ECtHR 5 December 2017, application no. 57101/10, Nationality discrimination

Ribać – v – Slovenia, Slovenian case

Summary

Denial of military pension is deemed to be discriminatory based on nationality.

Facts and national proceedings[1]

Mr Ribać is now a Slovenian national, but until 2003, was a citizen of Serbia within the Socialist Federal Republic of Yugoslavia ('SFRY'). He was born in 1942 and has lived in Slovenia since 1964. In 1969, he married a Slovenian woman, with whom he had two children. Since 1981, he was a permanent resident of Slovenia. Mr Ribać was a non-commissioned officer in active military service in the Yuguslav People's Army ('YPA'), the armed forces of the SFRY, until his retirement on 30 September 1991. The YPA had its own pension fund ('YPA Fund').

Between 1991 and 1992, the SFRY broke up. Slovenia declared its independence on 25 June 1991. In 1992, the Slovenian government issued a temporary Ordinance on the payment of advances on military pensions of former YPA military personnel residing in Slovenia (the 'Ordinance'). In 1998, Slovenia adopted an Act (the '1998 Act') which regulated YPA military pensions, in most cases allowing for pensions to be paid only to Slovenian nationals.

Under the Ordinance, Mr Ribać had been entitled to an advance on his military pension. In order to become eligible, he had stopped his payments from the YPA Fund in Belgrade, as he had encountered political and legal difficulties collecting them – the only two payments he received, had been collected personally (in Belgrade). Once the 1998 Act came into force, Mr Ribać was no longer entitled to any pension payments as he was not a Slovenian citizen. It was only in 2003 that he became a Slovenian citizen and hence became entitled to pension payments. Before 2003, his applications (since 1991) to become a Slovenian citizen had been dismissed (including on appeal).

In 2004, a Succession Agreement between Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (succeeded by Serbia), the former Yugoslav Republic of Macedonia and Slovenia came into force. Following this agreement, each successor State assumed responsibility for and regularly paid pensions to its citizens irrespective of their current residence, if those pensions were funded from the federal budget or other federal resources.

Mr Ribać claimed damages for the missed payments between 1998 and 2003, as he felt that he had been discriminated on based on his nationality (only Slovenian nationals were paid). The Slovenian courts dismissed his claim, after which Mr Ribać brought his claim to the ECtHR. He argued that Slovenia had discriminated against him based on Article 14 of the Convention (Non-discrimination) in conjunction with Article 1 of Protocol No. 1 (enjoyment of property).

ECtHR's Findings

Having declared Mr Ribać's claim admissible, the ECtHR held that Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 applied to this case. Article 14 of the Convention has no independent existence, but in this case, falls within the ambit of Article 1 of Protocol No 1. This also is the case for welfare benefits, once a Contracting State has legislation on them. Article 14 applied to the case, as nationality was in fact the only ground for refusal of the pension. The ECtHR also found that this was evident from the fact that Mr Ribać became entitled once he obtained the Slovenian nationality.

For the purposes of Article 14, a difference of treatment is discriminatory if it has no objective and reasonable justification; in other words, if it does not pursue a legitimate aim or if there is no reasonable relationship of proportionality between the means employed and the aim sought to be realised. While Contracting States enjoy a certain margin of appreciation as to what justifies a difference in treatment and the Court will generally respect policy choices made unless they are "manifestly without reasonable foundation", very weighty rea-

1. For a proper understanding of the case, the facts must be placed within the context of the Yugoslav wars in the 1990's.

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sons would have to be put forward before a difference in treatment based exclusively on nationality were found to be compatible with the Convention (*Gaygusuz v. Austria*, 16 September 1996).

The ECtHR held that Mr Ribać fulfilled all other statutory conditions entitling him to the pension but Slovenian citizenship. It refused the Slovenian argument that Mr Ribać had been entitled to pension rights in Serbia and under the YPA Fund, as he had only received two payments and Slovenia had not shown how Mr Ribać could have received such a pension between 1998 and 2003. Moreover, this argument had not been brought forward in domestic court proceedings, which had only focused on his citizenship.

As regards the justification, Slovenia had argued that the difference in treatment was justified (i) as nationals of other former SFRY republics were assumed to have participated in aggression against Slovenia, and (ii) their rights were the subject of succession negotiations, so there was no reason to assume responsibility during those negotiations. The ECtHR dismissed the first argument, as non-participation against Slovenia was already an explicit requirement in the 1998 Act, so there was no room for any other implicit assumption. Moreover, Mr Ribać's behaviour – which in no way suggests any violent activity – was never an issue during the proceedings: he had been granted an advance in 1993 and received his pension as soon as he had become a Slovenian citizen in 2003. The second argument was rejected as the Succession Agreement had not entered into force until 2004, at which point Mr Ribać was already receiving pension. In this context, the ECtHR stressed that it was fully aware that there was uncertainty about the obligations of the various successor States of SFRY, but Slovenia nevertheless was responsible for securing the rights and freedoms contained in the Convention.

Ruling

The ECtHR, unanimously:
- declared the application admissible;
- held that there had been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;
- awarded (part of the claimed) damages to the applicant, and dismissed the remainder of the applicant's claim for just satisfaction.

ECtHR 9 January 2018, application nos. 1874/13 and 8567/13, Fundamental rights, Privacy

Lopez Ribalda – v – Spain, Spanish case

Summary

The Spanish courts breached Article 8 of the Convention on Human Rights by accepting covert footage as valid evidence in court.

Introduction

The ECtHR recently reviewed in its judgment of 9 January 2018 of a case concerning the validity of covert video surveillance carried out by supermarket chain M.S.A. (a family owned business) on its employees in Spain (after suspicions of theft had been noticed by the employer).

Facts

The supermarket installed two types of cameras, some visible (in respect of which the employees were informed) and some not (which were covert cameras and were not disclosed to the employees).

The claimants had been dismissed by their employer based on the evidence collected mainly using footage obtained by the covert video camera – which had zoomed in on the checkout counters, without the employees' knowledge. The footage showed these employees stealing (and also allowing co-workers to steal).

The employees challenged their dismissals and held that this evidence had been obtained in breach of their fundamental right to privacy because they had not been given prior notice of the installation of the covert video cameras, nor about the possible disciplinary use of the footage by the company.

The company had presented the covert footage as the main evidence, and also called co-workers as witnesses. Ultimately, the dismissals of the employees were held to have been fair by the employment tribunals in Spain (both at first instance and on appeal) and the courts accepted the covert footage as valid evidence on the

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