

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

FOURTH SECTION

CASE OF RIBAĆ v. SLOVENIA

(Application no. 57101/10)

JUDGMENT

STRASBOURG

5 December 2017

FINAL

05/03/2018

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Ribać v. Slovenia,

The European Court of Human Rights (Fourth Section), sitting as a Chamber composed of:

Ganna Yudkivska, *President,*
Vincent A. De Gaetano,
Paulo Pinto de Albuquerque,
Iulia Motoc,
Carlo Ranzoni,
Georges Ravarani,
Marko Bošnjak, *judges,*

and Andrea Tamietti, *Deputy Section Registrar,*

Having deliberated in private on 14 November 2017,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 57101/10) against the Republic of Slovenia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovenian national, Mr Aranđel Ribać, on 29 September 2010.

2. The applicant was represented by Mr M. Krivic, who was granted leave to represent the applicant under Rule 36 § 4 (a) of the Rules of Court. The Slovenian Government ("the Government") were represented by their Agent, Ms J. Morela, State Attorney.

3. The applicant alleged, in particular, that the refusal to grant him an old-age pension between November 1998 and April 2003 because he had not had Slovenian citizenship constituted discrimination on the grounds of nationality, contrary to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

4. On 14 June 2016 the above complaint was communicated to the Government and the remainder of the application was declared inadmissible pursuant to Rule 54 § 3 of the Rules of Court.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1942 and lives in Maribor.

A. Relevant background to the case

6. The Socialist Federal Republic of Yugoslavia ("the SFRY") was a federal State composed of six republics: Bosnia and Herzegovina, Croatia, Serbia, Slovenia, Montenegro and Macedonia. Nationals of the SFRY had "dual citizenship" for internal purposes, that is to say they were citizens of both the SFRY and one of the six republics. They had freedom of movement within the federal State and could register as permanent residents wherever they settled on its territory.

7. The SFRY had two pension systems – military and civil. The pension rights of military personnel were regulated by and secured through the federal authorities. In particular, members of the Yugoslav People's Army (hereinafter "the YPA"), the armed forces of the SFRY, paid their contributions to and received their pensions from a special military pension fund based in Belgrade (*Zavod za socialno osiguranje vojnih osiguranika*, hereinafter "the YPA Fund"). The YPA Fund paid pensions to military pensioners irrespective of where they undertook military service or lived once retired. This was the only pension fund existing at federal level. In parallel, each republic had in place its own pension legislation and public pension fund set up for the payment of civil pensions.

8. Between 1991 and 1992 the SFRY broke up. On 25 June 1991 Slovenia declared its independence.

9. In 1992 the Slovenian Government issued the Ordinance on the payment of advances on military pensions (see paragraph 28 below, hereinafter "the Ordinance") which regulated, on a temporary basis, the payment of military pensions to former YPA military personnel residing in the Republic of Slovenia who had applied for or fulfilled the conditions for retirement under the rules governing the pension and disability insurance of military personnel (hereinafter "the SFRY military rules") by 18 October 1991, the date of withdrawal of the YPA from Slovenia (see *P.P. v. Slovenia*, no. 39923/98, Commission decision of 1 July 1998, Decisions and Reports (DR) 3, p. 25). This was followed in 1998 by a new Act on the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel (see paragraph 29 below, hereinafter "the 1998 Act") which put in place a comprehensive regulatory framework for the pension rights of former YPA military personnel, in most cases allowing for pensions to be paid only to Slovenian nationals.

10. In 1994 the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia) transformed the YPA Fund (see paragraph 7 above) into the Social Insurance Fund of Military Personnel of the Federal Republic of Yugoslavia on the basis of the Yugoslav Army Act. The (transformed) YPA Fund continued paying YPA pensions to the citizens of the Federal Republic of Yugoslavia. However, it remains uncertain to what extent, if at all, the YPA Fund continued paying YPA pensions to the citizens of the Federal

Republic of Yugoslavia residing in the other former SFRY republics (see also, *mutatis mutandis*, *Kudumija v. Bosnia and Herzegovina and Serbia, and Remenović and Mašović v. Bosnia and Herzegovina*, (dec.), nos. 28233/08 and 2 others, § 11, 4 June 2013).

11. At the inter-State level, however, the question of responsibility for the payment of pensions to military personnel who had acquired or applied for pensions with the YPA Fund under the rules governing the pension and disability insurance of military personnel (hereinafter "the SFRY military rules") remained unresolved until the Agreement on Succession Issues entered into force in 2004 (see paragraph 30 below).

B. The applicant's personal circumstances

12. The applicant was a citizen of the Republic of Serbia in the SFRY. Following its dissolution, he retained citizenship of the then Federal Republic of Yugoslavia. He has been residing in Slovenia since 1964 and has had permanent resident status since 1981. In 1969 he married a Slovenian woman, with whom he had two children. He was a non-commissioned officer in active military service in the YPA until 30 September 1991, when he retired.

