CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 15085/02
by Ljuba ČEKIĆ and Others
against Croatia

The European Court of Human Rights (First Section), sitting on 9 October 2003 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mr P. LORENZEN,
Mr G. BONELLO,
Mrs F. TULKENS,
Mrs N. VAJIĆ,
Mrs E. STEINER,
Mr K. HAJIYEV, *judges*,
and Mr E. FRIBERGH, *Deputy Registrar*,

Having regard to the above application lodged on 1 March 2002,

Having deliberated, decides as follows:

THE FACTS

The applicants, Ms Ljuba Čekić, Ms Kata Nenadić, Ms Ljubica Micin, Ms Miljka Kovačević and Mr Janko Španović are Croatian citizens, who were born in 1935, 1942, 1924, 1948 and 1928, respectively and live in Šaš, Kostajnica, Madjari, Sisak and Petrinja. They are represented before the Court by Mr Erih Fridrih and Ms Sandra Fridrih-Knez, lawyers practising in Sisak, Croatia.

Commented [Note1]: To be checked.

A. The circumstances of the case

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

1. Proceedings concerning the first applicant, Ms Ljuba Čekić

The applicant and her husband lived in Šaš. The husband received his pension until August 1991 when the payments stopped. Šaš is situated in a part of Croatia which was occupied from the summer of 1991 until August 1995.

In August 1995 the applicant and her husband left Croatia, due to the military operation "Storm" (*Oluja*), and went to live in Serbia.

On 26 January 1996 the husband died.

In April 1997 the applicant returned to Croatia.

It appears that the applicant requested the Croatian Pension Fund to grant her payments related to her late husband's pension. The applicant's right to a family pension was recognised as from 1 July 1998 and the applicant has continued to receive payments of her pension from that date.

The applicant then filed an action with the Sisak Municipal Court (*Općinski sud u Sisku*) seeking payments of her late husband's pension for the period between August 1991 and January 1996.

On 20 March 2000 the court rejected the applicant's claim. It found that the applicant and her husband had lived in an occupied part of Croatia and that the husband had received a pension from the authorities which controlled that territory. According to the Pensions Act a person was allowed to receive only one pension and since the applicant's husband had received a pension from the authorities of the occupied territory he had no right to another pension from the Croatian authorities.

On 19 May 2000 the applicant appealed against the first instance judgment.

On 19 October 2000 the Sisak County Court (*Županijski sud u Sisku*) upheld the first instance judgment.

2. Proceedings concerning the second applicant, Ms Kata Nenadić

The applicant lived in Hrvatska Kostajnica. She received a family pension until August 1991 when the payments stopped. Hrvatska Kostajnica is situated in a part of Croatia which was occupied from the summer of 1991 until August 1995.

In August 1995 the applicant left Croatia, due to the military operation "Storm", and went to live in Serbia.

In 1997 the applicant returned to Croatia.

It appears that the applicant requested the Croatian Pension Fund to provide her with a pension. The applicant's right to a family pension was recognised as from 1 May 1997 and the applicant has continued to receive payments of her pension from that date.

The applicant then filed an action with the Sisak Municipal Court seeking payments of her pension for the period between 1 September 1991 and 1 May 1997.

On 20 April 2000 the court rejected the applicant's claim. It found that the applicant had lived in an occupied part of Croatia and that she had received a pension from the authorities which controlled that territory. According to the Pensions Act a person was allowed to receive only one pension and since the applicant had received a pension from the authorities of the occupied territory she had no right to another pension from the Croatian authorities.

On 19 May 2000 the applicant appealed against the first instance judgment.

On 26 October 2000 the Sisak County Court upheld the first instance judgment.

3. Proceedings concerning the third applicant, Ms Ljubica Micin

The applicant lived in Mađari. She received a pension until June 1991 when the payments stopped. Mađari is situated in a part of Croatia which was occupied from the summer of 1991 until August 1995.

In August 1995 the applicant left Croatia, due to the military operation "Storm", and went to live in Serbia.

In July 1997 the applicant returned to Croatia.

It appears that the applicant requested the Croatian Pension Fund to pay her pension. The applicant's right to a family pension was recognised as from 1 May 1997 and the applicant has continued to receive payments of her pension from that date.

