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

THIRD SECTION

DECISION

Application no. 15090/08
Zarifa SKENDERI against Serbia
and 4 other applications
(see list appended)

The European Court of Human Rights (Third Section), sitting on 4 July 2017 as a Chamber composed of:

Helena Jäderblom, *President,*
Branko Lubarda,
Luis López Guerra,
Helen Keller,
Pere Pastor Vilanova,
Alena Poláčková,
Georgios A. Serghides, *judges,*

and Fatoş Aracı, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the first applicant, Ms Zarifa Skenderi,

Having deliberated, decides as follows:

THE FACTS

1. A list of the applicants is set out in the appendix.

2. Mr Halit Muhaxhiri maintained that he was a national of Kosovo[1], while all other applicants maintained that they were nationals of Serbia. Additional personal details, the dates of introduction of their complaints

1. All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with the United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

before the Court, and information regarding their legal counsel, respectively, are also set out in the appendix.

3. The Serbian Government ("the Government") were initially represented by their former Agent, Ms V. Rodić, who was subsequently substituted by their current Agent, Ms N. Plavšić.

A. The circumstances of the cases

1. The relevant context

4. Following the intervention of the North Atlantic Treaty Organisation ("NATO") in June 1999, Kosovo was placed under international administration.

5. On 18 June 2004 the Serbian Ministry for Work, Employment and Social Policy, in response to a prior query, informed Kosovo's Ombudsman that the pension system in Serbia was based on the concept of "ongoing financing". Specifically, pensions were secured through current pension insurance contributions. Consequently, as the Serbian authorities had been unable to collect any such contributions in Kosovo since 1999, persons who had received their pensions from the Kosovo Branch Office of the Serbian Pensions and Disability Insurance Fund ("SPDIF") could not expect to continue receiving them. The Ministry also reminded the Ombudsman that Regulation no. 2001/35 on pensions in Kosovo provided for a separate pension system for persons living in the territory (see paragraph 80 below).

2. The specific circumstances of each applicant's case

6. The facts, as submitted by the parties, may be summarised as follows.

(a) As regards the first applicant (Ms Zarifa Skenderi, application no. 15090/08)

7. The first applicant was born in 1946 and lives in Novi Pazar.

8. On 9 March 1999, following the death of her husband, the first applicant – together with her daughter Ms Beharka Renda, née Skenderi – was granted a survivor's pension by the SPDIF Branch Office in Kosovo, with retroactive effect as of 27 November 1998.

9. On 16 October 2002 the first applicant informed the SPDIF that she had moved from Kosovo to Novi Pazar, and sought payment of her pension at her new address.

10. Between 2001 and 2004 the first applicant repeatedly complained to the SPDIF that she had never received any pension payments.

11. In March 2006 the first applicant lodged a civil claim with the First Municipal Court in Belgrade, seeking payment of her accrued pensions with statutory interest and the reinstatement of her entitlement *pro futuro*.

12. On 8 May 2006 the said court found that it did not have territorial jurisdiction and forwarded the case file to the Second Municipal Court in Belgrade.

13. On 11 September 2006 the Second Municipal Court suspended the proceedings. It explained that the international status of Kosovo was yet to be resolved and that in the meantime the Serbian authorities were unable to collect any pension insurance contributions in that territory. The status of Kosovo was therefore a preliminary question which had to be settled before the first applicant's claim could be adjudicated.

14. On 17 September 2007 the District Court in Belgrade quashed the Second Municipal Court's decision of 11 September 2006, holding that the status of Kosovo was not a valid reason to suspend the proceedings.

15. On 13 October 2008 the Second Municipal Court reaffirmed the suspension of the first applicant's civil case, pending the outcome of her complaints lodged with the SPDIF. It also reiterated that the status of Kosovo was a preliminary issue which had to be resolved first.

16. On 4 March 2009 the District Court quashed that decision, reiterating that the status of Kosovo was not a valid reason to suspend the proceedings in question.

17. On 21 December 2011 the Court of First Instance in Belgrade, which had jurisdiction to deal with the matter following the reorganisation of the Serbian judiciary, ruled against the first applicant. It explained that she had not exhausted the administrative remedies before the SPDIF and had, in any event, failed to properly substantiate her calculation of the accrued pension.

18. On 17 May 2012 the Court of Appeal, which also had jurisdiction to deal with the matter following the above-mentioned reorganisation of the Serbian judiciary, quashed that judgment on the grounds of inadequate reasoning.

19. On 23 November 2012 the Court of First Instance again ruled against the first applicant, this time primarily based on her failure to exhaust administrative remedies before the SPDIF.

