

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

FOURTH SECTION

DECISION

Application no. 54805/15
Nikola ŽEGARAC against Serbia
and 10 other applications
(see list appended)

The European Court of Human Rights (Fourth Section), sitting on 17 January 2023 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr,
Ana Maria Guerra Martins, *judges*,

and Ilse Freiwirth, *Deputy Section Registrar,*

Having regard to the above applications lodged on the various dates indicated in the appended table,

Having regard to the decision to give notice to the Serbian Government ("the Government") of the complaints concerning the reduction in the payments of the applicants' pensions and to declare inadmissible the remainder of the applications followed by an asterisk in the list appended;

Having regard to the observations submitted by the respondent Government and the observations in reply submitted by the first, second, third, sixth, seventh and ninth applicants,

Having deliberated, decides as follows:

INTRODUCTION

1. The present applications primarily concern the temporary reduction in the payments of pensions made to the applicants, between November 2014 and September 2018, under the Act on the Temporary Regulation of the Manner of Paying Pensions.

THE FACTS

2. The applicants are Serbian nationals. A list of the applicants is set out in the Appendix I, as are the applicants' personal details, the dates of the lodging of their respective applications with the Court and information regarding their legal counsel.

3. The Serbian Government ("the Government") were represented by their Agent, Ms Z. Jadrijević Mladar.

A. The circumstances of the case

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

5. The applicants are all pensioners affiliated with the State's public sector pension scheme who have been receiving old-age pensions (*starosna penzija*) on the basis of mandatory contributions paid into the Serbian Pensions and Disability Insurance Fund (*Republički fond za penzijsko i invalidsko osiguranje zaposlenih* – hereinafter "the Pension Fund"; for more details on the pension system and the determination of the amounts to be paid as pensions, see paragraphs 38-42 below). The exact amounts of pension payments to be made to the applicants were determined by decisions (*rešenja*) taken by the various branches of the Pension Fund.

1. The reduction in pension payments under the Act on the Temporary Regulation of the Manner of Paying Pensions

6. The pension system in the Republic of Serbia has for most of its existence run at a deficit, which means that government subsidies are required, as contributions are not enough to fully fund pension payments. The deficit apparently reached a historic high in 2014 (see paragraph 46 below). The State authorities explained in the process of the legislative reforms that in order to reduce the high budget deficit and to preserve the financial sustainability of the pension system, they had to introduce both permanent and temporary austerity measures, including a temporary suspension of pension indexation and a temporary reduction in the amounts paid out in respect of State pensions and salaries of civil servants (for more details, see paragraphs 45-52 below).

7. As regards the reduction in pension payments, on 26 October 2014 the National Assembly of the Republic of Serbia adopted the Act on the Temporary Regulation of the Manner of Paying Pensions (hereinafter "the Pension Reduction Act"; *Zakon o privremenom uređenju načina isplate penzija*, which was published in the Official Gazette (hereinafter "OG RS"), no. 116/14 of 27 October 2014, and entered into force the following day). Asserting that the sustainability of the pension system was threatened, the Act stipulated *inter alia* (i) that pension payments of 25,000 dinars (RSD – around

200 euros (EUR)) and less per month would be exempt from the reduction; (ii) payments from above RSD 25,000 to RSD 40,000 per month would be reduced by 22% (in accordance with the mathematical formula employed) of the part of the payment higher than RSD 25,000, and (iii) payments above RSD 40,000 per month would be reduced by a further 3% of the part of the payment higher than RSD 40,000 (for the entire text of this Act, see paragraph 54 below). The effective pension reduction ranged from 0% for pensions not exceeding the minimum of RSD 25,000 to 19.4% for the highest pensions (see the table in the Appendix II below).

8. The Act was directly applicable (*ex lege*) with effect starting from the payment of the pensions for the month of November 2014, that is to say the provisions of the Act were directly applicable to each individual, as relevant, without any further action or individual decision needed on the part of the relevant body. Accordingly, pensioners did not initially receive individual decisions on the reduced amount of the pension (*rešenje o umanjenom iznosu penzije*).

9. The applicants received reduced pension payments from November 2014, which were calculated under the third category of pension beneficiaries, as detailed in paragraph 7 above (for more details, see Appendix I; see, also paragraph 100 below).

10. Apparently as a result of a reduction in total expenditure and government subsidies between 2014 and 2018, the Pension Reduction Act was repealed and the temporary reduction in pension payments was lifted as of 30 September 2018 (see paragraph 52 below). From October 2018, the Pension Fund started paying to all pensioners, including the applicants, regular pensions calculated in accordance with the applicable principal legislation (see paragraph 39 below), in the nominal value that they had had in October 2014.

2. Domestic avenue of redress

11. The applicants pursued different legal avenues – such as lodging civil or administrative claims and/or constitutional appeals – in seeking a review of the adverse impact of the Pension Reduction Act on the pension payments to which the Pension Fund had determined that they were entitled; all those avenues were ultimately unsuccessful.

12. In particular, following requests lodged by them with the Pension Fund, the applicants in the first, second, third, fifth, sixth, eighth and ninth cases (see Appendix I) received from the Pension Fund decisions (*rešenja*) on the calculation of their respective pensions following the implementation of the reduction.

13. Furthermore, while the Pension Reduction Act was still in force, the first and ninth applicants further requested the payment of their full pensions from the Pension Fund. On 1 February 2018 and 30 January 2018, respectively, the Pension Fund refused those requests: it deemed that the

disputes could not be characterised as being of an administrative nature concerning erroneous calculations; rather, the question constituted a civil matter concerning damage of a pecuniary nature, in respect of which it did not have jurisdiction. In May and July 2019, appeals lodged by the applicants were rejected and further proceedings in which they sought a judicial review before the Administrative Court were terminated on the same grounds.

14. The eighth and eleventh applicants lodged separate civil claims against the Pension Fund, seeking pecuniary damages in the amount of the parts of their respective pensions that they had not been receiving following the reduction measure. The Belgrade First Basic Court and the Belgrade Court of Appeal dismissed the claims, referring to the fact that the matter had been settled by a decision of the Constitutional Court of 23 September 2015 (see paragraph 16 below) and holding that the Pension Fund had engaged in no unlawful or incorrect work while applying the Pension Reduction Act and calculating pensions. Constitutional appeals lodged by the eighth and eleventh applicants were also rejected.

15. Like many other individuals, pensioners' associations and trade unions, all the applicants (except the eleventh) lodged applications with the Constitutional Court – either personally or through the Association of Pensioners Trade Unions – for (i) the institution of proceedings seeking a review of the "constitutionality" and "legality" (*inicijativa za pokretanje postupka za ocenu ustavnosti i zakonitosti*) of the Pension Reduction Act and its compatibility with ratified international treaties, and (ii) the suspension of its enforcement (see paragraphs 33 and 37 below). They argued that the Act was in contravention of Articles 3, 19, 20, 21, 22, 58, 70, 97, 194 and 197 of the Constitution (see paragraphs 25-31 and 35-36 below), and of Article 12 of the European Social Charter, Article 13 of the Convention, Article 1 of Protocol No. 1 to the Convention and Article 1 of Protocol No. 12 to the Convention.