13. On 16 July 1991 he applied for retirement to the Maribor military district headquarters, and was then "available" (*na razpolago)* until his retirement. On 13 November 1991 the YPA Fund found him to be entitled to an old-age pension under the SFRY military rules as from 1 October 1991 with more than forty-one pensionable years with bonus (*benificirana doba*) in the YPA. The applicant maintained that he had only received his pension from the YPA Fund twice (in November 1991 and January 1992), when he had personally gone to Belgrade to collect it.

14. On 23 October 1991 the applicant applied for Slovenian citizenship under section 40 of the Citizenship Act (see paragraph 26 below). By a decision of 11 July 1992 the Ministry of Interior dismissed his application. It based its decision on section 40(3) and section 10(1)(8) of the Citizenship Act, which stipulated that the Ministry was allowed to refuse an application where there was reason to believe that the person posed a threat to public order, security or national defence. After the Constitutional Court quashed the decision and the case was remitted to the Ministry of Interior for fresh consideration, the latter on 2 September 1997 again dismissed his application on the same grounds. The applicant instituted court proceedings, which were unsuccessful. On 13 October 2005 the Constitutional Court rejected a constitutional complaint by him on the grounds that it was no longer relevant because he had acquired Slovenian citizenship in 2003 (see paragraph 19 below).

15. On 27 February 1992 the applicant applied for an advance on his military pension under the Ordinance (see paragraph 28 below). On 29 April

1993 he requested the YPA Fund to discontinue the payment of his pension. By a decision of 17 May 1993 his payments were stopped with effect from 31 January 1992. The applicant lodged this request after realising that the Pension and Disability Insurance Institute of Slovenia (hereinafter "the Institute") only granted advances under the Ordinance provided that the YPA Fund stopped paying the pension. By a decision of 5 May 1993 the Institute found that the applicant had been entitled to such an advance starting from 1 November 1991. It held that he had been a permanent resident of Slovenia since 1 April 1981 and had fulfilled the conditions for pension entitlement under the SFRY military rules by 18 October 1991.

16. On 13 October 1998 the Institute, on the basis of section 25 of the 1998 Act (see paragraph 29 below), issued of its own motion a decision not to convert the applicant's advance on his military pension into an old-age pension under the 1998 Act. His advance was suspended as of 31 October 1998. The Institute decided that since the applicant had been in active military service in the YPA from 25 June to 18 July 1991 and from 18 July 1991 had been on leave, he did not fulfil the statutory conditions for converting the advance on his military old-age pension into an old-age pension under section 2(1)(4) of the 1998 Act.

17. The applicant appealed, complaining that at the relevant time he had not been on leave, but had been available until his retirement. On 30 September 2002 the Institute dismissed his appeal, holding that he could not be considered a beneficiary under section 2(1) of the 1998 Act as he did not have Slovenian citizenship and did not comply with the requirements applicable to foreign beneficiaries. It added that he could re-apply for an old-age pension under the 1998 Act once he acquired Slovenian citizenship.

18. The applicant subsequently applied for judicial review of the Institute's decision before the Ljubljana Labour and Social Court, maintaining that, as a resident of Slovenia, he should have been treated in the same way as Slovenian citizens.

19. On 1 April 2003 the applicant acquired citizenship by naturalisation under section 19 of the amended Citizenship Act read in conjunction with section 10(1) of the Citizenship Act (see paragraph 27 below).

20. On 4 June 2003, after lodging a new request with the Institute, the applicant was granted an old-age pension as from 1 April 2003.

21. On 13 January 2006 the Ljubljana Labour and Social Court dismissed the application for judicial review (see paragraph 18 above). It pointed out that the applicant's situation had to be assessed with regard to the different categories of beneficiaries listed in section 2(1) of the 1998 Act. It concluded that the applicant had not fulfilled the conditions for an old-age pension set out in section 2(1)(2) of the 1998 Act. Likewise, as a foreigner he had not met the conditions set out in section 2(1)(4) of the 1998 Act. He had therefore been eligible for an old-age pension under section 2

of the 1998 Act only from 1 April 2003 onwards, the date on which he had acquired Slovenian citizenship.

22. The applicant lodged an appeal with the Higher Labour and Social Court. On 21 March 2007 the appeal was dismissed, essentially on the grounds that in the legally relevant period the applicant had been a foreigner who had not had rights to a pension or other benefits under the SFRY military rules by 25 June 1991 as required by section 2(1)(2) of the 1998 Act. The court held that the other provisions of section 2 of the 1998 Act were applicable only to Slovenian citizens and, thus, the applicant, who had not fulfilled the condition of nationality, should not have relied upon them.

23. The applicant lodged an appeal on points of law, claiming he should have been treated the same as Slovenian citizens. On 23 March 2009 it was dismissed by the Supreme Court, which followed the lower courts' reasoning. It held that in the period at issue the applicant had not met the requirements of any of the categories of beneficiaries under section 2 of the 1998 Act, having applied for the pension under the SFRY military rules on 16 July 1991 and having only acquired Slovenian citizenship on 1 April 2003.