20. On 11 July 2013 the Court of Appeal ruled partly in favour of the first applicant (Gž. 2179/13). In so doing, it ordered the SPDIF to pay her the pension arrears between 9 March 2003 and 25 October 2012 with statutory interest, as well as the costs of the proceedings. The court opined that the suspension of payment of the first applicant's pension had been unlawful from a domestic legal perspective and had also been in breach of Article 1 of Protocol No. 1, as explained by the European Court of Human Rights in its judgment in the case of *Grudić v. Serbia* (no. 31925/08, 17 April 2012). The first applicant's claim regarding the payment of her accrued pension between 27 November 1998 and 9 March 2003, however, was rejected based on Article 376 of the Obligations Act, which provided for a three-year prescription period (see paragraph 67 below). Finally,

the Court of Appeal dismissed the first applicant's request for the reinstatement of her pension *pro futuro* on procedural grounds.

21. As of 23 September 2013 the SPDIF resumed payment of the first applicant's pension.

22. In the meantime, on 27 May 2010, the first applicant also lodged an appeal with the Serbian Constitutional Court (see paragraph 78 below). However, on 4 November 2010 her appeal was rejected because her representative did not have adequate authorisation.

(b) As regards the second applicant (Ms Hajra Memić, application no. 27952/10)

23. The second applicant was born in 1943 and lives in Tutin.

24. On 3 June 1980, following the death of her husband, the second applicant was granted a survivor's pension by the SPDIF Branch Office in Kosovo.

25. The second applicant regularly received her pension until January 1999, when the monthly payments stopped without an explanation from the SPDIF.

26. Thereafter, the second applicant repeatedly sought the resumption of her pension payments. Finally, on 6 March 2003 she lodged a formal request with the SPDIF.

27. On 21 March 2005 and 1 June 2006 the second applicant again made requests to the same effect.

28. In the absence of any action on the part of the SPDIF, on 27 December 2006 the second applicant brought an administrative dispute (*pokrenula upravni spor*) before the District Court in Novi Pazar (see paragraphs 73-75 below).

29. On 26 June 2007 the said court ruled in favour of the second applicant and ordered the SPDIF to decide on her request.

30. On 13 February 2008 the SPDIF suspended the proceedings, holding that the pensions-related situation in Kosovo was in a state of flux and that crucial information was lacking. The second applicant's request was thus deemed not ready for consideration.

31. On 3 December 2008 that decision was quashed on appeal, for procedural reasons, at a higher administrative level and remitted for re-examination.

32. On 23 April 2009 the second applicant brought another administrative dispute before the District Court, seeking, this time, that the court itself decide on the merits of her claim addressed to the SPDIF.

33. On 10 November 2011 the SPDIF rejected the second applicant's request to have the payment of her pension resumed, "in the absence of proper substantiation".

34. On 12 January 2012 that decision was upheld on appeal at a higher administrative level.

35. On 3 April 2014 the Administrative Court in Kragujevac, which had jurisdiction to deal with the matter following the reorganisation of the Serbian judiciary, quashed the impugned decisions of the SPDIF on procedural grounds and remitted the case for re-examination.

36. On 30 July 2014 the SPDIF ordered payment of the second applicant's pension which had accrued between 6 March 2002 and 9 July 2008. Regarding the reinstatement of her pension thereafter, the SPDIF decided that the matter would be considered following receipt of evidence from the United Nations Interim Administration Mission in Kosovo ("UNMIK") as to whether the second applicant was a beneficiary of a separate "Kosovan pension" as of 2008, which was when she had reached the age of sixty-five (see paragraph 80 below).

37. On 13 January 2015 the SPDIF rejected the second applicant's request to have the payment of her pension resumed because, based on an UNMIK certificate, she had been a recipient of a Kosovan pension as from 10 July 2008. The SPDIF based its conclusion on Article 119 of the Pensions and Disability Insurance Act (see paragraph 64 below).

38. On 23 January 2015 the second applicant appealed against that decision at a higher administrative level, arguing that the so-called "Kosovan pension", in the amount of 75 euros (EUR), was not in fact a pension at all but a benefit offered to all persons aged sixty-five or over residing in Kosovo.

(c) As regards the third applicant (Ms Fikrije Selimi, application no. 35372/10)

39. The third applicant was born in 1950 and lives in Gnjilane.

40. In 1988, following the death of her husband, the third applicant was granted a survivor's pension by the SPDIF Branch Office in Belgrade.

41. At some point thereafter the third applicant moved from Belgrade to Kosovo.

42. The third applicant regularly received her pension until January 1999, when the monthly payments stopped without an explanation from the SPDIF.

