AS TO THE ADMISSIBILITY OF

Application No. 21519/93
by Otto KUHLMAN
against Germany

The European Commission of Human Rights (First Chamber) sitting in private on 30 June 1993, the following members being present:

MM. F. ERMACORA, Acting President of the First Chamber
E. BUSUTTIL
A.S. GÖZÜBÜYÜK
Sir Basil HALL
Mr. C.L. ROZAKIS
Mrs. J. LIDDY
MM. M. PELLONPÄÄ
B. MARXER
G.B. REFFI
B. CONFORTI

Mrs. M.F. BUQUICCHIO, Secretary to the First 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 3 June 1992 by Otto Kuhlmann against Germany and registered on 11 March 1993 under file No. 21519/93;

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 1920 and living in Koblenz.

It follows from his statements and the documents submitted that on 20 October 1986 the Arbitration Court (Schiedsgericht) of the Federal Insurance Office (Versorgungsanstalt des Bundes und der Länder-VBL) dismissed an action brought against the Federal Insurance Office (VBL) by the applicant. The applicant had claimed that the Arbitration Court annul two orders of the defendant by which his pension was reduced.

It follows from the judgment that the defendant insurance paid a monthly pension in the amount of DM 2,042.54 to the applicant as of 1 January 1985. On 30 April 1985 it recalculated the applicant's pension claim on the basis of its amended statutes (amendment of 1 January 1985). Taking into account that the applicant received a social security pension of DM 2,228.73 it was found that the applicant could only claim an insurance pension in the amount of DM 1,357.52. As a consequence the pension payment had to be adjusted in the amount of DM 685.02 and this would be effective as of the beginning of 1987. On 31 May 1985 the defendant insurance informed the applicant that as of 1 July 1985 the adjustable amounts were increased by 3 per cent.

The Arbitration Court considered that, contrary to the submission of the plaintiff, the amendments of the statutes of the defendant party were not illegal. The court first pointed out that the contractual

relationship between the parties was of a private law nature. Therefore the jurisprudence of the Federal Court (Bundesgerichtshof) was considered to be binding according to which statutory amendments were valid only if they had been agreed upon or had been authorised previously. The court considered that the authorisation for the amendment in question was contained in statutory amendments enforced since 1 January 1967. The court also considered that the authorisation, although contained in various provisions, was sufficiently clear and that the consequences were foreseeable. The court added that the statutory changes in 1967 had become necessary in view of economic developments which had the consequence of pensions often equalling or even exceeding the latest income of the insured persons. The purpose of the insurance cover offered by the defendant was however that the insured receive from the defendant party in addition to already existing social security pension claims an additional pension by which it should be guaranteed that he received at least as much as a comparable retired civil servant. In view of these principles the statutory amendments in question were unobjectionable as they tended to avoid that the insureds received a pension which was excessive in comparison to their latest salary.

It was furthermore unobjectionable to establish general criteria for the calculation of the pensions instead of taking into account the latest income of the individual insured. This served the purpose of legal security and speedy processing without having to take into account various factors like age, family, status etc. in each individual case.

The Arbitration Court pointed out that transitional provisions also existed in order to avoid hardship cases.

The court also denied a violation of property rights. It stated in this respect that pension rights were protected by the guarantee of property insofar as they were based on important contributions of the insured person and served the purpose of insuring his existence. However, even assuming that the first criteria were complied with it could not be found that a diminution of the pensions to about 90 per cent of the latest net income could affect the purpose of the pension, namely to secure the insured's livelihood.

Finally, with regard to the applicant's personal position, the court pointed out that his latest net income amounted to DM 3,943.50 having been insured for 32 years his maximum insurance claim amounted to 88.30 per cent of his latest net income. He could therefore claim only a total pension in the amount of DM 3,482.11 or subsequent to the increase of 3.1 per cent a total of DM 3,586.25. As the applicant received a social security pension in the amount of DM 2,228.73 he could only claim an additional pension from the defendant insurance in the amount of DM 1,357.52. Consequently the defendant had correctly calculated his pension as of 1 January 1985 in the amount of DM 2,042.54. The pension paid as of 1 July 1985 was likewise not incorrectly calculated.

On 14 April 1989 the Supreme Arbitration Tribunal of the VBL dismissed the applicant's appeal against the judgment of 20 October 1986 as being unfounded. This court considered inter alia that the new regulation did not, insofar as it affected the applicant, result in an unacceptable hardship situation.

