CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 48077/99
by Josip BAKARIĆ
against Croatia

The European Court of Human Rights (Fourth Section), sitting on 13 September 2001 as a Chamber composed of

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr M. PELLONPÄÄ,
Mrs S. BOTOUCHAROVA, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced on 22 April 1999 and registered on 11 May 1999,

Having regard to the Section's partial decision of 25 May 2000;

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

The applicant, Josip Bakarić, is a Croatian citizen, born in 1928 and living in Zagreb. The respondent Government are represented by their Agent, Ms Lidija Lukina-Karajković.

A. The circumstances of the case

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

The applicant served in the Yugoslav People's Army (YPA) and in 1983 retired from service. His military pension was assessed according to his rank and years of service and was paid from the Yugoslav Federal Pension Fund. The payments terminated in December 1991, following the dissolution of the Federal Republic of Yugoslavia.

However, on 12 December 1992, the Social Security Fund, Zagreb Office (*Republički fond mirovinskog i invalidskog osigurnaja radnika Hrvatske, Područna služba u Zagrebu*), assessed the applicant's pension, as from 1 October 1992, to 63,22 % of the amount he had received in December 1991.

After the ensuing applicant's appeal was dismissed, he instituted proceedings with the Administrative Court (*Upravni sud Republike Hrvatske*). The applicant claimed that the decisions to decrease his military pension were unlawful and discriminatory and impaired his property rights.

The Administrative Court dismissed the applicant's claim on 17 December 1993. It found that the lower bodies applied the provisions of the laws regulating pension rights of the former YPA officers correctly. They based their decision on the Act of 31 December 1991 which provided that the former YPA officers' pensions were to be assessed to 63,22 % of what they received in December 1991. Furthermore, the applicant's property rights were not impaired by the Croatian authorities as the Yugoslav Federal Fund stopped paying the applicant's pension. The Croatian authorities accepted the payment of his pension according to the relevant provisions of the Acts regulating that matter. The applicant failed to lodge a constitutional complaint against the Administrative Court's decision.

Instead, the applicant challenged the constitutionality of the laws enacted in 1991 and 1992 regulating pension rights of the former YPA officers.

On 4 February 1998 the Constitutional Court terminated those proceedings as on 18 October 1993 the Croatian Parliament had passed a new law concerning that matter - the Former YPA Officers Pension Act (*Zakon o ostvarivanju prava iz mirovnskog i invalidskog osiguranja pripadnika bivše JNA* - Official Gazette no. 96/1993).

In the meantime, on 1 February 1994 the applicant lodged another constitutional claim challenging the constitutionality of the above 1993 Act. He complained that the 1993 Act impaired his property rights in that it provided that his military pension be reduced and in that it discriminated against him in so far as pensions of other categories of citizens were not reduced.

On 20 January 1999 the Constitutional Court (*Ustavni sud Republike Hrvatske*) terminated the proceedings concerning the applicant's claim as on

1 January 1999 new legislation was again enacted regulating pension rights of all Croatian citizens.

B. Relevant domestic law

The relevant provisions of the 1991 Constitutional Act on the Constitutional Court (hereinafter the "1991 Constitutional Court Act" - *Ustavni zakon o Ustavnom sudu*, Official Gazette 13/1991) read as follows:

Section 15

"Every person has a right to institute proceedings challenging the constitutionality of the laws..."

Section 23 § 2

"Each person whose rights have been violated by a decision based on the legislation declared unconstitutional or unlawful may ask the body that took the decision to vary it..."

Section 27

"The Constitutional Court shall terminate proceedings concerning the constitutionality of legislation that has been repealed or brought into line with the Constitution and statute law while those proceedings are pending before the Constitutional Court."

Section 28 § 1

"Every person, who considers that any of his constitutional rights have been violated by a decision of judicial or administrative body or any other body invested with public authority, may lodge a constitutional complaint with the Constitutional Court."

Section 30

"By a decision accepting a constitutional complaint the Constitutional Court quashes the contested decision and remits a case for re-trial."

COMPLAINT

The applicant complains of the fact that the Constitutional Court failed to decide his constitutional complaint but merely terminated the proceedings due to the enactment of new legislation.

THE LAW

The applicant complains that the Constitutional Court failed to decide his constitutional complaint challenging the constitutionality of the Former YPA Pensions Act of 18 October 1993. The Court will examine this complaint under Article 6 of the Convention, which, in so far as relevant reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing ... by an independent and impartial tribunal established by law."

The Government submit that the present application is incompatible *ratione personae* with the provisions of the Convention in so far as the case concerns an abstract review of the constitutionality of the laws that served as a basis for the reduction of the applicant's military pension. Such proceedings do not involve a determination of the applicant's civil rights, but exclusively address the question of whether the law at issue is in accordance with the Constitution. The Constitutional Court may examine whether the applicant's individual civil rights were violated by the lower bodies' decisions in the proceedings instituted upon an individual's constitutional complaint. However, the applicant failed to lodge an individual constitutional complaint by which he would have challenged the administrative bodies' and the Administrative Court's decisions that decreased his military pension.

The Government submit further that for the same reasons the applicant failed to exhaust domestic remedies.

