AS TO THE ADMISSIBILITY OF

Application No. 39921/98
by M.R.
against Slovenia

The European Commission of Human Rights (First Chamber) sitting in private on 1 July 1998, the following members being present:

MM M.P. PELLONPÄÄ, President
N. BRATZA,
E. BUSUTTIL
A. WEITZEL
C.L. ROZAKIS
Mrs J. LIDDY
MM L. LOUCAIDES
B. MARXER
B. CONFORTI
I. BÉKÉS
G. RESS
A. PERENIC
C. BÎRSAN
K. HERNDL
M. VILA AMIGÓ
Mrs M. HION
Mr R. NICOLINI

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 25 November 1997 by M. R. against Slovenia and registered on 17 February 1998 under file No. 39921/98;

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 Slovenian citizen, born in 1938 in what is now the Federal Republic of Yugoslavia (Serbia and Montenegro). The facts of the application, as submitted by the applicant, may be summarised as follows.

In the summer of 1991, when Slovenia declared its independence, the federal army agreed to withdraw from Slovenia. The applicant, who had been living and working as an officer of the Yugoslav Federal Army in Slovenia since 1961, decided to retire and applied for a pension on 20 July 1991.

On 27 December 1991, the Military Social Security Authority in Belgrade found the applicant to be entitled to early retirement with effect from 1 November 1991.

Following the dissolution of former Yugoslavia and as the relevant bilateral treaties had not been concluded, the Government of the Republic of Slovenia issued a Decree on the Advance on Payment of

Military Pensions (Official Gazette RS, no. 4/92 of 25.1.1992) by which it agreed to pay out monthly an advance on military pensions to Slovenian citizens who had lodged the application and fulfilled certain conditions to obtain military pensions by 18 October 1991, the date of final withdrawal of the federal army from Slovenia.

The applicant applied for an advance on payment of his military pension on 29 January 1992. The Pension and Invalidity Insurance Fund (Skupnost pokojninskega in invalidskega zavarovanja) found on 31 March 1992 that the applicant had no right to such an advance as he did not fulfil the conditions prescribed. His appeal was refused by the same body on 15 May 1992.

The applicant applied for judicial review. The Court of Associated Labour (Sodisce zdruzenega dela) rejected the application on 4 February 1993 on the ground that in the summer of 1991, at the relevant time after the aggression to Slovenia, the applicant still worked for the then enemy federal army and could not show that he was suspended from work, on holidays or ill, as required by the relevant Government decree.

The applicant appealed against the above decision. The Higher Labour and Social Court (Visje delovno in socialno sodisce) in Ljubljana rejected the appeal on 2 June 1994 and confirmed the previous decision.

The applicant applied for revision to the Supreme Court. Revision was refused on 5 September 1995 as the court found no error in the application of law by the lower court.

On 10 November 1995 the applicant lodged a constitutional complaint with the Constitutional Court (and asked for proceedings to be accelerated on 23 October 1996 and 24 February 1997) alleging breaches of his constitutional rights to equality before the law, to property, social security and to human dignity and personal security. To date the Constitutional Court has not yet decided.

COMPLAINTS

The applicant alleges that the courts, by wrongly establishing the facts in his case, deprived him of his pension, which was an inhuman and discriminatory measure against him and some other former officers of the federal army. He further complains about the length of proceedings before the Constitutional Court. He invokes Articles 3 and 14 of the Convention and in substance Article 6 of the Convention and Article 1 of Protocol No. 1.

THE LAW

1. The applicant complains under Article 6 (Art. 6) of the Convention about the length of proceedings before the Constitutional Court of Slovenia. The Commission considers that it cannot, on the basis of the applicant`s submissions, determine the admissibility of this complaint and that it is therefore necessary, in accordance with Rule 48 para. 2 (b) of the Rules of Procedure, to communicate this part of the application to the respondent Government.

2. The applicant further complains under Article 3 (Art. 3) of the Convention that not granting advances on pension to him was inhuman.

Article 3 (Art. 3) of the Convention provides as follows.