43. Thereafter, the third applicant repeatedly sought the resumption of her pension payments. On 14 February 2006 she lodged a formal request to that effect with the SPDIF.

44. Having received no response and following an additional request which was also ignored, on 18 July 2006 the third applicant brought an administrative dispute before the District Court in Belgrade.

45. On 21 July 2006 the said court declined its territorial jurisdiction and forwarded the case file to the District Court in Gnjilane (provisionally based in Vranje).

46. On 27 March 2008 and 12 May 2009 the third applicant requested information from the District Court in Gnjilane regarding the status of those proceedings.

47. On 28 July 2014 the SPDIF resumed payment of the third applicant's pension as of 14 February 2005 onwards.

(d) As regards the fourth applicant (Mr Sabit Šabani, application no. 35374/10)

48. The fourth applicant was born in 1943 and lives in Gnjilane.

49. On 1 January 1997 the fourth applicant was granted a disability benefit.

50. The fourth applicant regularly received his benefit until January 1999, when the monthly payments stopped without an explanation having been offered.

51. Thereafter the fourth applicant repeatedly sought the resumption of his benefit payments. On 24 March 2006 he lodged a formal request to that effect with the SPDIF.

52. Having received no response and following an additional request which was also ignored, on 15 August 2006 the fourth applicant brought an administrative dispute before the District Court in Belgrade.

53. On 14 September 2006 the said court declined its territorial jurisdiction and forwarded the case file to the District Court in Gnjilane (provisionally based in Vranje).

54. On 27 March 2008 and 12 May 2009 the fourth applicant requested information from the District Court in Gnjilane regarding the status of those proceedings.

55. On 22 July 2010 the Administrative Court in Belgrade, which had jurisdiction to deal with the matter since the reorganisation of the Serbian judiciary, apparently rejected the fourth applicant's claim because he had not shown that he had properly made use of the administrative remedies available to him before applying for judicial review.

(e) As regards the fifth applicant (Mr Halit Muhaxhiri, application. no. 47575/12)

56. The fifth applicant was born in 1942 and lives in Jagodina.

57. On 24 July 1991 the fifth applicant was granted an old-age pension by the SPDIF Branch Office in Kosovo.

58. The fifth applicant regularly received his pension until March 1999, when the monthly payments stopped without an explanation from the SPDIF.

59. Thereafter the fifth applicant repeatedly sought the resumption of his pension payments. On 28 January 2008 he lodged a formal request with the SPDIF.

60. Having received no response, on 7 October 2008 the fifth applicant again addressed the same request to the SPDIF.

61. On 1 June 2012 the SPDIF rejected the fifth applicant's claim because he had apparently failed to provide adequate supporting documentation.

62. On 7 August 2012 that decision was upheld on appeal at a higher administrative level.

B. Relevant domestic law and practice

1. *Pensions and Disability Insurance Act (Zakon o penzijskom i invalidskom osiguranju; published in the Official Gazette of the Republic of Serbia – OG RS – nos. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09, 107/09, 30/10, 101/10, 93/12, 62/13, 108/13, 75/14 and 142/14)*

63. Article 110 provides, *inter alia*, that a person's pension and disability rights must be terminated if it transpires that he or she no longer meets the original statutory requirements. However, should an entitled pensioner secure an additional pension from another pension and disability insurance fund established by one of the other States within the territory of the former Yugoslavia, his or her pension paid by the SPDIF must, unless stipulated otherwise by an international agreement, be reassessed (recalculated) based on the pensionable employment period (*penzijski staž*) already taken into account by the former.

64. Article 119 provides that when a pensioner is entitled to two or more pensions within the territory of the Republic of Serbia, only one of those pensions may be paid, in accordance with the pensioner's own preference.

65. Article 123 provides that pension instalments which have not been paid owing to circumstances caused by the pensioner can be sought only for the twelve months preceding the date on which he or she lodged a request to that effect.

2. *Opinion of the Ministry for Social Affairs (Mišljenje Ministarstva za socijalna pitanja) no. 181-01-126/2003 of 7 March 2003, and Opinion of the Ministry for Labour, Employment and Social Policy (Mišljenje Ministarstva rada, zapošljavanja i socijalne politike) no. 182-02-20/2004-07 of 18 June 2004*

66. The Opinions state, *inter alia*, that the pension system in Serbia is based on the concept of "ongoing financing". Specifically, pensions are secured through current pension insurance contributions. Since the Serbian authorities have been unable to collect any such contributions in Kosovo since 1999, persons who have been granted SPDIF pensions in Kosovo cannot expect, for the time being, to continue receiving them. It is further

stated that Regulation 2001/35 on pensions in Kosovo, adopted by UNMIK, provides for a separate pension system for persons living in the territory (see paragraph 80 below).