24. On 24 March 2010 the Constitutional Court decided not to accept a constitutional complaint by the applicant for consideration, finding that it did not concern an important constitutional issue or entail a violation of human rights which had serious consequences for him.

II. RELEVANT DOMESTIC AND INTERNATIONAL LAW

A. 1991 Constitutional Act implementing the Basic Constitutional Charter on the Independence and Sovereignty of the Republic of Slovenia (Official Gazette nos. 1/91 and 42/97, "the 1991 Constitutional Act")

25. The following provision of the 1991 Constitutional Act is relevant to the present case:

Section 18

> "The Republic of Slovenia guarantees the protection of the rights of fighters ... and beneficiaries of military pensions permanently residing in the Republic of Slovenia and of ... within the scope and under the conditions defined by the SFRY regulations [as applicable] until the entry into force of this Act."

B. Citizenship of the Republic of Slovenia Act (Official Gazette no. 1/91-I with further amendments, "the Citizenship Act")

26. Under section 40 of the Citizenship Act, which entered into force on 25 June 1991, a person could acquire Slovenian citizenship if he or she

could demonstrate that there were exceptional circumstances. In particular, citizens of another republic of the former SFRY who on 23 December 1990, the day the plebiscite on independence was held, were registered as permanent residents in the Republic of Slovenia and resided there would acquire Slovenian citizenship if they submitted an application with the internal affairs authority of the municipality where they lived within six months of the Act entering into force.

27. Section 10(1) of the Citizenship Act regulates the acquisition of citizenship by naturalisation. On 14 November 2002 the Citizenship Act was amended (Official Gazette no. 96/02-I). Under section 19, adult who on 23 December 1990 was registered as permanent residents in the Republic of Slovenia and lived there uninterruptedly from that date, could apply for Slovenian citizenship within one year of the amended Citizenship Act entering into force if they met the specific requirements set forth in section 10(1) of that Act.

C. Ordinance on the payment of advances on military pensions (Official Gazette no. 4/1992, "the Ordinance")

28. The Ordinance provided that the following former YPA military personnel with permanent residence in Slovenia by no later than 26 June 1991 were entitled to an advance on their military pension:

(i) those who had claimed pension or other benefits under the pension and disability insurance of military personnel by 18 July 1991 (section 2(1)(1));

(ii) those who after 18 July 1991 had still been available, suspended, on holiday, or on sick leave, and had submitted a request for retirement and had met the conditions for entitlement to a pension or other benefits under the SFRY military rules by 18 October 1991 (section 2(1)(2)); and

(iii) those who had joined the Territorial Defence of Slovenia and who had met the conditions for entitlement to a pension under the SFRY military rules by 1 February 1992 (section 2(1)(3)).

Pursuant to section 2(2), those who had participated in aggression against Slovenia as members of the YPA were not entitled to an advance.

D. Act on the Rights Stemming from the Pension and Disability Insurance of Former Military Personnel (Official Gazette no. 49/98 with further amendments, "the 1998 Act")

29. The following provisions of the 1998 Act are relevant to the present case:

Section 1
Purpose of the Act

"This Act regulates the rights arising from pension and disability insurance that [Slovenian] citizens and other beneficiaries have acquired or fulfilled the conditions for entitlement under this Act based on the insurance under the former SFRY regulations on pension and disability insurance of military personnel (hereinafter 'the military rules') and the coordination and translation of these rights."

Section 2
Beneficiaries

"The beneficiaries under this Act are:

- [Slovenian] citizens residing in the Republic of Slovenia who claimed pension or other benefits under the military rules up to and including 25 June 1991;
- persons who have not applied for [Slovenian] citizenship or whose application for citizenship has been rejected (hereinafter 'foreigners') with permanent residence or residing in the Republic of Slovenia without interruption from and including 25 June 1991, provided that they claimed pension or other benefits under the military rules up to and including 25 June 1991 and cannot obtain them under the rules of the country of which they are citizens;
- active military personnel of the former YPA who joined the Territorial Defence of ... Slovenia and who fulfilled the conditions for entitlement to a pension under the military rules up to and including 1 February 1992;
- [Slovenian] citizens residing in the Republic of Slovenia who remained in active military service in the YPA after 25 June 1991 provided that their active service ... ceased before 18 July 1991, or from 18 July 1991 to the termination of the active service they were still suspended, in prison, on sick leave, or available, or by order of a competent authority their service was terminated due to retirement, or they remained in service in the YPA with the consent of the [Slovenian] authorities competent for defence matters, and they submitted a request for retirement and fulfilled the conditions for entitlement to an old-age, early or survivor's pension under the military rules by 18 October 1991; and ...

Slovenian citizens who meet the conditions laid down in the preceding paragraph can also obtain rights under this Act if they have permanent residence in a foreign country in which they cannot claim or enjoy the rights under the pension and disability insurance for the period of their service in the former YPA.

Persons who actively participated in aggression against the Republic of Slovenia in the function of command or direct combat operation, or who participated in military intelligence or counterintelligence activities against the Republic of Slovenia shall not be considered beneficiaries under the preceding paragraphs.

