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

FIRST SECTION

DECISION

Application no. 26327/16
Daria ROIĆ ERCEG
against Croatia

The European Court of Human Rights (First Section), sitting on 3 May 2022 as a Committee composed of:

Erik Wennerström, *President,*
Lorraine Schembri Orland,
Ioannis Ktistakis, *judges,*

and Liv Tigerstedt, *Deputy Section Registrar,*

Having regard to:

the application (no. 26327/16) against Croatia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") on 3 May 2016 by a Croatian national, Ms Daria Roić Erceg, who was born in 1968 and lives in Split ("the applicant") who was represented by Ms A. Lovrinčević Šelamov, a lawyer practising in Split;

the decision to give notice of the complaint under Article 6 § 1 of the Convention concerning the principle of equality of arms 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 administrative proceedings in which the applicant, a civil servant, had been reassigned to a lower post, and in which the relevant administrative court failed to serve her with her employer's internal regulations on the basis of which the decision to reassign her had been adopted.

2. In the period between 18 December 2007 and 31 December 2011 the applicant was employed as a stenographer at the Supetar Municipal Court.

On 29 December 2011 she was appointed to a higher post of manager of the court's mail and administration office at the Split Administrative Court, with effect from 1 January 2012.

3. On 10 December 2013 the new Internal Organisation Rules of the Split Administrative Court (hereafter: internal regulations) entered into force regulating the conditions for the appointment to certain posts. These new internal regulations prescribed the following requirements for the position of a manager of the court's mail and administration office (which were the same as those in force at the time of the applicant's appointment to a higher post):

- bachelor's degree in public administration or in law,
- five years of professional experience, and
- passed State exam.

4. By a decision of 3 February 2014, the President of the Split Administrative Court ordered the applicant's transfer and reassignment to a lower post of an administrative officer. He held that since the post of a manager of the court's mail and administration office required a higher degree of education, the period of the applicant's employment as a stenographer at the Supetar Municipal Court could not be taken into account as relevant professional experience because that post only required a high school diploma. He therefore concluded that the applicant had not met the condition concerning the years of service for being appointed to a higher post, both under the internal regulations in force at the time of her appointment and under the new internal regulations. The applicant appealed against that decision arguing that her transfer to a lower post had been unlawful.

5. On 2 September 2014 the Civil Service Board dismissed the applicant's appeal against the first-instance decision confirming that the applicant's employment at the Supetar Municipal Court could not be considered as relevant professional experience for the managerial post at issue.

6. On 10 October 2014 the applicant brought an action for judicial review before the Split Administrative Court. She argued that she had only been served with the internal regulations adopted in August 2013 and had not been aware of any subsequent amendments thereof. However, if the internal regulations had indeed been amended, the applicant proposed that the new internal regulations be obtained and consulted in the course of the proceedings. She further contended that the internal regulations from August 2013 required four years of professional experience for the post of manager of the court's mail and administration office – a condition that she had met given that at the time of their adoption she had been employed in the civil service for five years and six months.

7. On 12 March 2015 the Rijeka Administrative Court, to which the case had been transferred in the meantime, dismissed the applicant's action. It established that the internal regulations from August 2013 relied on by the applicant had never been approved by the relevant ministry and thus the internal regulations applicable in her case were those adopted in December

2013. Nevertheless, it held that the applicant would not have met the conditions for the appointment to the higher post at issue even if the internal regulations from August 2013 were to be applied given that the period of her employment as a stenographer could not in any event be considered as relevant professional experience for the reasons already advanced in the impugned decisions.

8. The applicant appealed against the first-instance judgment arguing that she had not been given an opportunity to comment on the internal regulations from December 2013, as they had not been forwarded to her.

9. On 9 September 2015 the High Administrative Court dismissed the applicant's appeal against the first-instance judgment endorsing the reasons given therein.

10. On 14 December 2015 the applicant lodged a constitutional complaint against the High Administrative Court's judgment. She argued that by failing to serve her with the internal regulations from December 2013 the administrative courts had denied her the opportunity to effectively participate in the proceedings.

11. On 17 February 2016 the Constitutional Court declared inadmissible the applicant's constitutional complaint finding that the case did not raise any constitutional issue.

12. Before the Court the applicant complained, relying on Article 6 § 1 of the Convention, that the proceedings before administrative courts had not been adversarial because she had not been served with the internal regulations on the basis of which the administrative courts dismissed her action.