3. Obligations Act (Zakon o obligacionim odnosima, published in the Official Gazette of the Socialist Federal Republic of Yugoslavia nos. 29/78, 39/85, 45/89, 57/89 and the Official Gazette of the Federal Republic of Yugoslavia – OG FRY – no. 31/93)

67. Article 376 §§ 1 and 2 provides, *inter alia*, that the prescription period for seeking civil compensation is three years from the date on which the claimant first learnt of the damage in question, but that, in any event, the absolute deadline is five years from the time the damage occurred.

4. Opinion adopted by the Supreme Court's Civil Division on 15 November 2005 (Pravno shvatanje Građanskog odeljenja Vrhovnog sud Srbije, sa obrazloženjem, utvrđeno na sednici od 15. novembra 2005. godine, Bilten sudske prakse br. 3/05)

68. In response to the situation in Kosovo, this Opinion states, *inter alia*, that a person's recognised right to a pension may only be restricted on the basis of Article 110 of the Pensions and Disability Insurance Act (see paragraph 63 above). Recognised pension rights cannot depend on whether current pension insurance contributions can be collected in a given territory.

69. The Opinion further explains that administrative proceedings (*upravni postupak*) and, if necessary, judicial review proceedings (*upravni spor*) would be the appropriate avenue to challenge any restriction of a person's pension rights.

70. Lastly, the Opinion notes that, in this context, the civil courts are competent to adjudicate only cases involving claims of malfeasance (*nezakonit i nepravilan rad*) on the part of the SPDIF.

5. General Administrative Proceedings Act (Zakon o opštem upravnom postupku; published in OG FRY nos. 33/97 and 31/01, as well as in OG RS no. 30/10)

71. Article 208 § 1 provides, *inter alia*, that in simple matters an administrative body must issue a decision within one month of the date on which the claimant lodged his or her request. In all other cases, the administrative body must render a decision within two months thereof.

72. Article 208 § 2 enables a claimant whose request has not been decided within the time-limits established in the previous paragraph to lodge an appeal as if his or her request has been refused. Where an appeal is not allowed, the claimant has the right to directly bring an administrative dispute before the competent court of law.

6. Administrative Disputes Act 1996 (Zakon o upravnim sporovima; published in OG FRY no. 46/96)

73. Articles 5 and 6 provide, *inter alia*, that judicial review proceedings may be brought against the State body or public authority that issued the disputed administrative decision.

74. Article 24 provides that should a second-instance administrative body fail to decide on an appeal lodged more than sixty days earlier, and should it again fail to do so in another seven days upon receipt of the claimant's repeated request to that effect, the latter may directly institute judicial review proceedings, as if his or her appeal had been rejected.

75. Article 41 § 3 provides that the competent court may not only quash the impugned administrative decision but may also rule on the merits of the plaintiff's claim, should the facts of the case and the very nature of the dispute in question allow for that particular course of action.

7. Administrative Disputes Act 2009 (Zakon o upravnim sporovima; published in OG RS no. 111/09)

76. The substance of Articles 19 § 1, 42 and 43 of this Act corresponds, in the relevant part, to that of Articles 24 and 41 § 3 of the Administrative Disputes Act 1996.

77. The Administrative Disputes Act 2009 entered into force on 30 December 2009 thereby repealing the Administrative Disputes Act 1996.

8. Constitution of the Republic of Serbia 2006 (Ustav Republike Srbije; published in OG RS no. 98/06)

78. Article 170 provides:

> "[a] constitutional appeal may be lodged against individual decisions or actions of State bodies or organisations exercising delegated public powers which violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies for their protection have already been exhausted or have not been prescribed".