Slovenian citizens who were on 18 October 1991 missing at most five years with respect to their age or five pensionable years in order to fulfil the conditions for entitlement to a pension under military rules and who on that date had permanent residence in the Republic of Slovenia or in a country which does not recognise rights based on military rules to Slovenian citizens, are entitled to a pension under the conditions and in the manner defined in the Pension and Disability Insurance Act (Official Gazette nos. 12/92, 5/94 and 7/96, hereinafter 'the general rules') as if they spent the majority of their insurance period insured with the Pension and Disability Insurance Institute of Slovenia (hereinafter 'the Institute').

..."

Section 4
Rights under the military rules

"Beneficiaries under section 2 of this Act have a right to an old-age, early, family or ... under the conditions and to the extent determined in the military rules, unless stipulated differently in this Act."

..."

Section 25
Conversion of advances on military pensions [of the authorities' own motion]

"Advances on military pensions and other benefits under the Ordinance on the payment of advances on military pensions convert [of the authorities' own motion] to pensions and other benefits under this Act."

E. Agreement on Succession Issues

30. On 29 June 2001 Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia), the former Yugoslav Republic of Macedonia, and Slovenia signed the Agreement on Succession Issues, which entered into force on 2 June 2004. Pursuant to Article 2 of Annex E, each successor State assumes responsibility for and regularly pays pensions which are due to its citizens who were civil or military servants of the SFRY irrespective of their current residence, if those pensions were funded from the federal budget or other federal resources of the SFRY. If a person is a citizen of more than one State, the pension is paid by the State of residence.

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION TAKEN IN CONJUNCTION WITH ARTICLE 1 OF PROTOCOL No. 1

31. The applicant complained that he had been denied an old-age pension between November 1998 and April 2003 on the grounds that he had not had Slovenian citizenship, one of the requirements under section 2(1)(4) of the 1998 Act. He relied on Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1, which read as follows:

Article 14

"The enjoyment of the rights and freedoms set forth in [the] Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status."

Article 1 of Protocol No. 1

"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."

A. Admissibility

1. The parties' arguments

32. The Government argued that the applicant could not claim to have victim status since he had had Serbian citizenship and could thus have requested payment of his military pension from the YPA Fund and consequently from his own State but had failed to institute any proceedings in Serbia. In particular, they accentuated the fact that he had himself requested the YPA Fund to discontinue his pension payments (see paragraph 15 above).

33. The applicant argued that as he had been permanently resident in Slovenia, it had been "politically" and legally impossible for him to receive his military pension from Serbia, although his pension rights had been established by the YPA Fund. In particular, he submitted that the YPA Fund had only been paying pensions to retired YPA personnel residing in Serbia or Montenegro, while those, like him, living in Slovenia with their families had had no other choice but to claim and realise their rights in Slovenia. The applicant insisted that he had only received his pension from the YPA Fund twice, when he had gone to Belgrade (see paragraph 13 above). He explained that he had requested the YPA Fund to also formally discontinue his payments so that he could qualify for an advance on his military pension in Slovenia (see paragraph 15 above).

2. The Court's assessment

34. Although the Government presented their argument that the applicant should have requested his pension from the YPA Fund and Serbia as an objection to his victim status, the Court notes that the issue essentially concerns the merits of the case and should be addressed accordingly. It nevertheless observes that it has not been rebutted that the applicant did not receive any pension payments from the YPA Fund after January 1992 (see paragraph 13 above). Moreover, his renouncement of the pension from the YPA Fund could not be considered a waiver of his right to a pension in Slovenia, as seems to have been suggested by the Government (see paragraph 32 above). In particular, he requested that the YPA Fund formally

discontinue the payments of his pension after he had not received them for several months and with a view to claiming an advance on his pension payment from Slovenia (see paragraph 15 above). This had happened five years before the 1998 Act entered into force. Furthermore and most importantly, the applicant complained about the effect that the 1998 Act and the decisions adopted by the Slovenian authorities had had on his Convention rights, not the authorities of Serbia. Therefore the Court, without prejudging the merits of the case, cannot discern any elements which would call into question either his victim status or the responsibility of the respondent State for the measure complained of. The application is therefore compatible *ratione personae* with the Convention.

35. The Court further notes that application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Applicability of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

(a) The parties' arguments

36. The Government argued that the applicant did not have any "possessions" within the meaning of Article 1 of Protocol No. 1. They observed in this connection that, following the declaration of independence, Slovenia had assumed responsibility in accordance with the international law principle of acquired rights. In particular, pursuant to section 18 of the 1991 Constitutional Act (see paragraph 25 above) Slovenia had been obliged to grant the protection of pension rights to foreigners already receiving military pensions under the SFRY military rules but not to YPA military personnel who had not been granted pension rights by 25 June 1991. The Government thus considered that all the rights granted by Slovenia to insured YPA military personnel after the SFRY's dissolution had been provided "voluntarily", pending the conclusion of the Agreement on Succession Issues. Relying on the Court's findings in *Predojević, Prokopović, Prijović and Martinovič v. Slovenia* ((dec.), nos. 43445/98 and 3 others, 7 June 2001), the Government maintained that the funding of military pension advances had constituted a unilateral commitment on the part of Slovenia. Furthermore, they submitted that the right to an old-age pension under the 1998 Act was not a right arising from pension and disability insurance. The applicant had been insured under a completely separate insurance system with the YPA Fund which had nothing to do with Slovenia and had no legitimate claim for the payment of a military pension against it.