THE COURT'S ASSESSMENT

13. The Government argued that the applicant had failed to properly exhaust domestic remedies because in her appeal against the decision of 3 February 2014 she had not asked that the internal regulations of December 2013 be forwarded to her (see paragraph 4 above).

14. The Court does not find it necessary to examine the Government's objection since the application is in any event inadmissible for the following reasons.

15. The general principles concerning the right to adversarial proceedings have been summarised in *Juričić v. Croatia*, no. 58222/09, § 73, 26 July 2011.

16. The Court notes at the outset that the decision to reassign the applicant to a lower post of administrative officer was based on the internal regulations from December 2013 which had never been forwarded to her in the course of the proceedings (see paragraphs 3-5 and 7-8 above). In particular, the administrative authorities had adopted the view, subsequently also confirmed by the administrative courts, that the applicant had not met the conditions prescribed by the disputed rules for the appointment to the higher post of a

manager of the court's mail and administration office given that she had not had sufficient professional experience on posts requiring the same level of education as the managerial post at issue (see paragraphs 4 and 5 above).

17. The Court cannot but note that the relevant provision of the said regulations determining the conditions for the appointment to the post of a manager of the court's mail and administration office had been reproduced in all domestic decisions delivered in the applicant's case and that the domestic authorities interpreted it consistently.

18. In this connection, the Court also notes that the central issue in the applicant's case was purely legal and linked to the interpretation of that specific provision. More specifically, the main question had been whether the period of the applicant's employment at the Supetar Municipal Court could be considered as relevant professional experience for the purpose of her appointment to the post of a manager of the court's mail and administration office.

19. Throughout the proceedings the applicant had had the opportunity to put forward arguments in support of her claim that she indeed met the requirement concerning the years of relevant professional experience for being appointed to the managerial post at issue. The applicant made use of that opportunity by stating that she had been employed in the civil service for more than five years at the time of the adoption of the new internal regulations and the administrative courts addressed that argument (see paragraphs 6, 7 and 9 above).

20. Furthermore, both in the domestic proceedings and before the Court the applicant confined herself to stating that her right to a fair hearing had been violated because she had not been served with the disputed internal regulations. Her complaint remained purely abstract since she did not specify what additional arguments she would have put forward in support of her claim if she had had the full text of the internal regulations at her disposal (see paragraphs 10 and 12 above). She thus failed to demonstrate that she would have brought new and relevant elements of fact or law for the examination of her case or that the outcome of the proceedings would have been different had the internal regulations at issue been forwarded to her (see, *mutatis mutandis*, *Holub v. Czech Republic* (dec.), no. 24880/05, 14 December 2010; *Bratři Zátkove A.S. v. the Czech Republic* (dec.), no. 20862/06, 8 February 2011; *Liga Portuguesa de Futebol Profissional v. Portugal* (dec.), no. 49639/09, § 38, 3 April 2012; *Hanzl and Špadrna v. the Czech Republic* (dec.), no. 30073/06, 15 January 2013; *Ján Sarkocy v. Slovakia* (dec.), no. 36446/17, § 24, 22 September 2020; and *a contrario, 3A.CZ s.r.o. v. the Czech Republic*, no. 21835/06, § 34, 10 February 2011; *BENet Praha, spol. s r.o. v. the Czech Republic*, no. 33908/04, § 135, 24 February 2011; and *Joos v. Switzerland*, no. 43245/07, § 20, 15 November 2012).

21. In the above circumstances and underlining that the relevant parts of the internal regulations had been set out in the domestic decisions (see paragraph 17 above), the Court concludes that the applicant has not suffered a significant disadvantage on account of the administrative courts' failure to serve her with her employer's internal regulations.

22. The Court further observes that in a case raising a similar issue as the present one it held that respect for human rights as defined in the Convention and its Protocols did not require an examination of the application on the merits (see *Bazelyuk v. Ukraine*, (dec.), no. 49275/08, 27 March 2012). The Court sees no reasons to depart from this case-law in the present case.

23. In view of the above findings and having regard to its case-law (see paragraphs 20 and 22 above), the Court finds that the present application is inadmissible under Article 35 § 3 (b) of the Convention because the applicant has not suffered a significant disadvantage, and that it must therefore be rejected pursuant to Article 35 § 4.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 2 June 2022.

Liv Tigerstedt
Deputy Registrar

Erik Wennerström
President