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

FIRST SECTION

DECISION

Application no. 15301/14
Ruža SOLDO
against Croatia

The European Court of Human Rights (First Section), sitting on 12 December 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 14 February 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 Ruža Soldo, is a Croatian national who was born in 1953 and lives in Zagreb. She was represented before the Court by Ms I. Bojić, a lawyer practising in Zagreb.

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. Background to the case

4. The applicant was married to R.S., a war veteran who died in 1991 during the Homeland War. In 1995 she was granted a survivors' pension (*obiteljska mirovina*).

5. On 10 December 2000 she married I.Š. He died on 7 January 2002 while receiving medical treatment in Germany.

2. Civil proceedings for annulment of the marriage between the applicant and I.Š.

6. On 19 November 2002 I.Š.'s relatives instituted civil proceedings in the Zagreb Municipal Civil Court (*Općinski građanski sud u Zagrebu*), seeking annulment of the marriage between the applicant and I.Š.

7. In January 2011 the applicant complained to the Zagreb County Court (*Županijski sud u Zagrebu*) about the length of the proceedings.

8. On 14 November 2011 the court held that they had been excessive and awarded the applicant 5,000 Croatian kunas (HRK) in compensation. The Zagreb Municipal Civil Court was ordered to conclude the proceedings within nine months.

9. The Zagreb Municipal Civil Court failed to comply with that order. On 20 March 2014 it annulled the marriage between the applicant and I.Š. The relevant part of the judgment reads as follows:

> "... following an expert report delivered by a graphologist ... it is undoubtedly established that at the time when the marriage was contracted on 10 December 2000 I.Š. wrote the following words in the marriage register ... 'I don't want this' (*neću ja to*). The official, T.R., however, despite noticing that the bridegroom had written something apart from his signature, obviously primarily acted in accordance with the interests of his long-term acquaintance, Ruža Soldo, who had asked him to solemnise the marriage. In so doing he had, with utter lack of diligence, ignored the obvious facts ... that the bridegroom was over seventy years old, whereas the bride was forty-seven; that the bridegroom arrived accompanied by two women – witnesses to the marriage, who were holding him under his arms; that he was severely ill, slow and unable to communicate without difficulty.
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> ...
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> ... the defendant alleged that the marriage had been concluded at the late I.Š.'s insistence, to which she had agreed, even though she was not in any need, given that she had her own property, children, job, etc. The court does not find it credible that the defendant concluded the marriage at issue out of pure altruism, in order to fulfil the wishes of an old and sick man, who even in his best years did not want to marry and did not have children of his own ... It is neither logical nor convincing that the defendant would have put herself in the position of a "phantom" wife, who none of I.Š.'s family members or friends had ever seen or heard of, who appeared when there was no one around, who telephoned [I.Š.] when no one was listening, who visited him in hospital in Germany when there was no one around, all because [I.Š.] wished [her to] and she respected his wishes.
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> ...

> ... even assuming that I.Š. had indeed wanted to conclude the impugned marriage in his old days and thereby experience something he had not wished to have during his entire life ... an undisputed fact remains – I.Š. obviously changed his mind at the last minute given that at the time when the marriage was contracted on 10 December 2000 ... he added the words 'I don't want this' next to his signature.
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> ...
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> The court therefore deems that in this particular case the requirements for the marriage have not been met ... because the late I.Š. did not give his undisputed consent to the marriage, as explained above. ..."

10. The judgment was upheld by the Zagreb County Court on 14 October 2014.

3. Administrative proceedings concerning the applicant's entitlement to the survivors' pension in respect of R.S.

11. The applicant continued to receive the survivors' pension in respect of her first husband, R.S., until 29 November 2011.

12. On 29 November 2011 the Zagreb Office of the Croatian Pension Fund (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Zagrebu* – hereinafter "the Fund"), found that on 10 December 2000 the applicant had married I.Š. Accordingly, on 9 December 2000, she had lost her entitlement to the survivors' pension in respect of R.S. It also noted that the applicant had failed to report her second marriage, as required by domestic law.

13. The applicant appealed, submitting that proceedings had been ongoing in the Zagreb Municipal Court concerning the status of her marriage to I.Š. She therefore asked that the proceedings concerning her entitlement to the survivors' pension in respect of R.S. be stayed until a final decision was rendered regarding her marriage to I.Š.

