AS TO THE ADMISSIBILITY OF

Application No. 24116/94
by Rudolf FIEDLER
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 15 May 1996, the following members being present:

Mr. C.L. ROZAKIS, President
Mrs. J. LIDDY
MM. E. BUSUTTIL
A.S. GÖZÜBÜYÜK
A. WEITZEL
M.P. PELLONPÄÄ
B. MARXER
B. CONFORTI
N. BRATZA
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL

Mrs. M.F. BUQUICCHIO, Secretary to the Chamber

Having regard to Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms;

Having regard to the application introduced on 28 April 1994 by Rudolf FIEDLER against Germany and registered on 10 May 1994 under file No. 24116/94;

Having regard to the report provided for in Rule 47 of the Rules of Procedure of the Commission;

Having deliberated;

Decides as follows:

THE FACTS

The applicant is a German citizen, born in 1926 and living in Schöneiche. He is represented by Mrs. I. Christoph and Mr. K.-H. Christoph, lawyers practising in Berlin.

It follows from his statements and the documents submitted that the applicant was practising and teaching medicine as a university professor in the former German Democratic Republic (GDR).

At the end of September 1989 the applicant retired and received a pension for the intelligentsia (Altersversorgung für die Intelligenz)of 3.296,- M. per month.

In addition he received a social security invalidity pension in the amount 942,- M, including a supplement for the Armed Forces. The total of his retirement payments amounted to 4.238,- M per month.

After German unification the retirement pensions were converted and paid in German Marks (- DM).

As from 1 August 1991 the Transitional social security office (Überleitungsanstalt Sozialversicherung) reduced the applicant's total pension rights to 2.010,- DM, namely 1.728,- DM as a social security

pension (Sozialversicherung) and 282,- DM as a supplementary pension (gekürzte Zusatzversorgungsrente).

On 28 November 1992 the applicant was informed that as from 1 December 1992 he continued to receive a pension in the amount of 2.010,- DM although a calculation in abbreviated proceedings (pauschaliertes Verfahren) resulted in a lower amount. However, until the final recalculation (Neuberechnung) of the pension which could not be claimed before January 1994 he would receive as much as in 1991.

His opposition (Wiederspruch) against these decisions being to no avail the applicant then brought a social court action claiming a full old-age pension (dynamisierte Altersrente) and in addition an amount of 3.296,- DM corresponding to his GDR pension for the intelligentsia (Zusatzversorgnungsrente).

The action was dismissed by the Social Court (Sozialgericht) in Frankfurt/Oder on 24 June 1992. The court found that the limitation of the pension had been lawfully effected in accordance with Section 48 of the Tenth Book of the Social Code (Sozialgesetzbuch, SGB) and Section 10 (1) no. 1 of the Act (hereinafter referred to as the "Transformation Act") relating to the transformation of claims and expectancies based on additional or special pension systems of the former GDR (Anspruchs und Anwartschaftsüberführungsgesetz) of 18 December 1991.

On 27 January 1993 this judgment was confirmed by the Federal Social Court which rejected the applicant's appeal on points of law ([Sprung-]Revision) insofar as the applicant claimed a pension in the total amount of 4.238,- DM.

In its judgment comprising 40 pages this court carefully examined the applicant's objections against the relevant legislation and its application in the present case. It found that there existed no legal basis for the applicant's claim and furthermore the applicant had no claim vis-à-vis the legislator to enact a law recognising his alleged pension claim. In fact Section 10 of the Transformation Act provided for a limitation of pensions which should not exceed 2.010, DM. This limitation was aimed at pension claims (Versorgungsansprüche) which had been granted as a political favour, i.e. which constituted a political privilege. The underlying idea was that these pensions had not, at least not in their total amount, been useful for the public economy. In these circumstances the limitation was neither arbitrary nor discriminatory taking into account that German unification was in view of the economic collapse of the former GDR a unique process in which the legislator enjoyed a large margin of appreciation.

The applicant lodged a constitutional complaint which was rejected by a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) on 7 July 1993 as offering no prospects of success.