9. The Constitutional Court's case-law

79. As of 8 August 2014, the Constitutional Court considered a total of eleven appeals related in one way or another to the general issue of payment or reinstatement of pensions suspended by the SPDIF (see Už. nos. 537/08, 169/09, 2720/09, 2591/10, 2931/10, 758/11, 1582/11, 1810/11, 3007/11, 2391/12 and 2650/12, decisions rendered between 3 February 2009 and 30 May 2013). In a total of six out of those eleven cases the Constitutional Court found violations of the appellants' constitutional rights. In two cases the violations concerned the length of proceedings before the SPDIF or the competent courts; in three cases they concerned the inconsistent domestic case-law as regards whether persons seeking reinstatement of their pensions

should provide the supporting documentation themselves or whether it should be obtained by the SPDIF *proprio motu;* and in one case the Constitutional Court quashed an earlier decision adopted by an appellate court for lack of proper reasoning. The said appellate court had rejected the request for payment of accrued pensions because the claimant had allegedly failed to make proper prior use of the administrative remedies which it deemed relevant. In decisions Už. nos. 1582/11, 758/11 and 3007/11 of 20 March 2013, 24 April 2013 and 25 April 2013, respectively, the Constitutional Court also referred to the *Grudić* judgment, stating that it had taken that case-law into account but that the appellants had simply not complained that their property rights had been breached. Their complaints had focused instead on the inconsistent domestic case-law, as mentioned above. The other appeals were dismissed for various procedural reasons. In any event, the Constitutional Court always considered only the complaints as specified by the appellants and "could not go beyond that".

C. Relevant law in Kosovo

1. *Regulation 2001/35 on pensions in Kosovo and Regulation 2005/20 amending Regulation 2001/35, both regulations having been adopted by UNMIK*

80. These regulations provide for a separate system whereby all persons aged sixty-five or over "habitually residing" in Kosovo have the right to a "basic pension".

2. *Act to Amend Regulations 2001/35 and 2005/20*

81. On 13 June 2008 the Kosovan Assembly adopted this Act, which essentially endorsed the system as set up by the two Regulations cited above but transferred the functional competencies from UNMIK to the Kosovan authorities.

3. *Administrative Instruction no. 11/07 of 6 November 2007 on the execution of Government decision no. 13/277 of 31 October 2007*

82. These regulations provide, *inter alia*, that the basic pension referred to in paragraph 80 above, in the amount of EUR 40 monthly, could be increased to EUR 75 monthly in respect of all pensioners aged sixty-five or over, habitually residing in Kosovo, who could, *inter alia*, prove that they had been paying pension insurance contributions to the SPDIF for at least fifteen years and were not in receipt of another pension on the same basis.

4. Administrative Instruction no. 15/09 of July 2009 on the execution of Government decision no. 2/51 of 23 January 2009

83. These regulations essentially affirm those described in paragraph 80 above, but raise the pension in question from EUR 75 to EUR 80 monthly.

5. Publicly Funded Pension Schemes Act (no. 04/L-131; published in the Official Gazette no. 35/14 of 5 June 2014)

84. Articles 3 (1.4) and 7 § 1 state, *inter alia*, that a "basic age pension", that is a "minimal regular monthly pension", shall be paid to all "permanent citizens" of Kosovo aged sixty-five or over, regardless of whether they had ever been employed.

85. Articles 3 (1.5) and 8 § 1 provide for an "age contribution-payer pension", that is a "regular monthly pension" for "employed citizens" of Kosovo, who had paid their contributions to the SPDIF prior to 1 January 1999. Article 8 § 2 envisages that all persons entitled to a contribution-based pension shall be categorised by the Ministry taking into account the applicable pensionable employment period, as well as other relevant criteria.

86. Article 13 provides, *inter alia*, that pension adjustments, taking into account the living costs and the rate of inflation, shall be regulated by the Kosovan authorities on an annual basis.

COMPLAINTS

87. The applicants referred to various provisions of the Convention, as well as the Protocols thereto. In substance, however, they complained that they had not received their respective SPDIF pensions or other social benefits since 1999, and that there were no effective domestic remedies available to them in this regard.

THE LAW

A. Joinder of applications

88. Given their similar factual and legal background, the Court decides that the applications should be joined pursuant to Rule 42 § 1 of the Rules of Court.

B. The applicants' complaints

89. The Court, being the master of characterisation to be given in law to the facts of any case before it (see *Akdeniz v. Turkey*, no. 25165/94, § 88, 31 May 2005), considers that the above complaints fall to be examined under Article 1 of Protocol No. 1 and Article 13 of the Convention, which provisions read as follows:

Article 1 of Protocol No. 1 (protection of property)

"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.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

Article 13 of the Convention (right to an effective remedy)

"Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

1. As regards the first applicant (Ms Zarifa Skenderi)

(a) The parties' observations

90. The Government noted that the first applicant had failed to properly bring her complaints before the Constitutional Court, without explicitly raising the objection that she had thus not complied with the exhaustion requirement. The first applicant made no comments in this respect.