The applicant maintains that the decision of the Constitutional Court terminating the proceedings concerning his constitutional complaint, where he alleged that his right to property was violated and that he was discriminated against, deprived him of access to court as the domestic authorities have not answered his claims.

The Court considers that it is not necessary to examine the compatibility of the application *rationae personae* or the question of exhaustion of domestic remedies, as the application is in any event inadmissible for the following reasons.

The Court recalls that it has had to examine the question of the applicability of Article 6 § 1 of the Convention to proceedings in a Constitutional Court in a number of cases. According to the well-established case-law on this issue (see the Deumeland v. Germany judgment of 29 May 1986, Series A no. 100, p. 26, § 77; the Bock v. Germany judgment of 29 March 1989, Series A no. 150, p. 18, § 37; the Ruiz-Mateos v. Spain judgment of 23 June 1993, Series A no. 262, p. 19, § 35, and the Süßmann v. Germany judgment of 16 September 1996, *Reports* 1996-IV, p. 1171, § 39), the relevant test in determining whether Constitutional Court proceedings may be taken into account in assessing the reasonableness of the length of proceedings is whether the result of the Constitutional Court proceedings is capable of affecting the outcome of the dispute before the ordinary courts.

In the Ruiz-Mateos case the Court also found that Article 6 § 1 applied to Constitutional Court proceedings from the point of view of fair trial (see the above-mentioned judgment, pp. 23-24, §§ 55-60). It held that, while it was not called upon to give an abstract ruling on the applicability of Article 6 § 1 to Constitutional Courts in general, it had nevertheless to determine whether any rights guaranteed to the applicants under that provision were affected in the case before it (ibid., § 57). It noted further that by raising questions of constitutionality, the applicants were using the sole - and indirect - means available to them of complaining of an interference with their right of property (ibid., § 59). It follows that Constitutional Court proceedings do not in principle fall outside the scope of Article 6 § 1.

In the Süßmann case the Court found that Article 6 applied even where the proceedings in the Federal Constitutional Court were not an "extension" of the proceedings in the ordinary courts. In that case the applicant appealed directly to the Federal Constitutional Court without first bringing proceedings in the ordinary civil courts (see the above mentioned judgment, p 1164, §§ 16-17). The Court based its conclusion on finding that the dispute as to the amount of the applicant's pension entitlement was of a pecuniary nature and undeniably concerned a civil right within the meaning of Article 6 (ibid., p. 1171, § 41) and that the only avenue through which Mr Süßmann could pursue further determination of that dispute was by means of an appeal to the Federal Constitutional Court whereby he alleged a breach of his constitutional right of property (ibid., pp. 1171, 1172, § 42).

In the Pauger v. Austria case the Court found that Article 6 § 1 was applicable to the proceedings before the Constitutional Court as the only means by which Mr Pauger could challenge the administrative authorities' decisions was an application to the Constitutional Court as it alone could rule on the constitutionality of the statutory provisions in issue. If it found that those provisions were unconstitutional, they would be declared void and the applicant's pension rights would be reassessed (see Pauger v. Austria judgment of 28 May 1997, *Reports* 1997-III, p. 894, § 47).

However, in the present case the proceedings before the Constitutional Court differ from the above cases in some significant aspects. In the instant case, the applicant's pension was reduced on 12 December 1992 by the Social Security Fund, Zagreb Office. After unsuccessfully appealing against that decision, the applicant instituted administrative proceedings. On 17 December 1993 the Administrative Court found that the lower bodies applied the provisions of the laws regulating pension rights of the former YPA officers correctly. It based its decision on the 31 December 1991 Act which provided that the former YPA officers' pensions were to be assessed to 63,22 % of what they received in December 1991. Furthermore, the applicant's property rights were not impaired by Croatian authorities as the Yugoslav Federal Fund stopped paying the applicant's pension. The Croatian authorities accepted the payment of his pension according to the relevant provisions of the Acts regulating that matter.

The arguments before that court were therefore concentrated on the legal issues, primarily whether a decision to reduce the applicant's pension was legally based and whether it violated his right of property.

Subsequently, the applicant had at his disposal yet another possibility of examining the decisions to reduce his military pension - by means of a constitutional complaint which would directly attack the constitutionality of those decisions. In these proceedings the Constitutional Court would have had an opportunity to rule upon a dispute as to the amount of the applicant's pension entitlement, which is of a pecuniary nature and to which proceedings, accordingly, Article 6 would have applied.

However, the applicant failed to use that remedy. Instead, he twice lodged a constitutional claim challenging the constitutionality of the Acts regulating pension rights of the former YPA officers, including the claim which is now before the Court, i.e., the proceedings concerning the applicant's constitutional claim of 1 February 1994 challenging the constitutionality of the Former YPA Officers Pension Act of 18 October 1993.

In these proceedings the Constitutional Court could not, however, examine the lower bodies' decisions which reduced the applicant's military pension, but was only asked to give its ruling in the abstract on the constitutionality of the contested laws.

Therefore, these proceedings were not decisive for the determination of the applicant's civil rights and, accordingly, Article 6 of the Convention does not apply thereto.

It follows that the application, as submitted to the Court, is incompatible *ratione materiae* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

For these reasons, the Court unanimously

Declares the application inadmissible.

Vincent BERGER
Registrar

Georg RESS
President