CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FOURTH SECTION

FINAL DECISION

AS TO THE ADMISSIBILITY OF

Application no. 45424/99
by Nikola TRUHLI
against Croatia

The European Court of Human Rights (Fourth Section), sitting on 12 December 2000 as a Chamber composed of

Mr G. RESS, *President*,
Mr A. PASTOR RIDRUEJO,
Mr I. CABRAL BARRETO,
Mr V. BUTKEVYCH,
Mrs N. VAJIĆ,
Mr J. HEDIGAN,
Mr M. PELLONPÄÄ, *judges*,
and Mr V. BERGER, *Section Registrar*,

Having regard to the above application introduced with the European Commission of Human Rights on 25 September 1998 and registered on 15 January 1999,

Having regard to Article 5 § 2 of Protocol No. 11 to the Convention, by which the competence to examine the application was transferred to the Court,

Having regard to the Section's partial decision of 2 March 2000,

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the applicant,

Having deliberated, decides as follows:

THE FACTS

The applicant is a Croatian citizen, born in 1936 and living in Pula (Croatia). He is represented before the Court by Mr Boro Radić, a lawyer practising in Zagreb (Croatia). The respondent Government are represented by their Agent, Ms Lidija Lukina-Karajković.

A. The circumstances of the case

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

The applicant served in the Yugoslav People's Army and in 1987 retired from service. His military pension was assessed according to his rank and years of service and was paid from the Federal Pension Fund. The payments terminated in November 1991, following the dissolution of the Socialist Federal Republic of Yugoslavia.

Three separate proceedings took place in respect of the decrease in the applicant's military pension.

Firstly, on 12 December 1992, the Croatian Social Security Fund, Pula Office, assessed the applicant's pension, as from 1 October 1992, to 63,22 % of the amount he had received until 31 December 1991. The applicant appealed against that decision and after his appeal was dismissed, instituted administrative proceedings with the Administrative Court, which dismissed the applicant's claim on 19 May 1993.

On 7 February 1994 the applicant lodged a constitutional complaint claiming that the decisions of the administrative bodies and the Administrative Court to decrease the amount of his pension violated his constitutional rights.

On 7 April 1999 the Constitutional Court dismissed the applicant's constitutional complaint concerning the lower bodies' decisions to reduce his pension.

Secondly, on 29 April 1993 the applicant lodged a constitutional claim challenging the constitutionality of the law regulating the pension rights of the former Yugoslav People's Army officers whose service in the Yugoslav People's Army terminated prior to 31 December 1991 (*Uredba o ostvarivanju prava iz mirovinskog i invalidskog osiguranja osoba kojima je prestalo svojstvo aktivne vojne osobe u bivšoj JNA do 31. prosinca 1991* - Official Gazette 46/92 and 71/92).

On 18 October 1993 the Croatian Parliament passed a law on the regulation of pensions of the former Yugoslav People's Army officers which, among other provisions, reiterated that the amount of the former

Yugoslav Army officers' pension shall be 63,22 % of what they had received in December 1991 (*Zakon o ostvarivanju prava iz mirovinskog i invalidskog osiguranja pripadnika bivše JNA* - Official Gazette 96/93).

On 4 February 1998 the Constitutional Court terminated the proceedings concerning the applicant's constitutional claim of 29 April 1993 due to the enactment of new legislation.

Thirdly on 10 November 1993 the applicant lodged a constitutional complaint against the new law of 18 October 1993, challenging the constitutionality of that law as a whole.

As of 1 January 1999 the new legislation entered into force regulating pension rights of all Croatian citizens (*Zakon o mirovnskom osiguranju* - Official Gazette 102/98).

Consequently, on 20 January 1999 the Constitutional Court terminated the proceedings regarding the applicant's constitutional claim of 10 November 1993 due to the enactment of new legislation.

B. Relevant domestic law

The 1991 Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu*, Official Gazette 13/91)

Article 27 provides that the Constitutional Court must terminate proceedings concerning the constitutionality of legislation that has been repealed or brought into line with the Constitution and statute law while those proceedings are pending before the Constitutional Court.

The 1999 Constitutional Act on the Constitutional Court (*Ustavni zakon o Ustavnom sudu* - Official Gazette 99/99)

Article 55 § 1 provides that the Constitutional Court must decide upon the constitutionality of the contested legislation even in cases where that legislation is repealed or amended while the proceedings are pending before the Constitutional Court.