On 6 November 1991 a group of three judges of the Federal Constitutional Court (Bundesverfassungsgericht) rejected the applicant's constitutional complaint against the aforementioned decisions. In the view of the Federal Constitutional Court the applicant's complaint was clearly ill-founded. The decisions complained of did not disclose any arbitrariness. Also the property right was not violated. Even private law relations which were governed by the principle of private autonomy were subject to the limits set by

fundamental rights. Therefore the Federal Court had correctly held that the changes in the statutory regulations of the defendant insurance served the purpose of re-adjusting a development which had become unacceptable from the point of view of social policy. In addition the Constitutional Court observed that the principle of proportionality had been respected.

COMPLAINTS

The applicant submits that important losses of the Federal Insurance Office were for years concealed by the management while the insured persons now have to carry the burden of those losses. He mainly complains that his old age pension paid by the Federal Insurance Office has been reduced. The formal reason for this was an additional social security pension but in reality the cut-back became necessary because of mismanagement. He considers that Article 1 of Protocol No. 1 is thereby violated as well as Article 14 of the Convention. He also alleges a violation of Article 6 of the Convention in the above proceedings.

THE LAW

The Commission has considered the applicant's complaint particularly under Article 1 of Protocol No. 1 (P1-1). This Article provides that every person is entitled to the peaceful enjoyment of his possessions, and that 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 question whether the claim to an old age pension can be considered as a possession within the meaning of the above provision has already been examined in the Commission's earlier case-law. In it's decision on Application No. 4130/69 against the Netherlands (Yearbook of the European Convention on Human Rights 14 (1971) at pp. 224, 240) the Commission has expressed the opinion that, while no right to a pension is as such included in the Convention, the making of compulsory contributions to a pension fund may, in certain circumstances, create a property right in a portion of such fund and that such right might be affected by the manner in which the fund is distributed. In the particular case, the Commission denied the applicability of Article 1 of Protocol No. 1 (P1-1) because under Dutch legislation a person did not have, at any given moment, an identifiable share in the fund claimable by him. In its Report of 1 October 1975 on Application No. 5849/72 (Müller v. Austria, D.R. 3, pp. 25, 31 et seq.) the Commission extended its reasoning by stating the following:

> "30... The Commission considers that even if it is assumed that Article 1 of Protocol No. 1 (P1-1) guarantees persons who have paid contributions to a social insurance system the right to derive benefit from the system, it cannot be interpreted as entitling that pension to a person of a particular amount.
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> 31. The operation of a social security system is essentially different from the management of a private life 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. Fluctuations of this kind have nothing to do with the guarantee of ownership as a human right...
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> 32. It is true that, in some cases, a substantial reducing of the amount of the pension could be regarded as affecting the very substance of the right to retain the benefit of an old age insurance system..."

The applicant points out that the pension scheme here in question is not comparable to social security pensions because the relationship

between the Federal Insurance Office and the insured persons is a purely contractual one and of private law nature.

However, the applicant has not shown that in his case any contractual rights were violated and that he was denied a pension in an amount to which he was entitled under the statutory and/or contractual rules governing his position in the insurance system of the Federal Insurance Office.

It follows from the findings of the domestic courts that the pension adjustment complained of had been effected in accordance with binding statutory provisions. Furthermore, the courts denied a violation of the applicant's property right stating that the reduction in question still left the applicant with a total pension amounting to 90% of his latest net income and therefore in no way affected the purpose of the pension, namely to secure his existence.

In the light of these considerations and taking into account the applicant's submissions, the Commission cannot find that the pension reduction complained of amounts to an arbitrary and disproportionate interference with the right to the peaceful enjoyment of possessions, nor is there any appearance of a discrimination in the enjoyment of this right(cf. No. 10671/83, Dec. 4.3.85, D.R. 42 p. 229).

Furthermore, even assuming that Article 6 (Art. 6) of the Convention applies to the proceedings in question, there is nothing to show that the applicant was denied a fair hearing.

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

For these reasons the Commission, unanimously

DECLARES THE APPLICATION INADMISSIBLE.

Secretary to the First Chamber — Acting President of the First Chamber

(M.F. BUQUICCHIO) — (F. ERMACORA)