Insofar as the applicant had invoked the property right (Article 14 of the Basic Law - GG) the court found that he had not shown that his alleged pension claims resulted from substantial contributions (nicht unerhebliche Eigenleistungen) and that the denial of these claims substantially affected his basic means of existence (existenzielle Sicherung).

The applicant had furthermore not shown that he was discriminated against, i.e. that other groups of persons were treated more favourably. The social court judgments did not disclose any arbitrariness and there was no appearance of a violation of constitutional rights.

Background and present legal situation

The former GDR disposed of an all-embracing social security system with fixed contribution scales providing for a maximum level of 600,- M. Pension rights accrued after reaching the age limit and having paid contributions for at lease fifteen years. The minimum pension depended on the number of years the claimant had worked and in the end varied between 330,- M and 470,- M. The maximum pension amount was 510,- M.

There also existed a possibility for those whose income exceeded the maximum level of 600,- M to pay supplementary contributions on a voluntary basis. The average increase of pension on account of this regulation amounted to about 70,- M.

In addition to the obligatory social security pension scheme with the possibility of voluntary added protection there existed additional pension schemes (Zusatzversorgungssysteme) for members of the state machinery and mass organisations and the unified trade union (FDGB) as well as the scientific and technical intelligentsia like medical doctors, artists, members of the writers union, university professors etc. The purpose of the additional pension scheme was to ensure to the persons concerned that their retirement income including the social security pension amounted to a certain percentage of their last professional earnings, in general 90% of the last net income. From 1971 onwards certain professions adhering to the additional pension scheme had to pay contributions but the intelligentsia continued to be exempt from paying charges. Before German unification some 200,000 to 225,000 people were entitled to payments from the additional pension scheme. About half of them received no more than 200,- M, while about 800 persons received more than 2.000,- M. Another special pension scheme existed for civil servants and members of the police and the armed forces.

Before German unification a Treaty (Staatsvertrag) was concluded on 18 May 1990 between the FRG and the GDR providing for a trade and tariff union.

Article 20 (2) of that treaty provided that vested rights and expectancies (bisher erworbene Ansprüche und Anwartschaften) were transferred to the social security (werden in die Rentenversicherung überführt). However payments made on the basis of special regulations (Sonderregelungen) would be checked for the purpose of suppressing unjustified or excessive payments (mit dem Ziel ..., ungerechtfertigte Leistungen abzuschaffen und überhöhte Leistungen abzubauen).

A similar regulation was included in the Unification Treaty of 31 August 1990 (Annexe II, Chapter VIII, subject matter, title III no. 9 lit a to the Treaty). The first sentence of Section 2 (2) of the above-mentioned Transformation Act (AG) provides accordingly that vested rights and expectancies relating to pensions for invalidity, old-age and surviving dependants were as of 31 December 1991 transferred to the social security (Rentenversicherung). The first sentence of Section 2 (1) of the Transformation Act provides however for a number of exceptions, i.e. certain pension rights derived from additional pension schemes (Zusatzversorgungssysteme) are not transferred, i.e. suppressed.

COMPLAINTS

The applicant considers that the social security orders fixing the amount of his pension and the social court decisions dismissing his claims for a higher pension violate Article 1 of Protocol No. 1 also read in conjunction with Article 14 of the Convention. He submits that while he did not have to pay contributions in order to receive an additional pension he nevertheless contributed to the additional pension fund by way of his work, qualifications and services. He could therefore trust that the amount of his former GDR pension would be maintained.

He points out that a substantial part of this pension was suppressed and argues that there are no justified reasons as the measure has, in his opinion, in reality a punitive character and constitutes an act of political revenge.

He considers himself to be discriminated against in comparison with citizens who have always lived in the Federal Republic of Germany and also in comparison with those citizens of the former GDR who acquired pension rights by paying supplementary voluntary contributions. Furthermore he submits that he is being discriminated against because his pension is not adjusted to the general increase of the costs of living.

Furthermore, Section 10 (1) No. 1 of the Transformation Act provides for a provisional limitation of pensions derived from the GDR social security system and additional pension schemes to 2.010,- DM.