91. The Government further extensively repeated or restated most of the arguments which they had already made in *Grudić* (see *Grudić*, cited above, §§ 62-70). They also pointed out that, unlike in *Grudić* where the applicants' pensions had been paid only following the adoption of the Court's judgment, the first applicant's pension in the present case had been paid retroactively and reinstated *pro futuro* based on a number of domestic decisions so ordering. The first applicant could not therefore still claim to be a victim within the meaning of the Convention. The first applicant, in response, maintained that she had not been paid the entire amount of the accrued pension arrears, notably those due between 27 November 1998 and 9 March 2003. Also, on 28 November 2013 the first applicant had sought enforcement of the Court of Appeal judgment of 11 July 2013 but the said judgment was yet to be enforced. The Government contested those claims and submitted that the judgment in question had, in fact, been fully enforced.

(b) The Court's assessment

92. The principles which apply generally in cases under Article 1 of Protocol No. 1 are equally relevant when it comes to pensions. Thus, that provision does not guarantee the right to acquire property; nor does it guarantee, as such, any right to a pension of a particular amount. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit 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. The reduction or the discontinuance of a pension may therefore constitute an interference with peaceful enjoyment of possessions that needs to be justified (see *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 82 and 84, 13 December 2016, ECHR 2016).

93. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful and that it should pursue a legitimate aim "in the public interest" (ibid., §§ 112 and 113).

94. As regards lawfulness, Article 1 of Protocol No. 1 requires in the first place the existence of and compliance with adequately accessible and sufficiently precise domestic legal provisions (see, amongst other authorities, *Lithgow and Others v. the United Kingdom*, 8 July 1986, § 110, Series A no. 102).

95. According to the Court's case-law, the national authorities, because of their direct knowledge of their society and its needs, are in principle better placed than the international judge to decide what is "in the public interest" (see *Béláné Nagy*, cited above, § 113). The Court accepts that in the area of social legislation, including on pensions, States enjoy a wide margin of appreciation, which in the interests of social justice and economic well-being may legitimately lead them to adjust, cap or even reduce the amount of pensions normally payable to the qualifying population. However, any such measures must be implemented in a non-discriminatory manner and comply with the requirements of proportionality (see, for example, *Grudić*, cited above, § 75, with further references).

96. Any interference must also be reasonably proportionate to the aim pursued. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements to protect the individual's fundamental rights. The requisite balance will not be found if the person or persons concerned have had to bear an individual and excessive burden (see *Béláné Nagy*, cited above, § 115). Of course, the issue of whether a fair balance has indeed been struck becomes relevant only if and when it has been established that the interference in question has satisfied the aforementioned requirement of lawfulness and was not arbitrary (see *Iatridis v. Greece* [GC], no. 31107/96, § 58, ECHR 1999-II).

97. In the context of seeking judicial redress for property related issues, among others, the existence of a statutory limitation period *per se* is not incompatible with the Convention or a Protocol thereto. What the Court needs to ascertain in each given case is whether the nature of the time-limit in question and/or the manner in which it was applied is compatible with the Convention requirements (see, *mutatis mutandis*, *Vrbica v. Croatia*, no. 32540/05, § 66, 1 April 2010, as well as the authorities cited therein, in the context of Article 6 of the Convention; see also, *mutatis mutandis*, *Krasnodębska-Kazikowska and Łuniewska v. Poland*, no. 26860/11, §§ 46-51, 6 October 2015, in the context of Article 1 of Protocol No. 1).

98. The Court further notes that an applicant's status as a "victim" within the meaning of Article 34 of the Convention depends on whether the domestic authorities have acknowledged, either expressly or in substance, the alleged infringement of the Convention or of a Protocol thereto and, if necessary, provided appropriate redress in this respect (see *Cocchiarella v. Italy* [GC], no. 64886/01, § 71, ECHR 2006-V; *Cataldo v. Italy* (dec.), no. 45656/99, 3 June 2004; and *Pop-Ilić and Others v. Serbia*, no. 63398/13 and others, § 39, 14 October 2014).

99. In *Grudić*, a case involving the same issues as the ones raised by the first applicant, the Court held that the interference with the applicants' "possessions", namely the suspension of payment of their SPDIF pensions, had not been in accordance with the relevant domestic law. That conclusion made it unnecessary for the Court to ascertain whether a fair balance had been struck between the demands of the general interests of the community on the one hand, and the requirements to protect the individual's fundamental rights on the other. The Court thus found a violation of Article 1 of Protocol No. 1 and ordered the respondent State to pay the applicants all of their pension arrears due as of the dates of their suspension, respectively (see *Grudić*, cited above, §§ 77-83 and 92).