The applicant then filed an action with the Sisak Municipal Court seeking payments of her pension for the period between 1 September 1991 and 1 May 1997.

On 20 April 2000 the court rejected the applicant's claim. It found that, according to Section 87 § 2 of the Pensions Act, it was possible to seek pension instalments only for the past twelve months. Since it was established that the applicant had received a pension for the past twelve months before she had filed her claim with the Municipal Court, the period for which the applicant had sought the pension instalments fell within the statutory limitation.

On 19 May 2000 the applicant appealed against the first instance judgment.

On 12 October 2000 the Sisak County Court upheld the first instance judgment.

4. Proceedings concerning the fourth applicant, Ms Miljka Kovačević

The applicant lived in Sisak. She received a pension until July 1991 when the payments stopped and the applicant left Croatia and went to live in Bosnia and Herzegovina until June 1992. Then she returned to Croatia and settled in Petrinja, a town situated in a part of Croatia which was occupied from the summer of 1991 until August 1995.

In August 1995 the applicant left Croatia, due to the military operation "Storm", and went to live in Serbia.

In June 1998 the applicant returned to Croatia.

It appears that the applicant filed a request for payment of her pension. The applicant's right to a family pension was recognised as from 1 July 1998 and the applicant has continued to receive payments of her pension from that date on.

The applicant then filed an action with the Sisak Municipal Court seeking payments of her pension for the period between 1 July 1991 and 1 July 1998.

On 20 March 2000 the court rejected the applicant's claim. It found that, according to Section 87 § 2 of the Pensions Act, it was possible to seek pension instalments only for the past twelve months. Since it was established that the applicant had received a pension for the past twelve months before she had filed her claim with the Municipal Court, the period for which the applicant had sought payments of her pension fell within the statutory limitation.

On 19 May 2000 the applicant appealed against the first instance judgment.

On 6 November 2000 the Sisak County Court upheld the first instance judgment.

5. Proceedings concerning the fifth applicant, Mr Janko Španović

The applicant lived in Petrinja. He received a pension until July 1991 when the payments stopped. Petrinja is situated in a part of Croatia which was occupied from the summer of 1991 until August 1995.

In August 1995 the applicant left Croatia, due to the military operation "Storm", and went to live in Serbia.

On 1 June 1997 the applicant returned to Croatia.

It appears that the applicant filed a request for payment of his pension for the period between September 1991 and July 1997 with the Croatian Pension Fund, Sisak Office (*Hrvatski zavod za mirovinsko osiguranje, Područna služba u Sisku*). On 29 March 2000 that authority issued a decision stating that payment of the applicant's pension had been stopped on 31 August 1991 due to the war in Croatia. Since the applicant had lived in the occupied territory the Croatian authorities had been unable to verify his address. It also stated that the applicant had received a pension from the authorities that had controlled that territory. The applicant's right to receive again the payments of his pension from the Croatian authorities was recognised as from 1 July 1997.

The applicant then filed an action with the Sisak Municipal Court seeking payments of his pension for the period between 1 September 1991 and 1 July 1997.

On 13 April 2000 the court rejected the applicant's claim. It noted that the Croatian Pension Fund, Sisak Office had decided that the applicant had had no right to a pension for the period in question and found that a regular civil court had no competence to set aside such a decision issued by an administrative body, but only to determine the applicant's civil claim for payment. However, such a claim had no legal ground as the applicant's right to receive a pension in the period from September 1991 until July 1997 had not been recognised by the competent authority.

On 18 May 2000 the applicant appealed against the first instance judgment.

On 12 October 2000 the Sisak County Court upheld the first instance judgment.

6. The constitutional complaint

On 28 December 2000 all five applicants filed together a constitutional complaint. They recalled that they had requested payment of the pension instalments for the respective periods during which no pension had been paid and alleged that the Croatian Pension Fund refused to pay, contrary to the law. Thus, their right to the peaceful enjoyment of their property had been violated.

Furthermore, they alleged that their right to equality before the courts was violated because in other proceedings concerning similar claims, other

courts in Croatia had granted such claims. Also, the exact amount of the pension instalments that they claimed had never been established.