16. On 23 September 2015, the Constitutional Court rejected (*odbacio*) all the applications, by nine votes to four, and declined to open formal proceedings (the decision (IUž. 531/2014), together with the dissenting opinions, was published in OG RS, no. 88/2015 of 23 October 2015). The decision's reasoning acknowledged that the reduction in pension payments constituted an interference with pensioners' property rights, but stated that it had been imposed by law, had pursued a legitimate aim and had been proportionate. It stated, in particular, that:

(i) the reduction in pension payments, which had been imposed by the Pension Reduction Act, did not run counter to the Constitution or the international treaties ratified by the State;

(ii) Article 70 of the Constitution (see paragraph 30 below), which guaranteed the right to pension insurance, did not guarantee the content of the right that derived from it or the ultimate amount of the pension that a person received; these were matters for the legislature to decide upon, given that the

legislature had constitutional authority under Article 97.8 to provide and organise the system to be employed in various areas, including that of social insurance (see paragraph 31 below);

(iii) therefore, those persons who had lodged applications for an assessment of the constitutionality of the Pension Reduction Act could not rely on Article 20 of the Constitution (see paragraph 26 below); the level of pensions could vary [that is to say increase or decrease] – otherwise, the legislature would not be able to adapt its role according to what was in the public interest and to what the circumstances in question warranted;

(iv) in that connection, the Serbian pensions system is based on the "Bismarck model" of mandatory contributions from employees – those contributions are treated as public assets, which are used to finance pension payments to current pensioners (the "pay-as-you-go" model), and not for the payment of the pensions of those who made the contributions (whose pensions are to be calculated in accordance with the formula and variable general and personal coefficients determined by the legislature at the relevant time);

(v) the adoption of the Pension Reduction Act had been justified in view of the fact that it had been in the public interest, given that it had contributed to maintaining the financial sustainability of the pension system and to ensuring the regular payment of pensions, while most pensioners had not been affected by the austerity measures;

(vi) the temporary character of the measures at issue, the principle of social solidarity and the fact that the applicants had not been overburdened by the measures were considerations relied on by the Constitutional Court to deem them to be proportionate.

17. The four dissenting judges were of the view that the Court should have opened formal proceedings and examined the issues in question only after first organising a public debate to hear the views of both sides and of eminent experts.

3. Proceedings before the Court as regards the fourth, fifth, eighth and ninth applicants

18. In their observations of 3 June 2021 on the admissibility and the merits, the Government informed the Court that the fifth applicant, Mr Branimir Popović, and the eighth applicant, Ms Milka Čulić, had died on 1 September and 1 October 2020, respectively.

19. By registered letters of 1 July 2021, the Court invited (potential) relatives of the fifth and eighth applicants to comment on the information provided by the Government regarding their deaths and to indicate by 29 July 2021 whether they wished to pursue the applications lodged by the deceased applicants before the Court in their capacity as the applicants' heirs. Their attention was drawn to the fact that a failure on their part to reply could lead

to the conclusion that nobody was entitled and/or wished to pursue the application in the applicants' respective stead.

20. A return receipt dated 8 July 2021 in respect of a letter sent to the eighth applicant by the Court indicated that the eighth applicant had died and that no one had received the letter. In the meantime no heirs put themselves forward to continue with her application.

21. The letter sent to the fifth applicant's address was returned to the Court together with a receipt (*povratnica*) indicating that the letter had not been delivered.

22. As regards the fourth applicant, Ms Vesna Popović, the Court sent her letters dated 17 November 2020, 12 March 2021 and 1 July 2021 inviting her to appoint a legal representative, to set out her position on the question of a friendly settlement in respect of her case, or to submit her written comments to the Government's observations. Those letters received no response, so by a registered letter dated 3 September 2021 she was notified that the periods allowed for her to undertake the above-stated actions had expired; the letter further noted that no extension of the relevant time-limit had been requested. The applicant's attention was drawn to Article 37 § 1 (a) of the Convention, which provides that the Court may strike a case out of its list of cases in the event that circumstances lead to the conclusion that the applicant in question does not intend to pursue the respective application. Noting that the fourth and fifth applicants had provided the Court with the same address, including the number of the apartment, the Registry also sent to the fourth applicant a copy of the letter of 1 July 2021 that had been sent to the fifth applicant. The return receipt of 4 October indicated that the fourth applicant had received both letters on 13 September 2021. However, no response has been received by the Registry.

23. In his letter of 9 July 2021, the representative of the ninth applicant, Ms Nada Bunjak, informed the Court that she had died on 8 October 2020. The representative later on informed the Court that following inheritance proceedings, on 19 September 2021 the relevant authority (a public notary) had declared, *inter alia*, that the ninth applicant's sister, L.B., had inherited all those of her rights and obligations arising from the proceedings before the Court in the present case.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. CONSTITUTIONAL AVENUE OF REDRESS

A. The Constitution of the Republic of Serbia (*Ustav Republike Srbije*, published in OG RS, no. 98/06)

24. The provisions of the Constitution, referred to by the applicants or the Government, provide as follows.

25. Articles 3 and 19 provide, *inter alia*, that the rule of law is a fundamental prerequisite of the Constitution which is based on inalienable human rights.

26. Article 20 provides that human and minority rights guaranteed by the Constitution may be restricted by the law if the Constitution permits such a restriction and for the purpose allowed by the Constitution, to the extent necessary to meet the constitutional purpose of the restriction in a democratic society and without encroaching upon the substance of the relevant right (Article 20 § 1). An acquired level of human and minority rights (*stečeni nivo ljudskih i manjinskih prava*) may not be lowered (Article 20 § 2). When restricting human and minority rights, all State bodies, particularly the courts, shall be obliged to consider the substance of the restricted right, the relevance of the aim of the restriction in question, the nature and extent of that restriction, the relationship between the restriction and the aim thereof, and the possibility of achieving the purpose of the restriction through less restrictive measures (Article 20 § 3).

27. Article 21 provides that "everyone shall be equal before the Constitution and the law" and "shall have the right to equal legal protection, without discrimination". All "direct or indirect discrimination based on any grounds – particularly on grounds of race, sex, national or social origin, birth, religion, political or other opinion, property status, culture, language, age, [or] mental or physical disability – shall be prohibited". Special measures that may be introduced in order to achieve full equality of individuals or a group of individuals who are otherwise in a substantively unequal position compared to other citizens shall not be deemed to constitute discrimination.

28. Article 22 provides that everyone shall have the right to judicial protection when any of their human or minority rights, as guaranteed by the Constitution, have been violated or denied, as well as to address the international organisations to request their protection.

29. Article 58 guarantees the peaceful enjoyment of possessions and other property rights acquired under law. The "right to property" (*pravo na imovinu*) may be revoked or restricted only in the public interest (as established by the law) and for compensation, which cannot amount to less than market value. The law may restrict the manner of using property.

30. Article 70 provides that pension insurance shall be regulated by the law and that the Republic of Serbia shall ensure the economic security of pensioners.

31. Article 97 prescribes the various responsibilities of the Republic of Serbia, including the organisation and regulation of labour affairs, health and safety in the workplace, employment, social insurance and other forms of social security, and other economic and social matters of public interest (Article 97.8).

32. Article 167 § 1 provides that the Constitutional Court shall rule on the compliance of laws and other legal instruments with the Constitution and with

generally accepted rules of international law and ratified international treaties and on the compliance of ratified international treaties with the Constitution.

33. Article 168 § 2 provides, *inter alia*, that every natural person has the right to lodge an application for the institution of proceedings regarding the assessment of the "constitutionality" and/or "legality" of a specific piece of legislation.

34. Article 170 provides that "a constitutional appeal may be lodged against individual decisions or actions [taken by] State bodies (or organisations exercising delegated public powers) that violate or deny human or minority rights and freedoms guaranteed by the Constitution, if other legal remedies [for the protection of those rights or freedoms] have already been exhausted or have not been prescribed".

35. Article 194 regulates the hierarchy of domestic and international legal instruments, providing the Constitution as the supreme legal instrument, and stipulating that, *inter alia*, all laws and other general instruments enacted in the Republic of Serbia must be in compliance both with the Constitution and with ratified international treaties and generally accepted rules of international law.

36. Article 197 prohibits laws and other legal instruments from having retroactive effect, except if so required by the general public interest, as established during the procedure of adopting the law or legal instrument in question.

B. The Constitutional Court Act (*Zakon o Ustavnom sudu*, published in OG RS, no. 109/07, with subsequent amendments)

37. Article 50, Article 53 § 1, Article 58 § 1, Article 61 and Article 62 of this Act provide, *inter alia*, that the Constitutional Court may, of its own motion, assess the constitutionality and/or legality of a piece of legislation, provided that two thirds of its judges decide to do so. However, in the event that an application for the assessment of the constitutionality and/or legality of a piece of legislation is lodged by a natural person, it is up to the Constitutional Court itself to rule on whether it will institute formal proceedings. If it decides to do so, a formal decision to this effect will be rendered, and a public hearing organised (if considered necessary). If proceedings are brought and a breach of the Constitution or a ratified international treaty is established, the impugned legislation (or certain provisions thereof) will cease to be in force as of the date of the publication of the Constitutional Court's decision in the OG RS. Anyone whose rights have been violated by an individual decision based on the application of that legislation is entitled, within six months of the Constitutional Court's decision being published, to ask the relevant authorities to amend that decision. In the alternative, the Constitutional Court may decide to order other

measures or award compensation to the aggrieved parties if it considers that effective redress could not otherwise be secured.