Article 55 § 2 provides that when the Constitutional Court declares the legislation contemplated in § 1 unconstitutional or unlawful, each person whose rights have been violated by a decision based on that legislation may ask the body that took the decision to vary it.

COMPLAINTS

1. The applicant complains under Article 1 of Protocol No. 1 that the decision to decrease his military pension discriminated against him and violated his right to property.

2. The applicant also makes two separate complaints under Article 6 § 1 of the Convention:

(a) that the proceedings concerning his constitutional complaint lasted unreasonably long; and

(b) that the failure of the Constitutional Court to decide his claims on the merits due to the enactment of new legislation deprived him of his right of access to a court.

THE LAW

1. The applicant complains that the decision to decrease his military pension violated his right to property under Article 1 of Protocol No. 1.

Article 1 of Protocol No. 1 reads 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 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."

The Government invite the Court to declare this part of the application inadmissible as manifestly ill-founded. In this respect they contend that the former Yugoslav People's Army officers' pensions were increased by 40 % as late as in December 1991, i.e. at a time when the dissolution of the former State was *de facto* already achieved. As to the method of assessing the amount of the former Yugoslav People's Army officers' pensions, they state that the highest pension paid from the Croatian Pension and Invalidity Insurance Fund in December 1991 amounted to 63,22 % of the highest pension paid at the same time to former Yugoslav People's Army officers. Therefore, it was decided that that percentage would serve as the basis for assessing all pensions of that category of pensioners. In addition, as from January 1993 pensions of the military personnel have been increased for 15,47 %. After that, they have continuously been adjusted to the salaries in Croatia, the same as all other categories of pensions.

The applicant disagrees with the Government and argues that his pension has been decreased for 126 % and that there were never any adjustments. He also contends that the decision to decrease the pensions of the former Yugoslav People's Army officers was politically motivated.

The Government further argue that, although pensions of former Yugoslav People's Army officers have been reduced, their average pension is still higher than that of some other categories of pensioners. For comparison, the Government have submitted that the pension of ordinary workers in April 2000 was 1,373.97 Croatian Kunas, while of the former Yugoslav People's Army officers it was 1,619.28 Croatian Kunas.

The Government further argue that Croatia, as other sovereign states, enjoys the right to independently regulate its pension system and that it has no obligation to ensure to former Yugoslav People's Army officers pensions in the same amount as what they would have had in the former Yugoslavia. This is especially so in view of the fact that Croatia has no access to any federal funds pending an agreement on succession between Croatia and the Socialist Federal Republic of Yugoslavia.

The applicant disagrees with the Government and argues that the Republic of Croatia accepted federal laws concerning the pension rights of the former Yugoslav People's Army officers and, therefore, has the obligation to pay those pensions in their full amount. He also contends that the pension funds of the former Yugoslav republics and the federal pension fund shared their means and were mutually inter-connected.

The Court recalls 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 (Eur. Comm. HR, no. 5849/72, Müller v. Austria Comm. Report, 1.10.1975, D.R. 3, p. 25; no. 10671/83, Dec. 4.3. 1985, D.R. 42, p. 229; *Storkiewicz v. Poland* (dec.), no 39860/98, ECHR 1999, and *Domalewski v. Poland,* cited above).

In the present case, the applicant's pension has been reduced, but it cannot be said that it is inferior to pensions of all other categories of pensioners in Croatia. The applicant has only lost certain privileges that were formerly granted to him as a military official of a State that does no longer exist.

In this respect, the Court considers that the reduction of the former Yugoslav People's Army officers pensions by the Croatian authorities represents a method of integrating those pensions into the general pension system of Croatia (see, *mutatis mutandis, Schwengel v. Germany* (dec.), no. 52442, ECHR 2000). Furthermore, the Court considers that States enjoy quite a wide margin of appreciation in regulating their social policy. This also applies in the specific context of the dissolution of the former

Yugoslavia and with regard to persons who were granted special privileges by the former State, as, for instance, members of the former State's army, in particular in view of the fact that ever since January 1973 all contributions to the pension fund of the Yugoslav People's Army officers had been paid to the federal fund in Belgrade which, failing any agreement on State succession, has not been divided among the successor States (see *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000). The Court notes, in that respect, that the Croatian authorities accepted to pay pensions to former Yugoslav People's Army officers and adjusted these pensions to those of other pensioners so that the average pension of an Yugoslav People's Army officer is still slightly higher than the average pension in Croatia.