They argued furthermore that the lower courts had erred in the application of laws because they had applied the Pensions Act retroactively and also wrongly interpreted the rules regulating statutory limitation.

In respect of the first four applicants the Constitutional Court rejected the complaint on 12 July 2001 and in respect of the fifth applicant the complaint was rejected on 13 September 2001.

It found that, in essence, the constitutional complaint was of a fourth instance nature since the applicants complained that the lower courts wrongly established the facts and erred in their application of the laws. It concluded that the lower courts' decisions were based on law and well reasoned and that the rights complained of were not violated.

In respect of the first applicant, Ms Ljuba Čekić the Constitutional Court stated as follows:

> ... The applicant is treating her constitutional complaint as a regular legal remedy and is asking the Constitutional Court to act as a court of appeal in respect of the courts that gave the impugned judgments.
>
> However, according to the constitutional definition of the Constitutional Court's jurisdiction, as regulated by Article 128 § 1 (4) of the Constitution as well as by Section 59 of the Constitutional Court Act, a constitutional complaint is a remedy established for the protection of human rights and fundamental freedoms and may be filed against an act (and the proceedings that preceded such an act) that has violated an applicant's human rights or fundamental freedoms guaranteed by the Constitution (constitutional rights).
>
> The applicant asks the Constitutional Court to rule that the contested judgments violated her rights guaranteed in Article 14 § 2, Article 16 § 1, Articles 19, 26 and 32, Article 48 § 1 and Article 56 § 1 of the Constitution in connection with Articles 3, 5 and 89 and Article 117 § 3 of the Constitution.
>
> More specifically, the applicant alleges an infringement of her constitutional rights under Article 14 § 2 and Article 26 of the Constitution, in that her right to equality before the law and before the courts had been violated because the first-instance court failed to ask the defendant to certify the exact amount of the pension instalments that had not been paid to the applicant during the material period.
>
> However, the first-instance court established that the late applicant's husband had received a pension from a "para-fund", whose acts were recognised on the basis of Section 1 of the Validation Act (Official Gazette no. 104/97). According to Section 134 § 1 of the former Pensions and Invalidity Act (Official Gazette nos. 26/83, 5/86, 42/87, 34/89, 40/90, 9/91, 26/93, 96/93, 44/94 and 59/96) and Section 89 of the Pensions Act (Official Gazette no. 102/98) a beneficiary who has acquired the right to two or more pensions is allowed to receive only one pension. Accordingly, the first-instance court established that the late applicant's husband had chosen to receive in the relevant period a pension based on the act that that court recognised pursuant to Section 1 of the Validation Act; it further established that the applicant had no legal basis to claim for the same period another pension on a different basis.

> The applicant herself indicated the value of her claim. In rejecting the applicant's request that the exact amount of the pension instalments that she sought be established, having already ruled that her claim had no legal basis, the first-instance court did not violate her right to equality before the law and the courts.
>
> Lastly, the second-instance judgment accepted the defendant's objection based on the statutory limitation in Section 87 § 2 of the Pensions Act, which provides that all outstanding payments under § 1 of that provision (pensions and other monetary instalments) that have not been paid owing to circumstances caused by a beneficiary can be sought only for the twelve months preceding the day when the claim for payment has been filed, noting that the applicant had filed her claim on 19 July 1999 but had been in receipt of her family pension since 1 July 1998, a period of more than twelve months before the time when she filed her claim.
>
> The facts relevant in the proceedings in which the impugned judgments were given, and on which the applicant based her constitutional complaint, are not relevant for the assessment whether the applicant's constitutional rights were violated. Presentation of evidence and the establishment of facts fall within the competence of the courts that conducted those proceedings."

In respect of the other four applicants the Constitutional Court gave very similar reasoning.

B. Relevant domestic law

The relevant parts of the Pensions Act (*Zakon o mirovinskom osiguranju* - Official Gazette no. 102/1998) provide in its Section 87 § 2 that pension instalments which have not been paid owing to circumstances caused by a beneficiary can be sought only for the past twelve months, and that the period before that falls within the statutory limitation.

Section 89 provides that a person who, according to Croatian law, is entitled to two or more pensions under the compulsory national retirement pension scheme may receive only one of those pensions.