II. PENSION SYSTEM IN SERBIA AND THE RELEVANT LEGAL FRAMEWORK

A. Pension system in general

38. After regulating a single-pillar pension system for decades, Serbia now has two pension schemes: (i) an obligatory State statutory pension scheme that was set up almost one hundred years ago – initially along the lines of the "Bismarck model" of an earnings-related system with a defined-benefit public scheme, and (ii) a voluntary personal private pension which has been in the process of development since the adoption of the Act on Voluntary Pension Funds in 2005.

39. After political changes at the beginning of 2000s, a new principal Pensions and Disability Insurance Act was adopted in 2003, with subsequent amendments (hereinafter "the Pensions Act"; *Zakon o penzijskom i invalidskom osiguranju*, published in OG RS, nos. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09, 107/09, 30/10, 101/10, 93/12, 62/13, 108/13, 75/14, 142/14, 73/18, 46/19, 86/19 and 62/21). The State's statutory pension scheme in Serbia remains a typical example of the "Bismarck model" of earnings-related system with a defined-benefit public scheme financed on a "pay-as-you-go" basis by means of social insurance contributions to the Pension Fund. Accordingly, current pensioners receive pension benefits that are financed from the contributions made by currently employed workers. A key feature of the new law was a shift from the traditional defined-benefit system to the German points system, with the aim of tightening the link between contributions and benefits – in particular extending the reference period from the ten years in which a person earned his or her highest wages to that person's lifelong earnings[1].

40. Under the Pensions Act, pension and disability insurance is mandatory (Article 1). Unlike the voluntary private pension scheme, all employers and the working population (including all employees, self-employed persons and farmers), are obliged to pay contributions to the Pension Fund in an amount that is not freely decided but is determined by the Act on Mandatory Contributions to Social Insurance; the contribution rate currently stands at 25.5% of gross salary – 14.5% is paid by employees and 11% by employers (under Articles 2, 13 and 14 of that Act). An individual's obligation to pay contributions ceases at "retirement age", when individuals become entitled to and start receiving an old-age pension. Under the most recent amendments to the Pensions Act the retirement age is 65 years for men, while for women it

[1] See Matković, G, and Stanić, K, The Serbian pension system in transition: A silent break with Bismarck, Economic Annals, 65(225), p. 105-133

is currently 63 (but will gradually rise by two months a year until reaching 65 in 2032; see paragraph 48 below), provided that they have paid contributions to the Pension Fund for at least fifteen years. Alternatively, both men and women may retire after working for forty-five years, regardless of their age (these rules do not apply to people working in certain categories of jobs and professions, who may retire earlier).

41. The rights and pension benefits deriving from pension-related contributions should be acquired, exercised and used in accordance with the terms and conditions determined by the Pensions Act. Old-age pensions, early old-age pensions, disability and survivor's pensions may derive from pension and disability insurance. Old-age pensions are acquired and calculated according to a formula that takes into account the ratio of the level of gross earnings of the employee in question to the national average annual wage in each year in which contributions are paid (the personal and general coefficient – *ukupne osnovice zarada za koje je plaćen doprinos za penzijsko i invalidsko osiguranje u odnosu sa prosečnom zaradom*) and the overall contribution period (up to forty-five years) (see Articles 5 and 61-73 of the Pensions Act). Pensions are not subject to taxation.

42. Under the Pensions Act, a ruling setting the amount of a person's pension may be amended only in the event that (i) new relevant facts or evidence regarding the insured person in question become known that might result in a different outcome (that is, a higher or a lower pension), or (ii) such relevant facts or evidence were not presented in the original proceedings.

43. Contributions partly fund both the Pension Fund and the National Health System (*Zdravstveni fond Srbije*). The Pension Fund is the legal entity responsible for resource management and the administration of pensioners' statutory obligations and rights. Under Article 169, its assets consist of: compulsory pension and disability insurance (social insurance) contributions; its own property; earmarked sums in (that is to say direct transfers from) the State's central budget; subsidies and donations; returns on various investments; and a certain portion of the funds obtained through the privatisation of State-owned and socially-owned capital. Article 173 provides that the State guarantees the Pension Fund's commitments concerning rights arising from mandatory pension and disability insurance.

B. Permanent and temporary measures taken in respect of the State's pension scheme between 2014 and 2020, and relevant statistical information

44. The overall number of pensioners in Serbia currently stands at around 1,650,000 – almost a quarter of the whole population. The majority of pension beneficiaries (65.1%) are in receipt of an old-age pension, 14.8% claim a disability pension and 20.1% benefit from a survivor's pension. In June 2022,

the average old-age pension was RSD 30.974 (around EUR 260) per month.[2] A high proportion of pensioners apparently still receive the minimum level of benefits, and there is a need for a safety-net mechanism to keep these groups out of poverty.[3]

45. The pension system runs at a deficit, given that contributions are not sufficient to fully fund pension-related expenditure (see paragraph 46 below). Although the pension fund is separate from the State budget, the State nevertheless subsidises it. The level of expenditure on pensions should not exceed 11% of GDP (gross domestic product), and the State subsidy to be paid into the Fund is fixed by the annual Budget System Act (*Zakon o budžetskom sistemu*, published in OG RS, nos. 54/09, 73/10, 101/10, 101/11, 93/12, 62/13, 63/13, 108/13, 142/14, 68/15, 103/15, 99/16, 113/17, 95/18, 31/19, 72/19, 149/20 and 118/21).

46. According to the available information, the deficit was high and the system apparently reached "historically high levels of expenditure" [4] in 2013 and 2014.[5] According to the information collected by the Constitutional Court from the Finance Ministry and Pension Fund, the deficit in Pension

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[2] Monthly statistical bulletin - June 2022, published in August 2022 by the Pension Fund, https://www.pio.rs/sites/default/files/Statistike/Bilten/2022/Statisticki%20mesecni%20bilten%20za%20jun%202022.pdf

[3] Ljiljana Pejin Stokic, Jurij Bajec, ESPN Thematic Report on Assessment of Pension Adequacy – Serbia 2021, European Social Policy Network (ESPN), Brussels: European Commission.

[4] Ibid.; see, also, Republic of Serbia: Staff Report for the 2014 Article IV Consultation and Request for Stand-By Arrangement, Country Report No. 2015/050, published on 26 February 2015; and Serbia-Pension Policy Challenges in 2020. https://documents1.worldbank.org/curated/en/598501593564636264/pdf/Serbia-Pension-Policy-Challenges-in-2020.pdf

[5] According to information published by the World Bank for 2014, the Serbian economy faced serious challenges in 2014, such as a decrease in GDP on account of continued falling domestic demand aggravated by floods, and weak economic activity on the part of trading partners, and low "imported inflation" that pushed Serbia's inflation rate below the National Bank of Serbia's inflation "tolerance band". The authorities requested the assistance of the International Monetary Fund (IMF) in supporting their economic policies over the period 2015–17 in order to try to restore public debt sustainability, strengthen competitiveness and growth, and boost the resilience of the financial sector. The Serbian pension system ran at a deficit; it had reached historically high levels of expenditure in 2014 but had since reduced total expenses and government subsidies as a result of the parametric pension reforms and the temporary reduction in pension payments introduced in 2014. After the application of those measures, Serbia had been able to reduce pension costs to below 11% of GDP in 2018 (see Republic of Serbia: Staff Report for the 2014 Article IV Consultation and Request for Stand-By Arrangement, Country Report No. 2015/050, published on 26 February 2015. https://documents1.worldbank.org/curated/en/598501593564636264/pdf/Serbia-Pension-Policy-Challenges-in-2020.pdf (the note was prepared under the World Bank's Advisory Services and Analytics (ASA) activity for Western Balkans pensions in Q1 2020), and Serbia-Pension Policy Challenges in 2020, https://documents1.worldbank.org/curated/en/598501593564636264/pdf/Serbia-Pension-Policy-Challenges-in-2020.pdf).