The Court observes that in the present case, by virtue of the Social Security Fund, Pula Office, decision of 12 December 1992, the applicant lost a certain percentage of his pension. The applicant did, however, retain all the rights attached to his ordinary pension under the general social insurance system. Consequently, the applicant's pecuniary rights stemming from the contributions paid into his pension scheme remained the same (see, *mutatis mutandis*, *Domalewski v. Poland*, cited above).

In these circumstances, the Court does not consider that the applicant's right to derive benefits from the social insurance scheme was infringed in a manner contrary to Article 1 of Protocol No. 1, in particular as the loss of a certain percentage of his pension did not result in the essence of his pension rights being impaired.

It follows that this part of the application is manifestly ill-founded within the meaning of Article 35 § 3 of the Convention and must be rejected as inadmissible pursuant to Article 35 § 4.

2. The applicant further complains that the length of the proceedings before the Constitutional Court exceeds a reasonable time within the meaning of Article 6 § 1 of the Convention. He also complains under that same article that the failure of the Constitutional Court to decide his claims deprived him of his right of access to a court. The relevant parts of Article 6 § 1 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 ..."

(a) As to the applicant's complaint concerning the length of the proceedings

The Government submitted that the part of the application relating to the events, which took place prior to 5 November 1997, when the Convention entered into force in respect of Croatia, was outside the Court's competence *ratione temporis*.

In this connection, the Court recalls that Croatia recognised the competence of the European Commission of Human Rights to receive

applications "from any person, non-governmental organisation or group of individuals claiming to be a victim of a violation by Croatia of the rights recognised in the Convention through any act, decision or event occurring after 5 November 1997". According to Article 6 of Protocol No. 11, this limitation shall remain valid for the jurisdiction of the Court under that Protocol. It follows that the period to be taken into consideration by the Court starts on 5 November 1997. In order to determine the reasonableness of the length of time in question the Court will have regard to the state of the case on that date (see, among other authorities, the Podbielski v. Poland judgment of 30 October 1998, *Reports* 1998-VII, p. 3395, § 31 and *Janković v. Croatia*, cited above).

Furthermore, the Government invite the Court to declare this part of the application inadmissible on the ground that it is manifestly ill-founded within the meaning of Article 35 of the Convention. In this connection they contend that the applicant did not suffer any harm as a result of the length of proceedings before the Constitutional Court. They also maintain that the case was one of significant complexity and that it formed part of a large number of cases relating to the same problem. They further argue that there had been several changes in the laws regulating pensions of former Yugoslav Army officers and that numerous applicants had contested all those laws before the Constitutional Court. The Government contend that the outcome of those proceedings was closely related to the outcome of the applicant's complaint, and that the proceedings concerning the constitutionality of the laws that regulated pensions of former Yugoslav People's Army officers required detailed reports from and discussions with legal experts of various backgrounds as well as with the representatives of the pensioners themselves. The proceedings also required reports from the Croatian Government and the Ministry of Labour and Social Welfare. The Government further argue that at its session of 19 November 1997 the Constitutional Court decided that prior to examination of the applicant's case it was necessary to examine another case, concerning the Act incorporating into Croatian law the former federal law regulating the pension insurance for military personnel (the Yugoslav Military Pensions Act), which was closely connected to the issues at stake. Finally, as new legislation regulating pension rights of all Croatian citizens has been enacted as from 1 January 1999, all proceedings concerning the constitutionality of the previous laws that had regulated pension rights of former Yugoslav People's Army officers were terminated on 20 January 1999. Consequently, on 7 April 1999 the applicant's complaint was dismissed.

The applicant disagrees with the Government and argues that the length of the proceedings that altogether amounted to about six years was excessive.

The Court recalls that the reasonableness of the length of these proceedings is to be assessed in the light of the particular circumstances of the case, regard being had to the criteria laid down in the Court's case-law, in particular the complexity of the case, the applicants' conduct and that of the competent authorities, and the importance of what was at stake for the applicant in the litigation (see the Süßmann v. Germany judgment of 16 September 1996, *Reports* 1996-IV, p. 1172-73, § 48; the Pammel and Probstmeier v. Germany judgments of 1 July 1997, *Reports* 1997-IV, §§ 60 and 55, respectively; and *Gast and Popp v. Germany*, no 29357/95, § 70, ECHR 2000).