Section 1 of the Validation Act (*Zakon o konvalidaciji*, Official Gazette no. 104/97) provides that all individual acts and decisions issued by various bodies or legal persons exercising public authority in matters of a judicial or administrative nature in the parts of the Republic of Croatia that were under the protection and authority of the United Nations, are to be validated by that Act, according to the Constitution, the Constitutional Act on human rights and freedoms and the rights of ethnic and national communities or minorities in Croatia and other statutes.

COMPLAINTS

1. The applicants complain under Article 6 § 1 of the Convention that the proceedings before the domestic courts concerning their claims for the

payment of their pensions were unfair and exceeded the reasonable time requirement.

2. The applicants complain further, under Article 1 of Protocol No. 1 taken alone and in conjunction with Article 14 of the Convention, that their right to property was violated because they have been deprived of parts of their pension only because they lived in the occupied areas of Croatia or outside Croatia.

3. They also complain under Article 13 of the Convention that they had no right to file a request for revision on points of law before the Supreme Court.

4. The applicants complain under Article 2 of Protocol No. 4 that as a consequence of choosing to stay in the occupied areas of Croatia they lost their pensions.

5. Finally they complain under Article 3 of Protocol No. 4 that they were expelled from Croatia and subsequently prevented from returning for a prolonged period of time.

THE LAW

1. The applicants firstly complained that the proceedings concerning their claim for payment of the pension instalments had exceeded the reasonable time requirement. They also complained that the proceedings were unfair because the domestic courts had wrongly established the facts of their cases and erred in their application of the laws. They relied on Article 6 § 1 of the Convention, the relevant parts of which read as follows:

> "In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing within a reasonable time by [a] ... tribunal..."

As to the length complaint the Court observes that the second and the third applicants instituted proceedings sometime after 1 May 1997, the fifth applicant sometime after 1 July 1997, while the first and the fourth applicants instituted proceedings sometime after 1 July 1998. All five sets of proceedings came to an end when the Constitutional Court rejected the complaints. In respect of the first four applicants the Constitutional Court decided in the matter on 12 July 2001 and in respect of the fifth applicant on 13 September 2001. It follows that the proceedings concerning the first and the fourth applicants lasted for about three years while the proceedings against the second, the third and the fifth applicants lasted for about four years and two months.

The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the criteria established by its case-law, particularly the complexity of the case, the conduct of the applicant and of the relevant

authorities and what was at stake for the applicant in the dispute (see, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII).

The Court considers that the cases concerning the applicants' claim for payments of their pension did involve a certain degree of factual complexity since they required, *inter alia*, that the courts establish whether the applicants had received a pension from the authorities which had controlled the occupied territory of Croatia.

As to the applicants' conduct the Court notes that there is no indication that they contributed to the length of the proceedings.

As to the behaviour of the domestic authorities the Court notes that, although the applicants have not submitted a detailed account of all the actions taken, it transpires from the case-file that it took the trial courts about three years in respect of the second, the third and the fifth applicants and about two years in respect of the first and the fourth applicants to conclude the proceedings. The appellate court decided the appeals in all five cases within a period of about five months, while the proceedings before the Constitutional Court lasted for about seven months in respect of the first four applicants and for about nine months in respect of the fifth applicant.

The Court notes that the proceedings before the appellate court and the Constitutional Court lasted for only a few months which does not appear excessive in any respect, while the proceedings before the trial court lasted for three and two years, respectively, which the Court considers to be justified in particular having regard to the complex factual nature of the proceedings.

As to the overall duration of the proceedings, the Court notes that within a period of three to four years the cases were examined by three instances. Thus, having regard to all of the above circumstances the Court finds that the periods of time involved do not appear unreasonable.