37. The applicant alleged that his pension rights had been recognised in April 2003 on the basis of the 1998 Act and denied years before solely on the grounds of his nationality. He maintained that Article 1 of Protocol No. 1 was applicable regardless of the obligations of the former Republic of Slovenia as a federal unit of the SFRY, since with the 1998 Act Slovenia as an independent State had assumed further obligations and provided pension rights to former YPA military personnel. The applicant asserted that his legitimate expectation had been further apparent from the fact that he had been entitled to the advance on his military pension until October 1998 (see paragraph 16 above).

(b) The Court's assessment

38. The Court reiterates that Article 14 of the Convention complements the other substantive provisions of the Convention and its Protocols. It has no independent existence, since it has effect solely in relation to "the enjoyment of the rights and freedoms" safeguarded by those provisions. The application of Article 14 does not necessarily presuppose the violation of one of the substantive rights guaranteed by the Convention. It is necessary but it is also sufficient for the facts of the case to fall "within the ambit" of one or more of the Convention Articles (see, among many other authorities, *Andrejeva v. Latvia* [GC], no. 55707/00, § 74, ECHR 2009, and *Lupeni Greek Catholic Parish and Others v. Romania* [GC], no. 76943/11, § 162, ECHR 2016 (extracts)). The prohibition of discrimination in Article 14 thus extends beyond the enjoyment of the rights and freedoms which the Convention and Protocols require each State to guarantee. It applies also to those additional rights, falling within the general scope of any Convention article, for which the State has voluntarily decided to provide (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 40, ECHR 2005-X, and *Khamtokhu and Aksenchik v. Russia* [GC], nos. 60367/08 and 961/11, § 58, ECHR 2017).

39. The Court must, therefore, determine whether the applicant's interest in receiving an old-age pension under the 1998 Act fell within the "ambit" or "scope" of Article 1 of Protocol No. 1.

40. According to the Court's established case-law, the principles which apply generally in cases concerning Article 1 of Protocol No. 1 are equally relevant when it comes to welfare benefits (see *Andrejeva*, cited above, § 77, and more recently, *Ruszkowska v. Poland*, no. 6717/08, § 48, 1 July 2014). In particular, this Article does not guarantee the right to acquire property (see *Kopecký v. Slovakia* [GC], no. 44912/98, § 35, ECHR 2004-IX), nor does it guarantee, as such, any right to a pension of a particular amount (see, for example, *Béláné Nagy v. Hungary* [GC], no. 53080/13, § 84, ECHR 2016). Furthermore, it places no restriction on the Contracting State's freedom to decide whether or not to have in place any form of social security scheme, or to choose the type or amount of

benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a propriety interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Stummer v. Austria* [GC], no. 37452/02, § 82, ECHR 2011).

41. Moreover, in cases such as the present, concerning a complaint under Article 14 in conjunction with Article 1 of Protocol No. 1 that the applicant has been denied all or part of a particular benefit on a discriminatory ground covered by Article 14, the relevant test is whether, but for the discriminatory ground about which the applicant complains, he or she would have had a right, enforceable under domestic law, to receive the benefit in question (see *Fabris v. France* [GC], no. 16574/08, § 52, ECHR 2013 (extracts)).

42. In the present case, the Government contested the applicability of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1. They argued, firstly, that they had no obligation under the applicable law to pay military pensions to citizens of the SFRY who had not had their rights to a military pension established under the SFRY military rules by 25 June 1991, except for Slovenian nationals. Secondly, they maintained that YPA military personnel who had been contributing to a separate federal fund before the SFRY's dissolution and thus not to the Institute (see paragraph 7 above) had no claim against Slovenia (see paragraph 36 above).

43. The Court notes that Slovenia, by enacting the 1998 Act, decided of its own accord to provide as of right the entitlement to an old-age pension to former YPA military personnel who fulfilled the section 2 conditions of the Act, regardless of the payment of any kind of contributions to the Institute (see *Stec and Others*, § 54, and *Stummer*, § 82, both cited above). It thereby created a sufficiently clear legal basis in domestic law for the presumed entitlement to such a benefit to fall within the scope of Article 1 of Protocol No. 1 (see, *mutatis mutandis, Andrejeva*, cited above, § 78).

44. The Court further notes as undisputed the fact that the applicant in 1998 already fulfilled all the other conditions to be granted an old-age pension under the 1998 Act. It is purely on account of his nationality, the condition of entitlement he has alleged to be discriminatory (see paragraph 41 above), that he was refused the right to an old-age pension. This is also evident from the fact that he was granted the pension as soon as he acquired Slovenian citizenship (see paragraphs 19-20 above). Had he been a Slovenian citizen during the years in dispute, he would have been entitled to an old-age pension under the 1998 Act.