Fund's revenue covered by the State's budget was 44,59% in 2011, 48,22% in 2012, 44, 68% in 2013 and 41,86% in 2014.

47. The State authorities explained that, in order to respond to challenges such as the high budget deficit and rising public debt, and in order to ensure the stability of public finances and macroeconomic stability in general, they had to introduce several sets of permanent and temporary fiscal consolidation measures throughout 2014.

48. Firstly, the government introduced two permanent measures: (i) the threat of penalties (in the form of lower pensions) to reduce early retirement, and (ii) a gradual increase in the retirement age for women between 2015 and 2032 until it reached 65 years – the same retirement age as that which applied to men (see paragraph 37 above).

49. In July 2014, the government further temporarily discontinued the use of automatic pension indexation (*usklađivanje penzija*), which was based on consumer price growth, in favour of *ad hoc* adjustments – subject to budget availability – to pension payments until pension expenditure fell below 11% of GDP (the measure was facilitated by the temporary suspension of Article 80 of the Pensions Act by Article 2 of the Act on Amendments to the Pensions Act (*Zakon o izmenama i dopunama Zakona o penzijskom i invalidskom osiguranju*, published in OG RS, no. 142/14)).

50. Crucially, on 26 October 2014 the National Assembly adopted the Pension Reduction Act, which imposed a progressive reduction in pension payments above RSD 25,000 per month as of November 2014 (see paragraph 7 above; for the full text of this Act, see paragraph 54 below). Apparently, 61.2% of all pensioners in 2014 received monthly pensions amounting to less than RSD 25,000.[6]

51. During the period in which the Pension Reduction Act was in force – and (according to the government) in accordance with the financial possibilities open to the State – the government introduced an increase in pensions as follows: (i) a 1.25% increase was applied as of December 2015, (ii) a 1.5% increase was applied as of December 2016, and (iii) a 5% increase was applied as of December 2017. The increase was, however, added to the pensions payments and subject to the reductions imposed by the Pension Reduction Act. Furthermore, on two occasions in November 2016 and November 2017 all recipients of pensions were granted one-time payments in the amount of RSD 5,000 (approximately EUR 42).

52. The temporary austerity measures came to an end in 2018 and 2019. Apparently as a result of the realisation of positive macroeconomic results and a reduction in total expenses and government subsidies between 2014 and 2018, on 27 September 2018 the Pension Reduction Act was repealed and replaced by the Act on Amendments to the Pensions and Disability Insurance

[6] Ljiljana Pejin Stokic, Jurij Bajec, ESPN Thematic Report on Assessment of Pension Adequacy – Serbia 2021

Act (Article 53; *Zakon o izmenama i dopunama Zakona o penzijskom i invalidskom osiguranju*, published in OG RS, no. 73/18; part of the Act came into force on 30 September 2018, while Articles 6, 13, 16, 20-25, 27-29, 30-33 and 38 came into force on 1 January 2019), which ended the temporary reduction in pension payments. According to the information provided by the Government, a considerable savings of RSD 98,9 billion (around EUR 840 million) was made as a result of the pension reduction during the relevant period (see paragraph 75 below).

53. A further Act on Amendments to the Pensions and Disability Insurance Act (*Zakon o izmenama i dopunama Zakona o penzijskom i invalidskom osiguranju,* published in OG RS, no. 86/19), which came into force on 1 January 2020, reintroduced pension indexation based on the Swiss formula, which indexes pension benefits once a year according to 50% of inflation and 50% of average wage growth (*penzije se uskladjuju u procentu koji predstavlja zbir polovine procenta promene potrošačkih cena i polovine procenta promene prosečne zarade bez poreza i doprinosa*).

C. Act on the Temporary Regulation of the Manner of Paying Pensions

54. The Pension Reduction Act provides:

Article 1

This Act prescribes the manner of payment of pensions by the Pension Fund, starting with the pensions due as of November 2014, with the aim of preserving the financial sustainability of the pension system in the Republic of Serbia.

Article 2

Pension beneficiaries whose [monthly] pension, as determined in accordance with the law, is above RSD 25,000 and less than RSD 40,000 should be paid an amount determined by deducting from the full pension [entitlement] an amount determined by multiplying the coefficient of 0.22 by the difference between RSD 25,000 and the total amount of the pension.

Article 3

Pension beneficiaries whose [monthly] pension, as determined in accordance with the law, exceeds RSD 40,000 should be paid a pension in an amount determined by deducting from the full pension [entitlement] the total amount [calculated] by multiplying the coefficient of 0.22 by RSD 15,000 and the amount determined by multiplying the coefficient of 0.25 by the difference between the total pension and RSD 40,000.

Article 4

Pension payments calculated in accordance with this Act should be considered as final.

Article 5

The payment of pensions in the manner provided by Articles 2 and 3 should apply to both current and future pension beneficiaries.

Article 5a [as added in 2016]

Sums determined by Articles 2 and 3 of this Act amounting to RSD 15,000, RSD 25,000 and RSD 40,000 shall be increased, starting from the calculation and the payment of pensions of December 2016, by the percentage of pension adjustments determined by the law governing the budget system.

Article 6

The Act shall enter into force on the day following the day of its publication in the Official Gazette of the Republic of Serbia.

THE LAW

I. PRELIMINARY REMARKS AS REGARDS APPLICATIONS NOS. 7697/16, 7705/16, 20743/16 AND 21856/16

55. Having regard to the circumstances described above (see paragraph 22), the Court considers that the fourth applicant may be regarded as no longer wishing to pursue her application, within the meaning of Article 37 § 1 (a) of the Convention. In accordance with Article 37 § 1 (a) of the Convention, the Court considers that it is no longer justified to continue the examination of application no. 7697/16.

56. The Court notes that the fifth and eighth applicants have died and that no request has been submitted by any of their respective heirs to pursue the examination of either case (see paragraphs 18-21 above). Given these circumstances, the Court concludes that it is no longer justified to continue the examination of applications nos. 7705/16 and 20743/16 within the meaning of Article 37 § 1 (c) of the Convention.

57. Furthermore, in accordance with Article 37 § 1 *in fine*, the Court finds no special circumstances regarding respect for human rights, as defined in the Convention and its Protocols, which require the continued examination of the above-noted applications. Accordingly, applications nos. 7697/16, 7705/16 and 20743/16 should be struck out of the Court's list of cases.

58. Regarding application no. 21856/16, the Government invited the Court to strike it out of the Court's list of cases, given that (i) pension rights are not transferable, and (ii) from the documents submitted by the legal representative, it could not be concluded without any doubt that Ms L.B. was the actual heir of the late ninth applicant (see paragraph 23 above).

59. However, the Court does not consider it necessary to examine separately the Government's objection to the *locus standi* of Ms L.B. to pursue the ninth applicant's application in the present case given the conclusions which it reaches below (see paragraph 105 below).

II. JOINDER OF THE REMAINING APPLICATIONS

60. Having regard to their common factual and legal background, the Court finds it appropriate to examine the remaining applications jointly in a single decision (Rule 42 § 1 of the Rules of Court).

III. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1, BOTH ALONE AND IN CONJUCTION WITH ARTICLE 14 OF THE CONVENTION, AND ARTICLE 1 OF PROTOCOL NO. 12

61. All the remaining applicants complained under Article 1 of Protocol No. 1 to the Convention that the reduction in the payment of their pensions had amounted to a deprivation of property that had unjustifiably breached their right to the peaceful enjoyment of their property. In particular, they asserted that (i) the reduction in pension payments provided by the Act had itself amounted to a violation of their property rights, referring to "acquired" rights (*stečena prava)*; (ii) the Act had run counter to fundamental constitutional principles, international treaties and the Pensions Act; (iii) although the Act had been presented as temporary legislation, the period for which it would remain in force had not been set at the time of its enactment; and (iv) the calculations resulting from the Act had been arbitrary and not dictated by any economic factors.