As to the complaint about the fairness of the proceedings, in so far as the applicants' complaint may be understood to concern an assessment of the evidence and the result of the proceedings before the domestic courts, the Court reiterates that, according to Article 19 of the Convention, its duty is to ensure the observance of the engagements undertaken by the Contracting Parties to the Convention. In particular, it is not its function to deal with errors of fact or law allegedly committed by a national court unless and in so far as they may have infringed rights and freedoms protected by the Convention. Moreover, while Article 6 of the Convention guarantees the right to a fair hearing, it does not lay down any rules on the admissibility of evidence or the way it should be assessed, which are therefore primarily matters for regulation by national law and the national courts (see the *Schenk v. Austria*, judgment of 12 July 1988, Series A no. 140, p. 29, §§ 45-46 and *Garcia Ruiz v. Spain*, no. 30544/96, *Reports of Judgments and Decisions* 1999-I, § 28).

The Court finds that there is nothing to indicate that the national courts' evaluation of the facts and evidence presented in the applicants' cases was contrary to Article 6 of the Convention. The applicants were fully able to state their cases and challenge the evidence; all essential evidence was presented; there had been a public hearing at first instance and the courts' decisions were satisfactorily reasoned. Having regard to the facts, as submitted, the Court has not found any reason to believe that the proceedings did not comply with the fairness requirement of Article 6 of the Convention.

It follows this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

2. The applicants further complained that the decisions of domestic courts rejecting their claims for payment of the instalments of their pension violated their right to property under Article 1 of Protocol No. 1 and discriminated against them contrary to Article 14 of the Convention. These provisions read as follows:

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."

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."

The applicants argued that the domestic courts' decisions discriminated against them since the conclusions reached were based on the fact that they had lived in the occupied territories of Croatia.

The Court does not find it necessary to determine whether the right to a pension in the framework of the former Yugoslavia's pension scheme represented a pecuniary right protected under Article 1 of Protocol No. 1. However, for the purposes of the Court's assessment of the present case it assumes that the applicants' right to a pension is a pecuniary right. The Court therefore considers that the complaint falls to be examined under

Article 1 of Protocol No. 1 to the Convention read together with Article 14 of the Convention.

The Court notes that the applicants' right to a pension was recognised by the authorities of the former Yugoslavia and, after the dissolution of that State, their pension instalments continued to be paid by the Croatian authorities. The payments were, however, discontinued for various reasons, for periods ranging from about six to seven years.

The Court notes that in respect of the first, second and fifth applicants the domestic courts found it established that they had received a pension from the authorities which had controlled the occupied territories of Croatia where the applicants lived. They based their decisions to deny the applicant's claims for payment of a pension from the Croatian authorities on the provisions of the Pensions Act which stated that a person is entitled to only one pension. As already stated above, under the Court's assessment in respect of the alleged violation of Article 6 § 1 of the Convention, the proceedings which led to such decisions entirely complied with the fair trial requirement and showed no appearance of arbitrariness.

The Court recalls further that even though the rights stemming from the payment of contributions to the social insurance system, in particular the right to derive benefits from such a system - for instance in the form of a pension - can be asserted under Article 1 of Protocol No. 1, this provision cannot be interpreted as giving an individual a right to a pension of a particular amount (*Müller v. Austria*, no. 5849/72, Commission decision of 1 October 1975, Decisions and Reports 3, p. 25; and *Domalewski v. Poland,* (dec.), no. 34610/97, ECHR 1999-V, pp. 582, 583).

Thus, the Court concludes that during the very difficult period of time, involving the dissolution of the former Yugoslavia and the ensuing armed conflict, the applicants were not in fact deprived of their pensions. Furthermore, once the conflict was over and the applicants had returned to Croatia the payments of their pensions were resumed. In these circumstances the Court does not find that there has been any interference with their property rights which would run counter to Article 1 of Protocol No. 1 to the Convention.

As to Article 14 of the Convention, the Court recalls that, according to its established case-law, Article 14 complements the other substantive provisions of the Convention and the Protocols thereto. It has no independent existence since its effect comes into play solely in relation to "the enjoyment of rights and freedoms" safeguarded by those provisions. Although the application of Article 14 does not presuppose a breach of those provisions - and to this extent that Article is autonomous - there can be no room for its application unless the facts at issue fall within the ambit of one or more of the rights and freedoms guaranteed by the Convention (see the *Gaygusuz v. Austria*, judgment of 16 September 1996, *Reports* 1996-IV, p. 1141, § 36).