14. On 12 March 2012 the Central Office of the Fund dismissed the applicant's appeal.

15. On 27 March 2013 the Zagreb Administrative Court (*Upravni sud u Zagrebu*) dismissed an administrative claim lodged by the applicant. The relevant part of its judgment reads as follows:

> "... Under section 70(1)(1) of the Pension Insurance Act ... a widow or a widower under the age of fifty loses his or her entitlement to a survivors' pension by entering into a marriage ... unless he or she was granted the entitlement owing to his or her inability to work. Under section 92 of that Act a beneficiary ... is obliged to report to the Fund any change in his or her personal or factual circumstances affecting the entitlement ... within fifteen days.
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> In the proceedings at issue it is undisputed that on 10 December 2000 the claimant married I.Š. at the age of forty-seven which, under the cited provision, means that she has lost her entitlement to a survivors' pension. It is also undisputed that the claimant, as a beneficiary ... ought to have reported the [marriage] by 25 December 2000.
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> Taking into account the above, the court is of the view that since the claimant failed to report the change in her personal and factual circumstances within the statutory

> time-limit, she cannot successfully invoke the facts occurring subsequently, which in the present case pertain to establishing the status of her marriage...because those facts would have been irrelevant even if the claimant had complied with her obligation to report the new circumstances within the statutory time-limit.
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> ...
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> Owing to the fact that [the Fund] established that a new marriage was entered into on the basis of a marriage certificate ... and the claimant's age, and given that [the claimant's] remaining objections do not affect the correctness of the disputed decision, the court deems the [disputed] decision lawful. ..."

16. Subsequently, the applicant lodged a constitutional compliant. On 18 September 2013 the Constitutional Court dismissed the applicant's complaint as manifestly ill-founded.

4. Civil proceedings for reimbursement of the survivors' pension against the applicant

17. On 10 May 2012 the Fund instituted civil proceedings against the applicant, seeking reimbursement of the unduly received survivors' pension in respect of R.S. Under the relevant domestic law, the Fund was only allowed to seek reimbursement of the pension paid out during the last three years. Accordingly, it sought that the applicant reimburses the amount of HRK 246,931.43.

18. On 24 March 2015, following the final judgment annulling the applicant's marriage to I.Š., the Fund waived all financial claims against her.

5. Administrative proceedings for issuance of certificates from the public register

19. Meanwhile, the applicant requested certificates from the Register of Births and Marriages (hereinafter "the public register") in order to support her claim to the survivors' pension after I.Š.'s death.

20. Her requests were first dismissed by the Vukovarsko-Srijemska County State Administration Office (*Ured državne uprave u Vukovarsko-srijemskoj županiji*) on 19 April 2012. She successfully challenged the decisions and, on 5 June 2012, the Ministry of Administration (*Ministarstvo uprave Republike Hrvatske* – hereinafter "the Ministry") ordered that her requests be examined.

21. On 27 June 2012 the Vukovarsko-Srijemska County State Administration Office stayed the proceedings concerning the applicant's requests for certificates from the public register pending the outcome of the civil proceedings for annulment of her marriage to I.Š.

22. The applicant appealed against the decision staying the proceedings concerning her request for a marriage certificate. She did not appeal against the decision concerning her request for a birth certificate.

23. On 7 September 2012 the Ministry dismissed her appeal as unfounded. The decision was served on the applicant on 25 September 2012. She did not pursue further remedies against it.

6. Administrative proceedings concerning the survivors' pensions in respect of I.Š. and R.S.

24. In April 2012 and January 2013 the applicant applied to the Fund, seeking to obtain the survivors' pension in respect of either her second husband, I.Š., or her first husband, R.S.

25. On 24 January 2013 the Zagreb Office of the Fund stayed the proceedings concerning the survivors' pension in respect of I.Š. pending the outcome of the civil proceedings in which the status of her marriage to I.Š. would be determined.

26. On 22 July 2013 the Central Office of the Fund dismissed an appeal by the applicant. The relevant part of the decision reads as follows:

> "Since the requirement for granting a survivors' pension is [the existence of] a marriage between the appellant and I.Š. ... and given that the proceedings concerning the status of [that] marriage are currently pending before the Zagreb Municipal Civil Court, the status of the marriage has correctly been assessed as a preliminary question and the proceedings concerning awarding [the appellant] the survivors' pension in respect of I.Š. have rightfully been stayed. In particular, if a preliminary question pertains to the status of a marriage, the official conducting the administrative proceedings is absolutely prohibited from discussing and reaching a conclusion on the preliminary question and from deciding the case on the basis of that conclusion."

27. The decision was served on the applicant on 7 August 2013. She did not pursue further remedies against it.

28. On 2 April 2013 the Zagreb Office of the Fund dismissed the applicant's claim for the survivors' pension in respect of R.S.

29. On 23 July 2013 the Central Office of the Fund dismissed an appeal by the applicant on the grounds that by remarrying, she had lost her right to the survivors' pension in respect of late R.S. She did not pursue further remedies against the decision.