62. Relying on Article 14 of the Convention read in conjunction with Article 1 of Protocol No. 1 and/or Article 1 of Protocol No. 12, the second, third and eleventh applicants complained of the discriminatory way in which they had been treated in comparison to other pensioners to whom the reduction in pension benefits had not applied or had applied only to a lesser extent.

63. The first, ninth and eleventh applicants lastly complained under Article 13 that, as a result of the direct application of the Act and the unlawful absence of individual decisions regarding the reduced pensions, they had been prevented from pursuing their claims before domestic administrative authorities and/or civil courts.

64. As master of the characterisation to be given in law to the facts of the case before it (see, for example, *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018), the Court considers that the applicants' complaints fall to be examined under Article 1 of Protocol No. 1, both alone, in respect of all applicants, and in conjunction with Article 14 of the Convention, and under Article 1 of Protocol No. 12 in respect of the second, third and eleventh applicants only; those provisions read as follows:

Article 1 of Protocol No. 1

"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."

Article 14

"The enjoyment of the rights and freedoms set forth in [the] 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."

Article 1 of Protocol No. 12

"1. The enjoyment of any right set forth by law 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.

2. No one shall be discriminated against by any public authority on any ground such as those mentioned in paragraph 1."

A. The parties' submissions

1. The applicants

65. The applicants firstly argued that the Government had violated Article 1 of Protocol No. 1 because depriving them of the "acquired right to an old-age pension" (*stečeno pravo na starosnu penziju)*, in respect of the pensions that had been reduced in the period from 1 November 2014 until 1 October 2018, had been in contravention of international treaties that the State had ratified, the Constitution and the Pensions Act, which had remained in force the whole time. The Government's main argument that the reduction had been introduced by law, namely the Pension Reduction Act (see paragraph 54 above), should not be accepted as sufficient for a measure to be considered constitutional and legal. Under the Constitution and the relevant domestic laws, the pension entitlements in question had constituted acquired rights (*stečena prava*) and could not be lawfully revoked or suspended except in cases provided by the Pensions Act (see paragraph 42 above). The applicants submitted that they had had a legitimate expectation that they would receive the full amount of their pensions, on the basis of (i) the high mandatory contributions that they had been required to make throughout their working lives and (ii) the decisions of the Pension Fund, which had clearly and precisely determined and calculated, in accordance with the relevant law, the level of their respective pension entitlement (see paragraphs 5 above).

They challenged the Constitutional Court's finding that the amount of an awarded pension was a matter for the legislature's discretion (see paragraph 16 above). Even accepting that the Constitution and the Convention had not given them the right to a pension in a certain amount, it had been the principal Pensions Act that had given pensioners the right to a pension calculated in accordance with a prescribed formula that had been unequivocal (see paragraph 41 above); the State authorities should therefore have adhered to it. The Pension Reduction Act had disregarded the principal Pensions Act, the individual contributions and expectations of higher-earning pensioners.

66. Furthermore, the applicants complained that the adoption of the Pension Reduction Act had not been accompanied by appropriate public debate, explanatory notes and information. While the law had admittedly been precise regarding the envisaged percentage of the reduction in pension payments, pensioners had only been informed of it via the media (not personally and in writing), and none of them had initially received any new decision regarding the amount in pension payments that they would receive (see paragraph 8 above). The term "temporary" in the title of the Act had been pure "hypocrisy", as no provision setting out its duration had been contained in the wording of the Act, and neither had the government made any statement in respect of how long the progressive reduction in pension payments would be enforced. Every temporary law had to contain such a provision; for example, such a provision might stipulate that the temporary law in question would be repealed when the conditions that had led to the adoption of that law no longer existed. This Act had only incidentally ceased to be valid in 2018; it could have remained in force for as long as it suited the State authorities. It had also been hypocritical to talk of a "temporary" reduction in pension levels, given the fact that all pensioners were approaching the end of the lives.

67. As regards the legitimate aim, the applicants were of the view that the Government's assertions that the reduction in pension payments had helped to maintain the pension system were not genuine. The Government had only referred to budgetary consolidation; they had failed to demonstrate that the reduction had been actually required in order to realise a legitimate aim. Furthermore, the Government had failed to demonstrate a clear link between the reduction in pension payments and the IMF's recommendations, or to submit publicly accessible data regarding any clear, considerable savings realised by the pension system and where and how the money saved had been redirected. The applicants believed that the fiscal measures had not attained any expected results, and wondered if it was possible that a few hundred thousand pensioners could have saved the State from a financial crisis.

68. However, even if it could be accepted that the reduction in pension payments had pursued a legitimate aim, it had constituted a disproportionate measure. Moreover, all pensioners had not been equal before the law: the reduction in pension payments had affected only a small group of pensioners

(specifically, those receiving higher pensions) by significantly reducing the amount of their pension payments, while the remaining pensioners had not been affected. Namely, the Pension Fund was not a social-protection institution and it should not have been targeted as a means of securing funding for social-protection measures (specifically, by confiscating parts of assets belonging to "rich retirees" who had paid the highest contributions to the Pension Fund and had thus qualified for higher pensions under the law) in order for poorer retirees, who had contributed much less, to be exempted from the reduction. The real reasons might be found in populist considerations and political speculation, and the perception that low-earning pensioners and the public would tolerate and would not oppose a reduction being imposed on relatively high pensions, as long as they themselves were not affected. The aim had therefore been to attract voters in the long run.

69. Secondly, had it not been mandatory to adhere to the State pension scheme, employees could have been in a position to deposit in their bank accounts the money that had in fact gone towards financing their pensions or to otherwise invest that money in an asset of their own choice that would have yielded higher and stable returns; those returns could have been used to maintain their lifestyles after retirement (rather than their having to rely on a reduced pension). In addition, since the authorities were already bragging about the savings accrued from the reduction in pensions, they were obviously in a position to return what they had seized "temporarily", instead of ultimately confiscating it. Nothing further had subsequently been done to correct the injustice suffered by this group of pensioners and to compensate them. Some insignificant and symbolic corrections to pensions had been made (see paragraph 51 above), but those had not constituted a kind of "present" from the government on the basis of the savings realised as a result of the reduction in pensions; rather, they had reflected an attempt on the part of the Pension Fund to harmonise pensions with the growth in the cost of living by applying the relevant law. Moreover, the increase was applied in full only for the pensions exempted from the reductions (that is, monthly pensions of RSD 25,000 or less); in respect of higher pensions, the increase was reduced together with the pensions.

70. The applicants submitted that the reduction in pensions – which had already generally been so low in Serbia as to constitute a kind of social assistance – had had a major impact on the health and economic and social well-being of pensioners. If, for example, an already low pension was to be reduced by 22%, the essence of the right to a pension would be impaired. The Government had cited in support of their arguments the average monthly income of 1,535 households and the "at-risk-of poverty threshold", without taking into account elderly pensioners suffering from various diseases, including diseases for which the cost of medicines to treat chronic illnesses did not qualify for reimbursement, but had to be paid out-of-pocket. While Article 70 and 97.8 of the Constitution of Serbia (see paragraphs 30-31 above)

specified that the Republic of Serbia should secure the economic security of pensioners and should organise and provide for the functioning of the pension system, in reality, it had been shown that the government and the President of the Republic of Serbia had endangered the lives of pensioners, who had been left below the minimum subsistence level.

71. Lastly, the applicants submitted that it was also worth noting that the financial sustainability of the existing pension system would be less endangered had successive governments not made so many mistakes, including the following: (i) the authorities had not done enough to collect social security contributions from those in active employment and had tolerated the false calculation of contributions due; (ii) there had been a decline in economic activity and a growth in the number of unemployed; (iii) the privatisation of State-owned companies had not been wholly successful; (iv) those entitled to military pensions had been added to the beneficiaries of the Pension Fund, even though they had not contributed to it; (v) assets belonging to the Pension Fund had been sold off and the proceeds added to the State budget and used for purposes other than meeting the Fund's commitments (the Board of Directors had allegedly lodged a claim against the State in this respect); and (vi) the State could not talk of having strictly controlled the level of employment in the public sector, given the fact that there were 170 State agencies, twenty-one ministers and hundreds of various directors and bodies on which EUR 820 million was spent every year.