The Court notes that a difference in treatment is discriminatory if it has no objective and reasonable justification, which means that it does not pursue a "legitimate aim" or that there is no "reasonable proportionality between the means employed and the aim sought to be realised". Moreover, in this respect 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 the *Gaygusuz* judgment, cited above, § 42).

The Court notes that the applicants were in a position different from persons who did not live in the occupied territories of Croatia and did not receive their pension from some other authorities. The distinction between these two groups is, therefore, not discriminatory, as there is an objective and reasonable justification to discontinue payments of the pension instalments to persons who had received a pension on some other basis. Consequently, this difference in treatment does not, in the Court's view, disclose any appearance of discrimination within the meaning of Article 14 of the Convention.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

In respect of the third and the fourth applicants, the Court notes that the domestic courts rejected their claims because they fell within the statutory limitation for the claims of such nature imposed by the Pensions Act. In other words, their claims were filed out of the prescribed time-limit and the domestic courts were thus prevented from examining the merits of their cases.

The Court finds, therefore, that the third and the fourth applicants have not complied with the procedural rules governing the domestic proceedings.

It follows that the third and the fourth applicants' complaint must be rejected under Article 35 §§ 1 et 4 of the Convention for non-exhaustion of domestic remedies.

3. The applicants also complained that their inability to file a request for revision on points of law before the Supreme Court deprived them of their right to an effective remedy contrary to Article 13 of the Convention which reads as follows:

> "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."

The Court recalls that Article 13 of the Convention guarantees the availability at the national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they might happen to be secured in the domestic legal order. The effect of Article 13 is thus to require the provision of a domestic remedy to deal with the substance of an

"arguable complaint" under the Convention and to grant appropriate relief although Contracting States are afforded some discretion as to the manner in which they conform to their Convention obligations under this provision (see e.g. *Boyle and Rice v. the United Kingdom*, judgment of 27 April 1988, Series A no. 131, pp. 23-24, § 54-55 and *Andersson v. Sweden*, judgment of 27 August 1997, *Reports* 1997-IV, pp. 1417,1418, § 40). Furthermore, this provision does not require that there should be several levels of jurisdiction (*Z. and E. v. Austria*, no. 10153/82, Commission decision of 13 October 1986, Decisions and Reports 49, pp. 67, 74).

In the present case the applicants had an opportunity to file their requests for payment with a municipal court, to challenge the first instance judgments before an appellate court and to complain about alleged violations of their constitutional rights and freedoms before the Constitutional Court. They all availed themselves of these remedies.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

4. The applicants further complained that as a consequence of choosing to stay in the parts of Croatia that had been occupied they had lost their pensions, relying on Article 2 of Protocol No. 4 which reads as follows:

> "1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
>
> 2. Everyone shall be free to leave any country, including his own.
>
> 3. No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
>
> 4. The rights set forth in paragraph 1 may also be subject, in particular areas, to restrictions imposed in accordance with law and justified by the public interest in a democratic society."

The Court notes that the issue of the loss of the pension instalments has been examined under Article 1 of Protocol No. 1 taken alone and in conjunction with and Article 14 of the Convention and that in this respect no separate issue arises under Article 2 of protocol No. 4.

It follows that this complaint is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

5. They finally complained that they had been expelled from Croatia and subsequently prevented from returning for a prolonged period of time, relying on Article 3 of Protocol No. 4 which reads as follows:

"1. No one shall be expelled, by means either of an individual or of a collective measure, from the territory of the State of which he is a national.

2. No one shall be deprived of the right to enter the territory of the state of which he is a national."

As to the complaint that the applicants were expelled from Croatia, the Court notes, without further examination of such an allegation, that all the applicants left Croatia prior to 5 November 1997 when the Convention entered into force in respect of Croatia.

It follows that this complaint is incompatible *ratione temporis* with the provisions of the Convention within the meaning of Article 35 § 3 and must be rejected in accordance with Article 35 § 4.

As to the complaint that the applicants were prevented from entering Croatia, the Court notes that they were in fact able to enter Croatia and that all of them are now living in Croatia. The Court considers that in these circumstances this complaint is without substantiation.

It follows that this part of the application is manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application inadmissible.

Erik FRIBERGH
Deputy Registrar

Christos ROZAKIS
President