AS TO THE ADMISSIBILITY OF

Application No. 39923/98
by P.P.
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 24 November 1997 by P.P. against Slovenia and registered on 17 February 1998 under file No. 39923/98;

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 1939 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 1957, had been ill and applied for retirement and an invalidity pension on 30 September 1991.

On 4 January 1992 (with effect from 1 January 1992), the Military Social Security Authority in Belgrade found the applicant to be entitled to retire on the ground of invalidity disablement.

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 was considered to have taken an active part in the aggression on Slovenia and therefore did not fulfil the conditions prescribed by the Government decree.

The applicant applied for judicial review. The Court of Associated Labour (Sodisce zdruzenega dela) rejected the application on 19 March 1993. The Court confirmed that the applicant did not comply with the conditions prescribed, however, on different grounds. It found that it could not be established that the applicant took part in the agression but that he did not fulfil the conditions for a military pension by 18 October 1991, as prescribed.

The applicant appealed. 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 19 September 1995 as the Supreme Court found no error in the application of the relevant legislation.

On 11 December 1995 (with a request to accelerate the proceedings on 8 December 1996) the applicant lodged a constitutional complaint before the Constitutional Court 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 erred in establishing the facts in his case and so deprived him of his right to pension. He claims that although he did not commit any criminal offence he has so been "de facto convicted". He also complains about the length of proceedings before the Constitutional Court. The applicant invokes Articles 6 and 7 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 7 (Art. 7) of the Convention that he has been wrongly deprived of his pension and therefore punished as if he had committed a criminal offence.

Article 7 (Art. 7) of the Convention, insofar as relevant, provides as follows:

> "1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time

when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

The Commission recalls that Article 7 (Art. 7) of the Convention provides that a person should not be convicted or punished for a criminal offence which was not prescribed by law at the time it was committed. In the present case, the applicant has not been held guilty of a criminal offence, and the provision clearly does not apply to the applicant.

It follows that this part of the application is incompatible ratione materiae with the provisons of Article 7 (Art. 7) of the Convention, and must be rejected under Article 27 para. 2 (Art. 27-2) of the Convention.

3. The applicant also complains under Article 1 of Protocol No. 1 that the courts wrongly established the facts in his case and so deprived him of his pension.

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. ..."

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 of the decisions in the applicant`s case were taken before 28 June 1994, apart from the decision of the Supreme Court of 19 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 11 December 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 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.

It follows that this part of the application must be rejected as manifestly ill-founded 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