2. The Government

72. As regards all of the applicants, the Government acknowledged that the temporary reduction in pension payments had constituted an interference with the applicants' peaceful enjoyment of their property which should be considered as "a regulation of the use of property", as referred to in paragraph 2 of Article 1 of Protocol No. 1. In the Government's view, this measure had been lawful, had served to achieve a legitimate aim and had been proportionate.

73. As regards lawfulness, the National Assembly had imposed the measure by enacting the Pension Reduction Act, a law that had carried the same legal force as the principal Pensions Act. Its provisions had been accessible, precise and predictable. In particular, its six Articles (see paragraph 54 above) had clearly defined the categories of pensioner to whom reduced pensions would be disbursed, as well as the mathematical formula on the basis of which the reduction in pension payments had been calculated. Also, it had not (i) affected the right to receive a pension (*pravo na penziju*), (ii) created a new or different right compared to those provided by the Pensions Act, or (iii) provided different conditions or procedures in respect of exercising pension insurance rights; rather, it had only prescribed temporary formula for the calculation of reductions in pension payments. Contrary to the applicants' assertions (see paragraph 65 above), there had

been no inconsistency between the laws governing pension-related matters. For example, during the period of validity of this Act, certain provisions of the principal Pensions Act concerning adjustments to pensions had been suspended from application.

74. Responding to the applicants' concerns, the Government argued that it had been unnecessary for the Pension Fund to issue new individual decisions regarding the applicants' pensions entitlements, given that the Pension Reduction Act had been directly applicable (see paragraph 8 above). Furthermore, all pensioners had been adequately informed of the amount by which pension payments would be reduced. In view of the above, according to the Government, the interference had been lawful. In any event, the applicants had had at their disposal an effective legal remedy – namely, an initiative for the assessment of the constitutionality of the law – that could have been pursued as a means of raising their complaints at the domestic level. Most of the applicants had availed themselves of that remedy, and the Constitutional Court had thoroughly examined whether the application of the Pension Reduction Act had been in conformity with the Convention. In view of the Constitutional Court's findings, it would have been pointless to pursue any other remedies that had been available.

75. The Government submitted that it had been clear from the very name of the Act on the Temporary Regulation of the Manner of Paying Pensions that the measures were of a temporary nature. The State authorities had taken a number of measures aimed at the financial recovery of the country following the serious financial crisis that had struck the Republic of Serbia. Those measures had been introduced temporarily, in the public interest, in order to preserve the macroeconomic stability of the country – and, in particular (within the scope of economic reforms programme of fiscal consolidation aimed at limiting budget expenditure) – to achieve budgetary stability and to preserve the financial sustainability of the pension system in Serbia (see paragraph 47 above). In addition, owing to the positive effect of the measures taken and accrued savings of RSD 98.9 billion (approximately EUR 840 million), the Pension Reduction Act had ceased to be in force in September 2018 (see paragraphs 52 above), after which the authorities had been able once again to commence paying pensions in their full amount. Eventually, the State authorities had introduced a new criterion for adjusting pensions – namely, increases in pensions would now reflect changes in consumer prices and changes in net average earnings (see paragraph 53 above).

76. The Government submitted that the applicants had not suffered an excessive burden owing to the temporary reduction in their pensions. They had not been deprived of their livelihoods. According to the official statistics, the amounts that the applicants had received in pension payments after the reduction had still been higher than half the average monthly household income in the Republic of Serbia – or in some cases, higher than the entire

monthly household income. The Act had not impaired the essence of the right arising from pension insurance (*pravo koje proizilazi iz penzionog osiguranja*), nor had the amounts of pension payments been reduced to such an extent as to render the right to a pension practically meaningless or useless.

77. Lastly, the applicants had not been unequal before the law or been discriminated against in comparison with other pensioners. The State authorities had exempted from the application of the Act all pensioners whose monthly pensions did not exceed RSD 25,000, deeming that that category of pensioners was not able to contribute to overcoming the financial crisis as they themselves were battling for survival as a consequence of the crisis. During the time in question, this amount had been slightly higher than the "at-risk-of-poverty" threshold, and the monthly sum of RSD 25,000 had amounted to less than half of the then average monthly household income in the Republic of Serbia. Citing the principle of social justice and solidarity, the respondent State had foreseen a reduction in the highest percentage of pensions over RSD 40,000, while recipients of pensions in the monthly range from above RSD 25,000 to RSD 40,000 had seen their monthly payments reduced by a smaller percentage. The different treatment of certain categories of pensioners had been based on objective criteria – that is to say it could be rationally explained.

B. The Court's assessment

1. Article 1 of Protocol No. 1

(a) Relevant principles

78. The Court refers, in general, to the relevant principles set out by the Grand Chamber in its judgment in *Béláné Nagy v. Hungary* [GC], no. 53080/13, §§ 80-118, 13 December 2016, with further reference therein.

79. The Court has held that Article 1 of Protocol No. 1 places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social-security scheme, or to choose the type or amount of benefits to provide under any such scheme. If, however, a Contracting State has in force legislation providing for the payment as of right of a welfare benefit – whether conditional or not on the prior payment of contributions – that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for persons satisfying its requirements (see *Béláné Nagy*, cited above, §§ 81-82; *Andrejeva v. Latvia* [GC], no. 55707/00, § 77, 18 February 2009, with further references, in particular to *Stec and Others v. the United Kingdom (dec.) [GC],* nos. 65731/01 and 65900/01, § 54, ECHR 2005-X, and *Carson and Others v. the United Kingdom* [GC], no. 42184/05, § 64, ECHR 2010). While the relevant legislation is subject to evolution, the contributions to a pensions fund may, in certain circumstances, and subject to the domestic law, create a

property right and such a right may be affected by the manner in which the fund is distributed (see *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX, with further references).

80. In particular, it ought to be reiterated that Article 1 of Protocol No. 1 does not guarantee, as such, any right to a pension of a particular amount (see, among other authorities, *Kjartan Ásmundsson v. Iceland*, cited above, § 39, with further references; see, also, *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X; *Kuna v. Germany* (dec.), no. 52449/99, ECHR 2001-V (extracts); *Apostolakis v. Greece*, no. 39574/07, § 36, 22 October 2009; *Wieczorek v. Poland*, no. 18176/05, § 57, 8 December 2009; and *Maggio and Others v. Italy*, nos. 46286/09, 52851/08, 53727/08, 54486/08 and 56001/08, § 55, 31 May 2011). The reduction or the discontinuance of a pension may, however, constitute an interference with peaceful enjoyment of possessions that needs to be justified (see *Valkov and Others v. Bulgaria*, nos. 2033/04, 19125/04, 19475/04, 19490/04, 19495/04, 19497/04, 24729/04, 171/05 and 2041/05, § 84, 25 October 2011, with further references).

81. The first and most important requirement of Article 1 of Protocol No. 1 is that any interference by a public authority with the peaceful enjoyment of possessions should be lawful, that is to say it must be carried out "subject to the conditions provided for by law" (see *Former King of Greece and Others v. Greece* [GC] (merits), no. 25701/94, §§ 79 and 82, ECHR 2000–XII, and *Broniowski v. Poland* [GC], no. 31443/96, § 147, ECHR 2004-V). However, the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition, the legal basis must have a certain quality, namely it must be compatible with the rule of law and must provide guarantees against arbitrariness. It follows that, in addition to being in accordance with the domestic law of the Contracting State, including its Constitution, the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application. The Court would add that similar considerations apply to interferences with the peaceful enjoyment of possessions. As to the notion of "foreseeability", its scope depends to a considerable degree on the content of the instrument in issue, the field it is designed to cover and the number and status of those to whom it is addressed. In particular, a rule is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities. Similarly, the applicable law must provide minimum procedural safeguards commensurate with the importance of the principle at stake (see *R.Sz. v. Hungary*, no. 41838/11, §§ 36-37, 2 July 2013; see, also *Grudić v. Serbia*, no. 31925/08, §§ 73-74 and 77-83, 17 April 2012).