THE LAW

The applicant submits that the numerical amount of pension he now receives under the social security system of (the Federal Republic of) Germany is lower than the pension he would have received under the social security system of the former GDR where he has completed his professional career. He argues that while he has not contributed to the GDR additional pension scheme by money payments he nevertheless contributed to the GDR pension fund by way of his work, qualifications and services. Therefore the fact that his rights or expectations to a complementary pension under the former GDR pension system were not maintained in the social security law of Germany after the German unification amounts in his opinion to a taking of property in violation of Article 1 of Protocol No. 1 (P1-1) to the Convention which guarantees the right to the peaceful enjoyment of possessions.

The Commission first recalls its constant jurisprudence according to which the right to an old-age pension is not included as such among the rights and freedoms guaranteed by the Convention. The Commission has nevertheless recognised that payment of compulsory contributions to a compulsory pension fund may, in certain circumstances, create a property right in a portion of such a fund and that such right might be affected by the manner in which the fund is distributed (see, e.g., Müller v. Austria, Comm. Report 1.10.75, D.R.43 p. 25[31] with further references ; cf. also No. 10094/82, Dec. 14.5.84, D.R. 38 p. 84 [86]).

The Commission notes that, as was also pointed out by the Federal Constitutional Court, the applicant has not paid any contributions to the former Gar complementary pension fund.

He has furthermore, not shown that any capital assets constituting this fund were gathered by the GDR authorities to the debit of the adherents and that such assets were taken over by the Federal Republic and were spent for purposes other than they had been destined for under the former Gar social security system.

The Commission further recalls that the operation of a social security system is essentially different from the management of a private insurance company. Because of its public importance, the social security system must take account of political considerations, in particular those of financial policy. It is conceivable, for instance, that a deflationary trend may oblige a State to reduce the nominal amount of pensions (Müller Report, op.cit., p. 32 para. 31).

These considerations apply a fortiori to the present situation where in consequence of the collapse of the GDR regime and its economy (the Federal Republic of) Germany was faced with the sudden necessity of providing pension payments to all Germans who have reached the age of retirement and who have before German unification lived and worked

in the former GDR. Therefore the Unification Treaty contained a regulation providing for the possibility of reducing or suppressing unjustified or excessive GDR pension rights. There is nothing to show that this regulation was arbitrary. Consequently, the applicant has not acquired a valid claim under the social security system of the Federal Republic of Germany insofar as the additional pension, to which he was entitled in the former GDR, is concerned.

Finally it has to be noted that according to the finding of the Federal Constitutional Court, which was not refuted by the applicant, the applicant's present pension is not of an insufficient level such as to deprive him of basic means of existence.

It follows that there is no appearance of a violation of Article 1 of Protocol No. 1 (P1-1) and this part of the application has to be rejected as being manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

The applicant has further alleged that he is a victim of discrimination in violation of Article 14 of the Convention in conjunction with Article 1 of Protocol No. 1 (Art. 14+P1-1).

Even on the assumption that Article 14 (Art. 14) is operative the Commission finds that the applicant has failed to substantiate his complaint, in particular he has not shown that in respect of his present pension right he is treated less favourably than other persons being in a comparable position (see Eur. Court H.R., van der Mussele judgment of 23 November 1993, Series A no. 70, p. 22, para 46). First of all the applicant who has lived and worked during the active part of his life in the former GDR cannot compare his situation to that of fellow citizens who have always been members of the social security system of the Federal Republic. Furthermore his situation is likewise not comparable to those who lived in the former GDR and contrary to the applicant paid contributions to a complementary pension system.

Even supposing that comparable situations existed the Commission considers that the difference of treatment is objectively justified by the fact that pension rights can be made conditional on the payment of contributions.

It follows that this part of the application likewise has to be rejected in accordance with Article 27 para. 2 (Art. 27-2) of the Convention as being manifestly ill-founded.

For these reasons, the Commission, unanimously,

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — President of the First Chamber

(M.F. BUQUICCHIO) — (C.L. ROZAKIS)