In this respect the Court firstly notes that the period to be taken into account after the entry into force of the Convention in respect of Croatia, i.e. 5 November 1997, in respect of the proceedings instituted on 29 April 1993 and terminated on 4 February 1998 amounts to two months and 29 days; in respect of the proceedings instituted on 10 November 1993 and terminated on 20 January 1999, to one year, two months and 15 days; and in respect of the proceedings instituted on 7 February 1994 and terminated on 7 April 1999, to one year, five months and two days. At the moment of ratification, the first proceedings had been pending for four years, six months and six days, the second for three years, eleven months and 25 days and the third for three years, eight months and 28 days.

The applicant's conduct did not cause any delay in the proceedings.

As regards the conduct of the Constitutional Court, the Court recalls that, as it has repeatedly held, Article 6 § 1 imposes on Contracting States the duty to organise their judicial systems in such a way that their courts can meet each of its requirements, including the obligation to hear cases within a reasonable time.

Although this obligation applies also to a Constitutional Court, it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution may make it particularly necessary for a Constitutional Court to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of a case and its importance in political and social terms. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (see the Süßmann judgment, cited above, p. 1174, §§ 55-57; *Gast and Popp v. Germany*, cited above, § 75, and *Janković v. Croatia*, cited above).

In the instant case, the Court finds that it appears reasonable for the Constitutional Court to have joined all the cases so as to obtain a comprehensive view of the legal issues arising from the integration of Yugoslav People's Army officers' pension rights into the general pension system of Croatia (see, *mutatis mutandis*, the Süßmann judgment, cited above, § 59; *Gast and Popp v. Germany*, cited above, § 76 and *Janković v. Croatia*, cited above).

The Court further notes the Government's explanations on the delays caused by the enactment of several laws concerning the decrease of the former Yugoslav People's Army officers' military pensions as well as the prior examination of the Yugoslav Military Pensions Act.

The Court also notes that the case involved complex legal issues as to the obligations of Croatia towards the retired officers of the Yugoslav People's Army in the specific context of the dissolution of the former Yugoslavia, failing any agreement on state succession.

In the light of the circumstances of the present case, in particular the fact that the proceedings lasted for only one year five months and two days; one year, two months and 15 days; and two months and 29 days, respectively, after the entry into force of the Convention in respect of Croatia, the Court finds that that delay does not appear substantial enough for the length of the proceedings before the Constitutional Court to have exceeded a "reasonable time" within the meaning of Article 6 § 1 (see, *mutatis mutandis*, *Gast and Popp v. Germany*, cited above, § 81 and *Janković v. Croatia*, cited above).

(b) As to the applicant's complaint concerning his right of access to a court

The Government contend that the issue concerned in the proceedings terminated by the Constitutional Court's decision of 20 January 1999 were not the applicant's constitutional rights and freedoms, but an abstract review of the constitutionality of the contested law (Yugoslav People's Army Officers' Pensions Act - 1993 - *Zakon o ostvarivanju prava iz mirovnskog i invalidskog osigurnja pripadnika bivše JNA*). However, as the new legislation regulating pension rights of all Croatian citizens, including the former Yugoslav People's Army officers, was enacted as of 1 January 1999, the Constitutional Court, pursuant to Article 27 of the then valid Constitutional Act on the Constitutional Court (Official Gazette no. 13/91), had no other choice but to terminate those proceedings.

They further contend that the alleged violation of the applicant's individual rights and freedoms was examined by the Constitutional Court in the proceedings concerning the applicant's constitutional complaint of 29 April 1993. In respect of those proceedings the Constitutional Court, by its decision of 7 April 1999, dismissed the applicant's complaint as it assessed that his constitutional rights and freedoms were not violated by the lower bodies decisions to decrease his pension.

The applicant contends that the Constitutional Court simply waited for over six years postponing its decision until the enactment of new legislation, which provided it with the possibility to terminate the proceedings without deciding any of his cases on the merits.

The Court considers, in the light of the parties' submissions, that the above complaint raises complex issues of law and fact under the Convention, the determination of which should depend on an examination of the merits. The Court concludes, therefore, that this part of the

application is not manifestly ill-founded, within the meaning of Article 35 § 3 of the Convention. No other grounds for declaring it inadmissible have been established.

For these reasons, the Court, unanimously,

Declares admissible, without prejudging the merits, the applicant's complaint that the failure of the Constitutional Court to decide his cases on the merits violated his right of access to a court;

Declares inadmissible the remainder of the application.

Vincent BERGER
Registrar

Georg RESS
President