82. Any interference by a public authority with the peaceful enjoyment of "possessions" can only be justified if it serves a legitimate public (or general) interest. According to the Court's case-law, the national authorities, because of their direct knowledge of their society and its needs, are in principle better placed than the international judge to appreciate what is "in the public

interest". Under the Convention's system, it is thus for those authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions. The notion of "public interest" is necessarily extensive. In particular, the decision to enact laws concerning social-insurance benefits, will commonly involve consideration of economic and social issues. The Court finds it natural that the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one, and will respect the legislature's judgment as to what is "in the public interest" unless that judgment is manifestly without reasonable foundation (see, for example, *Béláné Nagy,* cited above, § 113 with further references).

83. This is particularly so, for instance, when passing laws in the context of a change of political and economic regime or the merging of pensions systems (see *Valkov and Others*, cited above, § 91, and *Yavaş and Others v. Turkey*, no. 36366/06, § 39-51, 5 March 2019); the adoption of policies to protect the public purse (see *N.K.M. v. Hungary*, no. 66529/11, §§ 49 and 61, 14 May 2013); or to reallocate funds (see *Savickas and Others v. Lithuania* (dec.), no. 66365/09, 15 October 2013); or of austerity measures prompted by a major economic crisis (see *Koufaki and ADEDY v. Greece* (dec.), nos. 57665/12 and 57657/12, §§ 37 and 39, 7 May 2013; see also *da Conceição Mateus and Santos Januário v. Portugal* (dec.) nos. 62235/12 and 57725/12, § 22, 8 October 2013; *da Silva Carvalho Rico v. Portugal* (dec.), § 37, no. 13341/14, 1 September 2015).

84. Lastly, an interference has to be reasonably proportionate to the aim sought to be realised. In other words, a "fair balance" must be struck between the demands of the general interest of the community and the requirements of the protection of an individual's fundamental rights under Article 1 of Protocol No. 1. The requisite balance will be lacking where the person or persons concerned has to bear an individual and excessive burden (see *Maggio,* cited above, § 61; *Lakićević and Others v. Montenegro and Serbia*, nos. 27458/06, 37205/06, 37207/06 and 33604/07, § 62, 13 December 2011, and *Wieczorek*, cited above, § 60, with further references).

85. In that regard, it would also be important to verify whether an applicant's right to derive benefits from the social security scheme in question has been infringed in a manner resulting in the impairment of the essence of his pension rights (see *Domalewski v. Poland* (dec.), no. 34610/97, ECHR 1999-V; *Kjartan Ásmundsson*, cited above, § 39 *in fine*; and *Wieczorek*, cited above, § 57 *in fine*). The assessment would vary depending on the particular circumstances of the case and the applicant's personal situation; while the deprivation of the entirety of a pension is likely to breach the provisions of Article 1 of Protocol No. 1, conversely, reasonable reductions to a pension or related benefits are likely not to do so (see *Béláné Nagy*, cited above, § 117, and *da Conceição Mateus and Santos Januário,* cited above, § 24, with further reference therein).

(b) Application of the relevant principles to the present case

(i) Applicability of Article 1 of Protocol No. 1 and the existence of interference

86. Turning to the present case, the Court notes from the outset that the applicants are beneficiaries of the State's statutory pension scheme, based on the "Bismarck model" of earnings-related system, and in receipt of old-age pensions as recognised by the respective decisions of the various branches of the Pension Fund (see paragraphs 5, 16 and 38-42 above). In view of the compulsory nature of the statutory pension scheme and contributions thereto, it was clearly intended to afford to individuals reaching retirement age a pension that corresponded to the cover provided under the social security scheme (see, *mutatis mutandis*, *Klein*, cited above, § 55). None of the parties dispute that the applicants' existing pension entitlements – determined and paid in line with the general rules of the Pensions Act until October 2014 (and after September 2018) – generated a proprietary interest within the meaning of Article 1 of Protocol No. 1 to the Convention.

87. Likewise, it is not disputed that the reduction in the applicants' pensions by virtue of the legislative amendments introduced by the Pension Reduction Act between November 2014 and September 2018, and not due to any changes in the applicants' own circumstances, constituted an interference with their rights, as protected by this provision (see, *mutatis mutandis*, *Grudić v. Serbia,* cited above, § 77).

88. The Court sees no reason to disagree. However, the Court does not uphold the applicants' argument (see paragraph 65 above) that the reduction in pension payments amounted to a "deprivation of possessions" within the meaning of the second sentence of the first paragraph of Article 1 of Protocol No. 1 (see *Banfield v. the United Kingdom* (dec.), no. 6223/04, ECHR 2005-XI). Rather, it is to be regarded as an interference with the applicants' right to the peaceful enjoyment of their possessions, within the meaning of the first sentence of the first paragraph of Article 1 of Protocol No. 1; such an interference needs to be justified by the State (see, for example, *Fábián v. Hungary* [GC], no. 78117/13, § 64, 5 September 2017; *Lakićević and Others*, cited above, § 64; and *Da Conceição Mateus and Santos Januário*, cited above, § 19).

(ii) Whether the interference was lawful

89. The reduction in pension payments was temporarily introduced by the enactment of the Pension Reduction Act on 26 October 2014. None of the applicants claimed that his or her pension had not been calculated and paid in accordance with the new conditions provided by that Act.

90. Referring to the relevant principles above (see paragraph 81 above), the Court reiterates that, as argued by the applicants (see paragraph 65 above), the existence of a legal basis in domestic law does not suffice, in itself, to satisfy the principle of lawfulness. In addition to being in accordance with the

domestic law of the Contracting State (including its Constitution), the legal norms upon which the deprivation of property is based should be sufficiently accessible, precise and foreseeable in their application.

91. The Court cannot, however, uphold the central issue raised by the applicants that the Pension Reduction Act was not sufficiently precise and foreseeable (see paragraphs 65 and 66 above). The interference in question had a legal basis in this Act, the constitutionality of whose provisions was upheld by the Constitutional Court (see paragraph 16 above; see, *mutatis mutandis*, *Valkov and Others,* cited above, §§ 29, 46 and 89; contrast *Grudić*, § 80, and *R.Sz. v. Hungary*, §§ 42-43, both cited above). While the Constitutional Court did not open formal proceedings to assess the constitutionality and legality of the Pension Reduction Act (see paragraph 16 above), it dismissed several petitioners' arguments to the effect that the measures in question had breached the lawfulness principle, setting out a comprehensive interpretation of the relevant legislation causing ambiguities and disputes in this area. Admittedly, it did so mostly in the light of the standards that the Court has developed in respect of Article 1 of Protocol No. 1, which does not have the same wording and the scope as the Articles referred to by the applicants before the Constitutional Court (see paragraphs 25-31 and 35-36 above). However, this Court would need compelling reasons to depart from the conclusions ultimately reached by the Constitutional Court and to substitute its own views for those of the Constitutional Court on a question concerning the interpretation of the Constitution of Serbia and the domestic law for which that court offered acceptable reasoning. The Court does not find any reasons in the applicants' submissions to do so.

92. As regards the applicants' argument that the authorities had failed to inform them of the exact reduction in their respective pensions or to provide them respectively with individual decisions regarding the new amount of the pension payments that they would receive from the Pension Fund given the direct applicability of the Act (a failure which the applicants described as unlawful), the Court observes that the pensioners were able – with or without appropriate advice – to foresee the ramifications for their pensions of the application of the Pension Reduction Act, which had been published in the OG RS. Moreover, the Pension Fund in any case issued such decisions (*rešenja*) to all applicants who requested them (see paragraph 12 above).

93. Lastly, the Court does not consider it necessary to take a position on the lack of clarity as to the duration of the impugned temporary measures, since the issue will be taken into consideration under the proportionality test (see paragraph 104 below).