7. Reopening of the proceedings concerning the applicant's entitlement to the survivors' pension in respect of R.S.

30. On 24 December 2014, following the final judgment annulling her marriage to I.Š., the applicant asked that the proceedings concerning her entitlement to the survivors' pension in respect of R.S. be reopened.

31. On 3 March 2015 the Zagreb Office of the Fund reopened the proceedings, reversed its decision of 29 November 2011 terminating her entitlement to the survivors' pension in respect of R.S., and ordered that the payment of that pension as established before that date be reinstated. The decision became final on 8 April 2015.

8. Criminal proceedings against the applicant

32. Meanwhile, I.Š.'s relatives instituted private criminal proceedings in the Županja Municipal Court (*Općinski sud u Županji*) against the applicant, a public register official and two other individuals on charges of abuse of power and authority and forgery.

33. On 26 November 2009 it acquitted the applicant and the other accused. The decision was upheld on appeal on 25 February 2010.

34. On 22 July 2014 the Zagreb County State Attorney's Office (*Općinsko državno odvjetništvo u Zagrebu*) indicted the applicant for fraud for failing to inform the Fund that she had remarried and continuing to receive the survivors' pension in respect of her first husband even after she had remarried. She was also charged with forgery for submitting a falsified international death certificate of I.Š. when seeking to have his death entered into the public register.

35. On 8 September 2015 the Zagreb Municipal Criminal Court (*Općinski kazneni sud u Zagrebu*) discontinued the criminal proceedings for fraud against the applicant. The criminal proceedings concerning forgery are still pending.

B. Relevant domestic law

36. The relevant provisions of the Pension Insurance Act (*Zakon o mirovinskom osiguranju,* Official Gazette nos. 102/1998, 71/1999, 127/2000, 59/2001, 109/2001, 147/2002, 117/2003, 30/2004, 177/2004, 92/2005, 43/20007, 79/2007, 35/2008, 94/2009, 40/2010, 121/2010, 139/2010, 61/2011, 114/2001 and 76/2012), as in force at the material time, provided as follows:

Section 70

"(1) By entering into a marriage or an extramarital relationship [the following persons] shall lose the entitlement to a survivors' pension:

1. A widow or a widower under the age of fifty, unless he or she was awarded the entitlement owing to his or her general inability to work;

..."

Section 92

"A beneficiary of the entitlement...is obliged to report to the Fund any change in his or her personal or factual circumstances affecting the entitlement ... within fifteen days."

COMPLAINTS

37. The applicant complained that owing to the lengthy civil proceedings for annulment of her marriage to I.Š. which the relatives of I.Š. had brought against her in 2002, she had been unable to obtain the necessary certificates from the public register attesting to her status as I.Š.'s widow. This had consequently prevented her from obtaining a pension as his widow. At the same time, she had been unable to obtain the pension related to the death of her first husband in 1991 because the pension authorities considered that she had lost her entitlement to it by marrying I.Š.

THE LAW

38. The applicant alleged a violation of her right to respect for her private and family life as set out in Article 8 of the Convention, which reads:

> "1. Everyone has the right to respect for his private and family life, his home and his correspondence.
>
> 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

A. The parties' arguments

1. The Government

39. The Government contended that the applicant had abused her right of individual application because in her application to the Court she had implied that she had been left without a pension since December 2000, which had not been the case.

40. They further submitted that she had failed to exhaust the domestic remedies available because she had not lodged administrative claims against the impugned decisions of the administrative authorities staying the proceedings, and thereby had not afforded the Administrative Court an opportunity to decide the matter differently.

41. The Government further argued that the applicant had lodged her application with the Court outside the six-month time-limit. She had lodged her application with the Court on 14 February 2014, despite receiving the decisions on staying the proceedings concerning her request for certificates and those concerning her claim for the survivors' pension in respect of her

second husband on 25 September 2012 and 7 August 2013 respectively (see paragraphs 23 and 27 above).

42. They also argued that the applicant had not suffered any significant disadvantage because she had already been in possession of certificates attesting to her status as I.Š.'s wife. These certificates, being documents of permanent value, could be used for any purpose.

43. As to her entitlement to a survivors' pension, the Government submitted that the applicant had received the survivors' pension in respect of her first husband until 29 November 2011, when it had been established that she had had no right to it as of 9 December 2000 (see paragraph 12 above). However, on 3 March 2015 the decision of 29 November 2011 had been reversed, with the effect that her entitlement to that pension had been restored, as if the decision of 29 November 2011 had never been rendered (see paragraph 31 above).

44. Lastly, the Government argued that any inconvenience the applicant might have experienced in connection with the uncertainty of her status had been entirely her own fault. In particular, she had firstly failed to inform the Fund in a timely manner of her marriage to I.Š., whereas her marriage to I.Š. had been annulled partly because of her own actions.