45. The above considerations are sufficient for the Court to conclude that the applicant's pecuniary interest falls within the scope of Article 1 of

Protocol No. 1 and the right to the peaceful enjoyment of possessions which it safeguards. Article 14 is therefore applicable to the present case.

2. Compliance with Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1

(a) The parties' arguments

46. The applicant argued that the respondent State discriminated against him by refusing to grant him an old-age pension on the grounds of nationality criterion enshrined in the 1998 Act. Between 1 November 1998 and 1 April 2003 he had not received any pension or other benefits which had, consequently, seriously affected his life. He maintained that the domestic courts' decisions and in particular, the fact that he had been granted an advance on his military pension until the enactment of the 1998 Act showed that he had not participated in aggression against Slovenia following its declaration of independence. He submitted that it was unacceptable for the Government to assume that in general all military personnel of the YPA without Slovenian citizenship had participated in hostilities against Slovenia. The applicant further argued that the protection of the economic system could not justify discrimination on the basis of nationality in his case.

47. The Government, on the contrary, alleged that Slovenian citizens had not been in the same situation as foreigners with permanent residence in Slovenia, because the latter had had citizenship of another State and could have thus expected their own State to assume responsibility for their social security. In particular, they had been entitled to pension rights in their own State and under the YPA Fund. It had thus not been unreasonable of the respondent State to have assumed full responsibility for the pensions of only its own citizens.

48. In the alternative, the Government argued that even assuming a difference in treatment, it had had an objective and reasonable justification. It served the legitimate aim of safeguarding the State, ensuring the social security of its citizens and protection of the economic system. In particular, in their view the difference in treatment complained of fell within the broad margin of appreciation enjoyed by States in the organisation of their social security systems.

49. The Government further contended that the Court should take into account the particular context of the case, which was linked to the process of restoring Slovenian independence. Following the declaration of independence on 25 June 1991, the YPA was considered an aggressor army and members of the YPA as participants in aggression against Slovenia. Therefore, section 2(1)(4) of the 1998 Act, the only provision addressing as beneficiaries military personnel who had remained in active military service in the YPA after 25 June 1991, excluded non-Slovenian nationals.

50. Lastly, the Government submitted that pending the conclusion of a succession agreement among the former SFRY republics, each newly established State had provided for a military pension for its own citizens only. Referring to the terms of the Agreement on Succession Issues (see paragraph 30 above) and general principles of international law, they argued that the applicant's old-age pension was a succession issue. In their view, there had been no need for Slovenia to assume responsibility for YPA pensioners of foreign nationality, other than those permanently resident in the country whose pension rights under the SFRY military rules had been recognised by 25 June 1991.

(b) The Court's assessment

(i) Principles deriving from the Court's case-law

51. The Court reiterates that although Article 1 of Protocol No. 1 does not comprise the right to receive a social security payment of any kind, if a State does decide to create a benefits scheme, it must do so in a manner which is compatible with Article 14 of the Convention (see *Stec and Others*, cited above, § 55).

52. In the enjoyment of the rights and freedoms guaranteed by the Convention, Article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in relevantly similar situations (see, among many other authorities, *Fabris*, cited above, § 56). 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 not a reasonable relationship of proportionality between the means employed and the aim sought to be realised (see *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 61, ECHR 2010).

53. The Contracting States enjoy a certain margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a difference in treatment (see *İzzettin Doğan and Others v. Turkey* [GC], no. 62649/10, § 156, ECHR 2016). The scope of this margin will vary according to the circumstances, the subject matter and the background (see *Carson and Others*, cited above, § 61). A wide margin is usually allowed to the State under the Convention when it comes to general measures of economic or social strategy (see *British Gurkha Welfare Society and Others v. the United Kingdom*, no. 44818/11, § 62, 15 September 2016). Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to appreciate what is in the public interest on social or economic grounds, and the Court will generally respect the legislature's policy choice unless it is "manifestly without reasonable foundation" (see *Stummer*, cited above, § 89). However, as a general rule, very weighty

reasons would have to be put forward before the Court could regard a difference in treatment based exclusively on the grounds of nationality as compatible with the Convention (see *Gaygusuz v. Austria*, 16 September 1996, § 42, *Reports of Judgments and Decisions* 1996-IV, and *Andrejeva*, cited above, § 87).

54. Lastly, as to the burden of proof in respect of Article 14 of the Convention, the Court has established that once the applicant has shown a difference in treatment it is for the Government to show that it was justified (see *D.H. and Others v. the Czech Republic* [GC], no. 57325/00, § 177, ECHR 2007-IV).

(ii) Application of the above principles in the present case

(α) Whether there was a difference in treatment between persons in similar situation on the grounds of nationality

55. The Court must first examine whether the applicant, when his pension rights were determined in 1998, was in a relevantly similar situation to retired YPA military personnel with Slovenian citizenship.

