 § 1 the judgment of the national courts, unless their findings can be regarded as arbitrary or manifestly unreasonable (see *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 90, ECHR 2016 (extracts)).

29. The Court also reiterates that although Article 6 § 1 obliges the courts to give reasons for their judgments, it cannot be understood as requiring a detailed answer to every argument (see, for example, *Van de Hurk v. the Netherlands*, 19 April 1994, § 61, Series A no. 288, and *Sivova and Koleva v. Bulgaria*, no. 30383/03, § 76, 15 November 2011). The extent to which this duty to give reasons applies may vary according to the nature of the decision and must be determined in the light of the circumstances of the case (see *Ruiz Torija v. Spain*, 9 December 1994, § 29, Series A nos. 303-A).

30. Turning to the present case, the Court notes that the applicant applied to the Fund on 12 May 2009 to obtain a survivor's pension following the death of her mother (see paragraph 14 above). The Court further notes that one of the conditions the applicant had to meet under the Pension Insurance Act in order to obtain such a benefit was that her general inability to work had arisen before her mother's death (see paragraph 21 above). However, the domestic authorities found that that was not the case (see paragraphs 15-20 above). They also found that the fact that she had been granted an assistance and attendance allowance before her mother's death was irrelevant.

31. Contrary to the applicant's arguments, the Court is of the view that there is nothing arbitrary or manifestly unreasonable in the domestic authorities' conclusion. In particular, the Court notes that the applicant's mother died on 1 March 2009 (see paragraph 15 above). It further notes that the experts involved in the second set of administrative proceedings concerning the applicant's entitlement to a disability pension established that her general inability to work had arisen on 20 October 2009 (see paragraph 12 above). That was confirmed by the decision of the Split Office of 10 November 2009 (see paragraph 13 above). The Court notes that the applicant lodged no appeal against that decision. She therefore never tried to argue that her general inability to work had arisen earlier.

32. Consequently, the Court finds no fault with the domestic authorities for finding in the proceedings concerning the survivor's pension, in accordance with the Split Office's decision of 10 November 2009, that the applicant's general inability to work had arisen on 20 October 2009, that is, after her mother's death, and that she was therefore not entitled to such a pension (see paragraphs 15-20 above).

33. The Court further notes that in the first set of administrative proceedings concerning the applicant's entitlement to a disability pension, the Central Office expert examined the applicant's medical file on 21 August 2008 and reported that her condition did not amount to a "general inability to work" (see paragraph 6 above). That was confirmed by the decision of the Central Office of 25 August 2008 (see paragraph 7 above). The Court notes that the applicant lodged no subsequent appeal against that decision. The Court is therefore of the view that in the proceedings complained of (see paragraph 14-20 above), the applicant could not have successfully argued that owing to the fact that she had been found to have a "total inability to work" from 27 August 2008 meant that the condition qualifying her for a survivor's pension had been established before her mother's death.

34. Having regard to the above considerations, the Court finds no appearance of arbitrariness in the decisions of the domestic authorities dismissing the applicant's claim for a survivor's pension. The domestic

authorities provided sufficient reasons for finding that she did not meet the statutory requirements to be granted that pension.

35. It therefore follows that the applicant's complaints under Article 6 § 1 of the Convention are manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. As regards Article 1 of Protocol No. 1

36. The Court reiterates that an applicant can only allege a violation of Article 1 of Protocol No. 1 in so far as the impugned decisions relate to his or her "possessions" within the meaning of that provision. "Possessions" can be either "existing possessions" or assets, including claims, in respect of which the applicant can argue that he or she has at least a "legitimate expectation" of obtaining effective enjoyment of a property right (see, for example, *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX).

37. The Court reiterates that Article 1 of Protocol No. 1 does not create a right to acquire property. Additionally, it places no restriction on a Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, §54, ECHR 2005- X).

38. With a view to establishing whether the interests of the applicant in the present case fell within the ambit of Article 1 of Protocol No. 1, the Court notes that according to the Pension Insurance Act one of the conditions she had to meet in order to obtain a survivor's pension was that her general inability to work had arisen before her mother's death (see paragraph 21 above). The Court notes that the domestic authorities found that such a situation only came about after her mother's death and therefore dismissed her claim. Since the domestic authorities' conclusions do not appear to be arbitrary or manifestly unreasonable (see paragraphs 30-35 above), it cannot be said that the applicant's claim for a survivor's pension amounted to "possessions" attracting the protection of Article 1 of Protocol No. 1.

39. 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.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 5 October 2017.

Renata Degener Deputy Registrar	Kristina Pardalos President