100. Turning to the present case, and assuming a formal objection on the part of the Government as to exhaustion of domestic remedies, the Court considers that there is no need to determine that objection as the first applicant's complaint under Article 1 of Protocol No. 1 is in any event inadmissible for the following reasons. Specifically, while the original suspension of the first applicant's pension was clearly unlawful, just like in *Grudić*, the subsequent judgment of the Court of Appeal, rendered on 11 July 2013, recognised a breach of Article 1 of Protocol No. 1 and redressed it in part by awarding to the first applicant a certain sum on account of her pension arrears (see paragraph 20 above). Regarding the remainder of the first applicant's claim, she was indeed denied payment of her pensions between 27 November 1998 and 9 March 2003, but the domestic courts justified this rejection based on the applicable prescription period (ibid., see also *Vučković and Others v. Serbia* (preliminary objection) [GC], nos. 17153/11 and 29 others, § 72, 25 March 2014,

and *Čekić and Others v. Croatia* (dec.), no. 15085/02, 9 October 2003, both as regards the general obligation of applicants to comply with the prescribed time-limits). The Court must further note that the three-year prescription period in question, an issue which did not arise in *Grudić*, was envisaged in Article 376 of the Obligations Act and was therefore lawful (see paragraph 67 above). It also pursued a legitimate aim, namely to ensure legal certainty and finality, protect potential respondents from stale claims which might be difficult to counter and prevent the injustice which might arise if courts were required to decide upon events which took place in the distant past on the basis of evidence which might have become unreliable and incomplete because of the passage of time (see, *mutatis mutandis*, *Vrbica*, cited above, § 66). There is likewise nothing to indicate that the domestic courts' displayed any arbitrariness in the application of the said time-limit, nor evidence that the three years referred to in Article 376 of the Obligations Act may have been a disproportionately short period in the specific circumstances of the present case. Finally, as of 23 September 2013 the SPDIF resumed payment of the first applicant's pension *pro futuro*.

101. Accordingly, the Court is of the view that the first applicant's complaint under Article 1 of Protocol No. 1 is manifestly ill-founded and must, as such, be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention (see, *mutatis mutandis*, *Krasnodębska-Kazikowska and Łuniewska*, cited above). It is, nevertheless, understood that the first applicant remains entitled to the payment of any outstanding pension arrears awarded to her by the domestic civil courts (see paragraphs 91 and 20 above, in that order).

102. As regards Article 13 of the Convention, this provision requires a remedy in domestic law only where an individual has an "arguable claim" that one of his or her rights or freedoms set forth in the Convention or one of the Protocols thereto has been violated (see, for example, *Boyle and Rice v. the United Kingdom*, 27 April 1988, § 52, Series A no. 131). However, given its above findings, according to which the first applicant's main complaint under Article 1 of Protocol No. 1 has been declared inadmissible as manifestly ill-founded, the Court considers that her related complaint under Article 13 of the Convention cannot be considered "arguable" within the meaning of the Court's case-law (see *Rukavina v. Croatia* (dec.), no. 770/12, § 75, 6 January 2015). It follows that this complaint is likewise inadmissible under Article 35 § 3 (a) of the Convention as manifestly ill-founded and must therefore also be rejected pursuant to Article 35 § 4 thereof.

2. As regards the second, third, fourth and fifth applicants (Ms Hajra Memić, Ms Fikrije Selimi, Mr Sabit Šabani and Mr Halit Muhaxhiri respectively)

(a) The parties' observations

103. The Government lastly argued that the second, third, fourth and fifth applicants should have lodged constitutional appeals (see paragraph 78 above). In support of their contention they referred to the Constitutional Court's relevant case-law (see paragraph 79 above). Since the said four applicants had failed to do so, the Government submitted that their complaints should be rejected for non-exhaustion of an available and effective domestic remedy. The second, third, fourth and fifth applicants made no comments as regards the exhaustion issues raised by the Government.

(b) The Court's assessment

104. The Court reiterates that the States are dispensed from answering before an international body for their acts before they have had an opportunity to put matters right through their own legal system. Those who wish to invoke the supervisory jurisdiction of the Court as concerns complaints against a State are thus obliged to use first the remedies provided by the national legal system (see, among many authorities, *Akdivar and Others v. Turkey*, 16 September 1996, § 65, *Reports and Decisions* 1996-IV, and *Vučković and Others*, cited above, § 103).

105. The obligation to exhaust domestic remedies therefore requires an applicant to make normal use of remedies which are available and sufficient in respect of his or her Convention grievances. The existence of the remedies in question must be sufficiently certain not only in theory but also in practice, failing which they will lack the requisite accessibility and effectiveness (see *Akdivar and Others*, § 66, and *Vučković and Others*, § 104, both cited above).