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

The Commission recalls that the European Court of Human Rights stressed that "ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3 (Art. 3)" (Ireland v.

the United Kingdom judgment of 18 January 1978, Series A no. 25, p. 65, para. 162). In the present case the applicant alleges that the deprivation of his "advance on payment of a military pension" amounted to a violation of Article 3 (Art. 3) of the Convention. The Commission is of the opinion that the applicant's situation does not attain the level of severity to raise an issue under Article 3 (Art. 3) of the Convention.

It follows that this part of the applicant's complaint is manifestly ill-founded within the meaning of Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 1 of Protocol No. 1 (P1-1) taken alone and together with Article 14 (P1-1+14) of the Convention that his right to peaceful enjoyment of possessions was violated.

Article 1 of Protocol No. 1 (P1-1), insofar as relevant, provides as follows:

> "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. ..."

Article 14 (Art. 14) of the Convention provides as follows:

> "The enjoyment of the rights and freedoms set forth in this 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 Commission first recalls that the Convention only governs, for each Contracting Party, facts subsequent to its entry into force with respect to that Party. The Convention entered into force with respect to Slovenia on 28 June 1994 which is also the date of its recognition of the right of individual petition. The applicant's complaints of facts that occurred before that date are therefore outside the competence ratione temporis of the Commission.

The Commission notes that almost all decisions in the applicant's case were taken before 28 June 1994, apart from the decision of the Supreme Court of 5 September 1995 rejecting the applicant`s request for revision as no error of law lay. The Commission further notes that the applicant lodged a constitutional complaint on 10 November 1995 which is still pending before the Constitutional Court. The questions thus arise of whether the Commission is competent ratione temporis to consider this complaint, and whether the applicant has complied with the rule on exhaustion of domestic remedies set out in Article 26 (Art. 26) of the Convention.

However, the Commission considers that it is not required to determine these preliminary issues, as this part of the application is in any event manifestly ill-founded for the following reasons.

The Commission recalls that in Trickovic v. Slovenia (No. 39914/98, Dec. 27.5.98), in which the applicant's entitlement to a military disablement pension was also established by the Military Social Security Authority in Belgrade after 18 October 1991, the Commission found that applicant`s case did not concern the applicant's entitlement to a pension. Rather, it concerned the refusal of the Slovenian authorities to grant the applicant an "advance" on that pension under a regime which was a temporary "stop-gap" measure aimed at assisting those who had applied for and were entitled to a federal pension by 18 October 1991, the date on which the federal army finally

withdrew from Slovenia. Noting that it remained open to the applicant to apply for social security benefits pursuant to the Law on Social Security for Slovenian Citizens entitled to Pensions granted in the Republics of Former Yugoslavia, the Commission recalled that the Convention did not guarantee a right to a specific social welfare benefit of a particular amount (Muller v. Austria, Comm. Report 1.10.75, D.R. 3, p. 25), and declared the complaint inadmissible.

In the present case, too, the applicant was entitled to apply for an advance on a military pension, but was only entitled to an advance if he complied with certain requirements. The domestic courts found that the applicant did not comply with those requirements. In these circumstances the refusal of an "advance" on the applicant`s military pension does not disclose any interference with his right to peaceful enjoyment of his possessions, set out in Article 1 of Protocol No. 1 (P1-1) to the Convention.

In connection with Article 14 (Art. 14) of the Convention, the Commission notes that the date of 18 October 1991 was set as cut off point for entitlement to such an advance as it was the date on which the federal army finally withdrew from Slovenian territory. Whilst entitlement to social security benefits may, in certain circumstance, give rise to issues under Article 14 (Art. 14) of the Convention (see, for example, Eur. Court HR, Gaygusuz v. Austria judgment of 16 September 1996, Reports 1996*IV), in the present case the legislature chose to grant a form of interim relief to those who had applied for and fulfilled the requirements for a (federal) pension in the period when the federal army was still in Slovenia. Such a limitation of social security benefits to a clearly defined category cannot be considered to lack an objective and reasonable justification within the meaning of the court's case-law on Article 14 (Art. 14) of the Convention.

It follows that this part of the application is manifestly ill*founded and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

For these reasons, the Commission

DECIDES TO ADJOURN the examination of the applicant's complaint about the length of proceedings before the Constitutional Court, and

unanimously,
DECLARES INADMISSIBLE the remainder of the application.

M.F. BUQUICCHIO
Secretary
to the First Chamber

M.P. PELLONPÄÄ
President
of the First Chamber