56. It has not been disputed that the applicant has lived in Slovenia since 1964, established a family life there and has been registered as a permanent resident there since 1981 (see paragraph 12 above). He, like other YPA military personnel, paid pension contributions to a federal pension fund (the YPA Fund) and was entitled to a pension under the conditions (for example pensionable years) set out in the SFRY military rules, which applied to all beneficiaries regardless of their nationality (see paragraph 7 above).

57. The Court further observes that in 1998 the applicant fulfilled all other statutory conditions under section 2(1)(4) of the 1998 Act (see paragraph 17 above) entitling him to the pension but Slovenian citizenship. This is confirmed by the fact that he was recognised the right to an old-age pension under section 2(1)(4) of the 1998 Act as soon as he acquired Slovenian citizenship in 2003 (see paragraph 21 above).

58. The Government argued that despite the above, the applicant, as a foreign national, could not be compared to Slovenian nationals because he, unlike them, had been entitled to pension rights in Serbia as well as under the YPA Fund (see paragraph 47 above).

59. The Court observes that in November 1991 and January 1992 the applicant did receive two pension instalments from the YPA Fund (see paragraph 13 above); these were however the only instalments he had ever received from them. The Court further observes that the Government did not refer to any specific legal provision that would clearly indicate that the applicant could have received his pension from the YPA Fund or the then Federal Republic of Yugoslavia in the period between November 1998 and April 2003 while residing in Slovenia. They also did not provide a single

example which would show that someone else in a similar situation to the applicant in fact received a pension for his employment in the YPA from the YPA Fund or any other entity apart from Slovenia (see paragraph 10 above, and, by contrast and *mutatis mutandis*, *Tarkoev and Others v. Estonia*, nos. 14480/08 and 47916/08, §§ 63-64, 4 November 2010). Lastly, the Court finds it particularly significant that none of the domestic courts dismissed the applicant's pension request because he could have pursued his pension claim elsewhere. On the contrary, they found the lack of Slovenian citizenship to be the only reason for refusal of an old-age pension under the 1998 Act (see, for instance, paragraph 22 above).

60. Having dismissed the Government's above arguments, the Court cannot but accept that between November 1998 and April 2003 the applicant's situation with regard to retirement benefits was similar to that of retired YPA military personnel with Slovenian citizenship. The Court must accordingly determine whether the difference in treatment, which was based on the applicant's nationality, was justified, taking into account that the burden of proof for such justification lies with the Government (see paragraph 54 above).

(β) Whether there was objective and reasonable justification

61. The Court accepts that the difference in treatment complained of pursued at least one legitimate aim that is broadly compatible with the general objectives of the Convention, namely the protection and organisation of the country's economic and social system (see paragraph 48 above; see, *mutatis mutandis*, *Andrejeva*, cited above, § 86).

62. The Court takes note of the Government's arguments that the difference in treatment that was meant to secure that aim was justified because, firstly, nationals of other former SFRY republics were assumed to have participated in aggression against Slovenia (see paragraph 49 above), and secondly, their rights were the subject of succession negotiations and there was therefore no reason for Slovenia to assume responsibility pending the conclusion of a succession agreement (see paragraph 50 above).

63. As regards the first Government's argument, the Court observes that section 2 of the 1998 Act, which would have been the legal basis for the applicant's old-age pension, explicitly set out the requirement of non-participation in aggression against Slovenia (section 2(3) of the 1998 Act). There were no exceptions to this requirement, and all potential beneficiaries could be subject to verification, including those of Slovenian nationality (see paragraph 29 above). The Court cannot therefore accept the Government's argument that the difference in treatment was justified by the assumption that nationals of other former SFRY republics were likely to have participated in aggression against Slovenia.

64. Regardless of the above, the Court notes that it is not disputed by the Government that the applicant did not take part in the aggression against

Slovenia and, moreover, there is nothing in the case file to suggest that that was the case. In particular, in the dismissal of his first application for citizenship on grounds relating to public order, security or national defence there was no reference to his actual conduct in the aftermath of Slovenia's declaration of independence (see paragraph 14 above). Moreover, the Constitutional Court has never examined the applicant's constitutional complaint challenging the aforementioned dismissal of his citizenship application, finding an examination unnecessary because he had in the meantime acquired Slovenian citizenship under a different legal provision (see paragraphs 14 and 19 above). The Court further finds it particularly significant that the Slovenian authorities already in 1993 granted the applicant an advance on his military pension to which only those who were found not to have participated in the aggression against Slovenia were entitled (see paragraphs 15 and 28 above). The applicant was also granted an old-age pension, which was similarly conditional on non-participation in the aggression against Slovenia, as soon as he acquired Slovenian citizenship in 2003 (see paragraphs 20 and 63 above).