2. The applicant

45. The applicant replied that she had not falsely presented any facts to the Court. Nor did she conceal anything.

46. She further submitted that both her inability to obtain certificates from the public register attesting to her family status and her inability to obtain a pension had been caused solely by the lengthy civil proceedings concerning the status of her marriage to I.Š. In those proceedings she had used the length-of-proceedings remedy, albeit unsuccessfully, as they had commenced in 2002 and had only ended in October 2014, without there being any justified reason for their excessive length. For those reasons, even if she had lodged administrative claims with the Administrative Court, they would have had no prospect of success as the status of her marriage to I.Š. had been a preliminary question both in the proceedings concerning her request for certificates and in those concerning her pension claim.

47. The applicant also submitted that the time-limit for lodging her application with the Court should be calculated in connection with the length-of-proceedings remedy which she had used in the civil proceedings concerning the status of her marriage to I.Š. In particular, she had lodged her application with the Court after the Zagreb Municipal Civil Court had failed to comply with the Zagreb County Court's order of 14 November 2011 to conclude the proceedings within nine months (see paragraph 9 above).

48. She argued that her inability to obtain certificates from the public register and to obtain a pension for a considerable time was only a

consequence of the uncertainty during the lengthy civil proceedings of the status of her marriage to I.Š. According to her, the excessive length of the impugned civil proceedings had in itself violated her rights under Article 8 of the Convention.

49. The applicant also argued that it was not true that she had not suffered any significant disadvantage by the fact that she had been unable to obtain certificates from the public register dated more recently. This was because all institutions in the Republic of Croatia, as a rule, for any purpose for which it was necessary to produce certificates from the public register, required them to be not more than six months old. Lastly, she pointed out that she had lived for a number of years without receiving a pension, all owing to the lengthy civil proceedings concerning the status of her marriage to I.Š.

B. The Court's assessment

50. The Court does not have to address all the objectives raised by the Government because the application is in any event inadmissible for the following reasons.

51. The Court reiterates that although the object of Article 8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private or family life. In determining whether or not such a positive obligation exists, the Court will have regard to the fair balance that has to be struck between the general interest of the community and the competing interests of the individual, or individuals, concerned (see *Gaskin v. the United Kingdom*, 7 July 1989, § 42, Series A no. 160, and *McGinley and Egan v. the United Kingdom*, 9 June 1998, § 98, *Reports of Judgments and Decisions* 1998 III).

52. The Court notes that the central tenet of the applicant's complaints is that owing to the excessive length of the civil proceedings for annulment of her marriage to I.Š. she lived for a number of years without receiving any pension.

53. The case therefore raises the issue whether or not the respondent State has failed to comply with its duty to ensure that the proceedings for annulment of marriage do not unnecessarily hinder other aspects of the applicant's private life, including her standard of life and means of subsistence.

54. In this connection, the Court firstly notes that in 1995 the applicant was granted the survivors' pension in respect of her first husband, R.S. (see paragraph 4 above). She continued to receive it until 29 November 2011, even though she had had no right to from 9 December 2000 on account of her marriage to I.Š. (see paragraph 11 above). The Court notes that the sole

reason the applicant continued to receive it was because she had failed to report her marriage to I.Š. to the domestic authorities within fifteen days, as required by domestic law (see paragraph 12 above).

55. The Court further notes that although the domestic authorities found that the applicant had had no right to the survivors' pension in respect of R.S. from 9 December 2000 (see paragraph 12 above), on 3 March 2015 that decision was reversed, with the effect that her entitlement to it was restored as if the decision of 29 November 2011 had never been rendered (see paragraph 31 above).

56. The Court is mindful of the fact that there was a period during which the applicant was not receiving a pension, in particular, from 29 November 2011 to 3 March 2015. However, on 3 March 2015 the payment of the survivors' pension in respect of R.S. was reinstated and applicant was compensated for the period during which payment was suspended.

57. Accordingly, having regard to the fact that the applicant failed to act in good faith after entering into her second marriage and consequently, at the time unlawfully, continued to receive the survivors' pension in respect of her first husband for almost eleven years, and taking into account that she was compensated for the period during which payment of the survivors' pension was suspended, the Court is of the view that the civil proceedings for annulment of her marriage to I.Š. did not seriously affect the aspects of her private life that are the object of her application. It cannot therefore be said that on account of the State's alleged inaction she had to bear an excessive burden, incompatible with Article 8 of the Convention.

58. It thus follows that the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English and notified in writing on 11 January 2018.

Renata Degener
Deputy Registrar

Kristina Pardalos
President