106. Article 35 § 1 also requires that the complaints intended to be made subsequently in Strasbourg should have been made to the appropriate domestic body, at least in substance (see, for instance, *Castells v. Spain*, 23 April 1992, § 32, Series A no. 236; *Gäfgen v. Germany* [GC], no. 22978/05, §§ 144 and 146, ECHR 2010; and *Fressoz and Roire v. France* [GC], no. 29183/95, § 37, ECHR 1999-I) and in compliance with the formal requirements and time-limits laid down in domestic law (see *Akdivar and Others*, § 66, and *Vučković and Others*, § 105, both cited above).

107. To be effective, a remedy must be capable of remedying directly the impugned state of affairs and must offer reasonable prospects of success (see *Balogh v. Hungary*, no. 47940/99, § 30, 20 July 2004, and *Sejdovic v. Italy* [GC], no. 56581/00, § 46, ECHR 2006-II). However, the existence

of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see *Akdivar and Others*, cited above, § 71; *Scoppola v. Italy (no. 2)* [GC], no. 10249/03, § 70, 17 September 2009; and *Vučković and Others*, cited above, § 106).

108. As regards the burden of proof, it is incumbent on the Government claiming non-exhaustion to satisfy the Court that the remedy was an effective one, and was available in theory and in practice at the relevant time. Once this burden has been satisfied, it falls to the applicant to establish that the remedy advanced by the Government was in fact exhausted, or was for some reason inadequate and ineffective in the particular circumstances of the case, or that there existed special circumstances absolving him or her from this requirement (see *Akdivar and Others*, cited above, § 68; *McFarlane v. Ireland* [GC], no. 31333/06, § 107, 10 September 2010; and *Vučković and Others*, cited above, § 108).

109. Turning to the Government's specific objection, unlike the applicants in *Grudić*, the second, third, fourth and fifth applicants all lodged their applications with the Court after 7 August 2008, which is why they were under an obligation to avail themselves of the constitutional appeal procedure (see, on this point exactly, *Vinčić and Others v. Serbia*, nos. 44698/06 and others, § 51, 1 December 2009). Indeed, where legal systems envisage constitutional protection of fundamental human rights and freedoms, such as in Serbia, it is in principle incumbent on the aggrieved individual to test the extent of that protection and allow the domestic courts to develop those rights by way of interpretation (see *Vinčić and Others*, cited above, § 51). As already stated above, the existence of mere doubts as to the prospects of success of a particular remedy which is not obviously futile is not a valid reason for failing to exhaust that avenue of redress (see paragraph 107 above). In that connection, having also taken note of the Constitutional Court's case-law provided by the Government, the Court is of the opinion that it cannot be said that the appellants in those cases, which involved the payment and suspension of SPDIF pensions or other benefits, had no prospects of success (see paragraph 79 above). It is, of course, understood that all complaints before the Constitutional Court should be made in compliance with the formal requirements as laid down in domestic law (see paragraph 106 above), but also that the appellants may, if they so consider, provide arguments therein to the effect that certain other, preliminary, domestic remedies may not have been effective in the particular circumstances of their cases and at the relevant time (see, in this respect precisely, *Grudić*, cited above, §§ 47-53). In view of the foregoing and since the second, third, fourth and fifth applicants did not make use of the constitutional appeal procedure, the Court rejects their complaints under Article 35 §§ 1 and 4 of the Convention for non-exhaustion of domestic remedies.

For these reasons, the Court, unanimously,

Decides to join the applications;

Declares the applications inadmissible.

Done in English and notified in writing on 27 July 2017.

Fatoş Aracı
Deputy Registrar

Helena Jäderblom
President

APPENDIX

No.	App. nos.	Lodged on	Applicant's name Date of birth Place of residence	Represented by Practising in
1.	15090/08	03/03/2008	**Zarifa SKENDERI** 06/11/1946 Novi Pazar	Đura STEFANOVIĆ Žitkovac
2.	27952/10	05/05/2010	**Hajra MEMIĆ** 10/07/1943 Tutin	Hasim KLIMENTA Tutin
3.	35372/10	04/05/2010	**Fikrije SELIMI** 07/07/1950 Gnjilane	Milorad BJEGOVIĆ Belgrade
4.	35374/10	04/05/2010	**Sabit ŠABANI** 07/04/1943 Gnjilane	Milorad BJEGOVIĆ Belgrade
5.	47575/12	18/07/2012	**Halit MUHAXHIRI** 01/04/1942 Jagodina	Teki Bokshi Đakovica