65. As regards the second Government's argument, the Court observes that the Agreement on Succession Issues, which provided that each SFRY successor State was responsible for the payment of pensions to its citizens employed by the YPA in the SFRY, did not enter into force until 2004 (see paragraph 30 above). At that time the applicant already had Slovenian citizenship and was receiving his old-age pension under the 1998 Act. Prior to the Agreement on Succession Issues there were only each State's domestic laws that regulated in their own way the pension rights of YPA military personnel. However, the Court again observes that the Government did not put forward any evidence that between November 1998 and April 2003 the applicant could have in fact received a pension for his employment in the YPA from another SFRY successor State (see paragraph 59 above). The Court, for its part, is fully aware that there might have been some uncertainty as to which successor State should have assumed responsibility for the pensions of retired YPA military personnel. Nonetheless, it reiterates that by ratifying the Convention, the respondent State undertook to secure "to everyone within [its] jurisdiction" the rights and freedoms guaranteed therein. Accordingly, in the present case Slovenia cannot be absolved of its responsibility under Article 14 of the Convention on the grounds that the matter at that time was not regulated by a succession agreement (see, *mutatis mutandis*, *Andrejeva*, cited above, § 90).

66. The Court reiterates that, while being mindful of the broad margin of appreciation enjoyed by the State in the field of social security (see paragraph 61 above), very weighty reasons would have to be put forward to justify the difference in treatment based exclusively on the grounds of nationality (see paragraph 53 above). The Court cannot discern any such

reasons in the present case. There is accordingly no objective and reasonable justification for the difference in treatment.

67. In the light of the aforementioned findings, the Court concludes that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1.

II. APPLICATION OF ARTICLE 41 OF THE CONVENTION

68. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

69. The applicant claimed 24,810 euros (EUR) in respect of pecuniary damage, corresponding to the outstanding pension instalments between 1 November 1998 and 1 April 2003. Referring to domestic statutory default interest rates, he further claimed interest until the date of payment, which on 22 November 2016 amounted to EUR 81,300.

70. The applicant also claimed EUR 7,000 in respect of non-pecuniary damage. He explained that in calculating the amount he had taken into account his feelings of desperation, mental emptiness, helplessness, continuous stress and sleeplessness.

71. The Government disputed the claim for pecuniary damage as excessive and argued that the applicant had also received an advance on his military pension for November 1998. They further argued that the exchange rate applied by the applicant had been wrong and that the statutory default interest was excessive. The Government also disputed the claim for non-pecuniary damage as unjustified and unsubstantiated, arguing that the applicant had failed to submit any evidence in this connection.

72. The Court reiterates that the principle underlying the provision of just satisfaction is that the applicant should, as far as possible, be put in the position he or she would have enjoyed had the violation of the Convention not occurred. Furthermore, the indispensable condition for making an award in respect of pecuniary damage is the existence of a causal link between the damage alleged and the violation found (see, for instance, *Andrejeva*, cited above, § 111). In the light of the foregoing, the Court awards the applicant EUR 24,342 as compensation for fifty-two unpaid pension instalments to which he would have been entitled between December 1998 and April 2003 had the violation of Article 14 not occurred. To this some interest should be added, reflecting the inflation rates since the relevant period. It therefore awards him EUR 37,000 in respect of the pecuniary damage sustained.

73. The Court further considers that the applicant must have suffered non-pecuniary damage, in particular feelings of frustration and distress, as a result of the violation found. Making its assessment on an equitable basis, the Court awards the applicant EUR 5,000 for non-pecuniary damage, plus any tax that may be chargeable on that amount.

B. Costs and expenses

74. The applicant also claimed EUR 3,570 for the costs and expenses incurred before the domestic courts and before this Court. He submitted that he had been assisted by his legal representative Mr. Krivic throughout the domestic proceedings and the proceedings before the Court. Under the terms of a written contract, which followed an earlier oral agreement, the applicant was due to pay Mr. Krivic EUR 3,420 on the conclusion of the case, in the event that the Court found a violation. The applicant also provided an invoice for EUR 150 issued by a law firm for assisting him in calculating the amount of just satisfaction claimed.

75. The Government considered the amount entirely unfounded, claiming that the aforementioned agreement had only been concluded on 23 November 2016. Additionally, they claimed that his representative would not have been entitled to any payment before the domestic courts as he was not a practising lawyer in Slovenia. In this connection, they maintained that pursuant to the Attorney Tariff Act applicable in the relevant period, a lawyer's fee for the whole set of domestic proceedings would have been between EUR 500 and 1,500. The Government also argued that the invoice submitted was not in accordance with the Attorney Tariff Act and that there was no proof that the services provided had been in connection with the present application.

76. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. Moreover, the Court reiterates that it does not consider itself bound by domestic scales and practices, although it may derive some assistance from them (see, among many examples, *Gaspari v. Slovenia*, no. 21055/03, § 83, 21 July 2009).

77. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the entire amount claimed.

C. Default interest

78. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1;

3. *Holds*
   (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
      (i) EUR 37,000 (thirty-seven thousand euros), plus any tax that may be chargeable, in respect of pecuniary damage;
      (ii) EUR 5,000 (five thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
      (iii) EUR 3,570 (three thousand five hundred and seventy euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;
   (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

4. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 5 December 2017, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Andrea Tamietti	Ganna Yudkivska
Deputy Registrar	President