(iii) Whether the interference served a legitimate public interest

94. The Court firstly notes that the Pension Reduction Act was enacted "with the aim of preserving the financial sustainability of the pension system

in the Republic of Serbia" (under Article 1 of the Act, cited in paragraph 54 above). According to the Government, the reduction in pension payments formed a part of a wider set of general austerity measures, which were designed by the State authorities over the course of 2014 with the aim, *inter alia*, of reducing public expenditure to the level intended (see paragraphs 47-50 above). The authorities asserted that the aim had been achieved by 2018, by which time considerable savings had been accrued (approximately EUR 840 million), after which the Pension Reduction Act had been repealed (see paragraphs 52 and 75 above). The applicants questioned the authorities' justification of the measures and their ultimate effect.

95. A decision to enact laws concerning social insurance and pensions in order to balance State expenditure and pension benefits involves the consideration of various political, economic and social issues, on which opinions within a democratic society may reasonably differ widely. Given that the domestic policymaker should be afforded a wide margin of appreciation in matters of general social and economic policy (including in the area of pensions), the interests of social justice and economic well-being may legitimately lead them to adjust, cap or even reduce the amount of pensions normally payable to the qualifying population (see, for example, *Yavaş and Others v. Turkey*, § 39-51, and *Valkov and Others,* § 92, both cited above). Having regard to the decision of the Constitutional Court and the available reports and information, the Court accepts that the national authorities were facing the need to reduce the high central budget expenditure by 2014 owing to the ever-growing deficit in the pension system (see paragraphs 16 and 46 above) and that the measures were prompted by budgetary shortfalls and rising public debt.

96. Against such a background, the Court has no reason to doubt that, in deciding to temporarily reduce the payment in respect of State pensions, the legislature pursued a legitimate public interest with the wish to preserve the financial sustainability of the pension system and to balance State expenditure, and its judgment in that respect does not appear to be manifestly without reasonable foundation (see, *mutatis mutandis*, *Frimu and 4 other applications v. Romania* (dec.), no. 45312/11, § 42, 7 February 2012).

(iv) Whether the respondent States respected the principle of a "fair balance"

97. The Court must now proceed to examine the key issue – namely, whether that interference was reasonably proportionate to the aim sought to be realised. In other words, whether a "fair balance" was struck between the demands of the protecting the budget and preserving the financial sustainability of the pension system in the general interest of the public and the requirement that the applicants' property rights under Article 1 of Protocol No. 1 be protected in order to prevent the latter bearing an individual and excessive burden.

98. Admittedly, the State was not, at the time in question, facing a major economic crisis such as that being faced by Greece or Portugal (see, within the context of austerity measures prompted by a major economic crisis, *Koufaki and ADEDY*, cited above, §§ 37 and 39, in respect of justified permanent measures; see also *Da Conceição Mateus and Santos Januário cited above*, § 22; *Da Silva Carvalho Rico*, cited above, § 37, in respect of justified transitional measures). Nor was the State overseeing the comprehensive reforms and/or transformation or merging of different pension schemes (see the above-cited cases of *Valkov and Others*, § 94, and *Yavaş,* § 47). Nevertheless, the Court observes that the temporary and progressive pension reduction in effect between November 2014 and October 2018 formed part of a wider set of general austerity measures which were prompted by an objective reason - namely, the need to reduce the high public debt and to preserve the financial sustainability of the pension system and obvious budgetary constraints given that defined contributions were insufficient and a considerable proportion of the pension fund expenditures had to be covered from the central national budget (see paragraphs 47-50 above).

99. According to the Government, the different treatment of certain categories of pensioners had been based on the principle of solidarity and social justice. Those receiving minimum-level pensions, with monthly pensions that did not exceed RSD 25,000 (slightly higher than the "at-risk-of-poverty" threshold), were exempted, as it was deemed that those falling within that category of pensioners were not able to contribute to overcoming the financial crisis, as they themselves were battling for survival.[7] The reduction in pension payments was directed at recipients of higher pensions: in accordance with the mathematical formula used, pensions of between RSD 25,000 and RSD 40,000 a month were reduced by 22% of the part above the exempted amount (that is to say the first RSD 25,000), and any amount above RSD 40,000 was reduced by a further 3% (contrast *Yavas*, cited above, in which – following the transfer and adaptation of the applicants' pensions from a special pension scheme that had entered insolvency to the State pensions scheme, the applicants lost part of the "top-up" amount to which they were entitled under the special scheme – up to nearly 50% in some cases – but continued to receive the standard pension under the ordinary scheme without any discrimination).

100. The applicants received reduced pension payments from November 2014, which were calculated in line with the mathematical formula fixed for the third category of pension beneficiaries (for more details, see paragraphs 7, 9 and 54 above and Appendix I below).

101. By way of example, according to the documents submitted by the parties, the amount of the first applicant's monthly pension between

[7] The data on poverty and social inclusion apparently show that a high proportion of pensioners in Serbia are at risk of poverty and/or social exclusion (see ESPN Thematic Report on Assessment of Pension Adequacy – Serbia 2017, cited above, pp. 7 and 13).

November 2014 and October 2018 would have been between RSD 72,608 and 77,785 (approximately EUR 610 and 655). With the entry into force of the Pension Reduction Act, his pension was reduced during the same period for between RSD 11,452 and 12,305 (approximately EUR 96-104 loss), leaving him with a monthly payment of between RSD 61,156-65,479 (approximately EUR 512-552). The second applicant, for example, could expect to receive a monthly pension payment between RSD 84,767 and 91,371 (approximately EUR 710 and 770), while he received between RSD 70,207 and 75,669 (EUR 589 and 639), his loss amounting to EUR 120-133. Also, the ninth applicant could expect a monthly pension payment between RSD 43,562 and 47,007 (EUR 365 and 397) while she received between RSD 39,371 and 42,395 (EUR 330 and 358) and saw a monthly loss of RSD 4,190-4,611 (EUR 35-39).

102. The Court finds that the applied method of calculation does not appear to have been unreasonable or disproportionate. For pensions exceeding the minimum of 25,000 RSD, it entailed a gradually increasing reduction of the pensions depending on the amount of pension received before the entry into force of the Pensions Reduction Act (see Annex II). Regarding alternative solutions to the budgetary crisis, their possible existence would not in itself mean that the contested legislation was unjustified. Noting the applicants' argument that they, being among the minority of high-pension recipients, had had to bear an individual and disproportionate burden (while the majority of pensioners had been spared), the Court deems that it is not for it to say, provided that the legislature remained within the bounds of its margin of appreciation, whether the impugned legislation constituted the best solution for dealing with the problem or whether the legislature's discretion should have been exercised in another way (see *James and Others v. the United Kingdom*, 21 February 1986, § 51, and *Koufaki and ADEDY*, cited above, § 48).

103. That said, while the matter must have been of great concern for the applicants and other pensioners, the Court considers that the applicants were obliged to endure only temporarily what was a reasonable and commensurate reduction in their pensions, rather than a total suspension of their pensions or the permanent reduction of their pensions by a significant amount (see, among many authorities, *Kjartan Ásmundsson*, §§ 44-45; *Maggio*, § 62; and *Valkov and Others,* § 95, all cited above). In this respect, none of the applicants proved that the reduction in their own pension payments was such as to place them at risk of having insufficient means to live (compare, *Valkov and Others,* cited above, § 97, where the Court found that the cap did not divest the applicants of their only means of substance) or that their living conditions had deteriorated to the extent that they risked falling below the subsistence threshold (see, for example, *Larioshina v. Russia* (dec.), no. 56869/00, 23 April 2002). The Court therefore considers that the applicants were not made to bear an excessive individual burden and that the

interference complained of in the present case has not impaired the essence of their pension rights.

104. Lastly, the Court notes with certain concern that while the Act was portrayed as temporary legislation, the authorities did not indicate at the time of its enactment a date on which the temporary reduction in pension payments would expire; nor did they indicate how often the necessity of keeping the measures in force would be reassessed (contrast *Valkov and Others*, cited above, §§ 27-28 and 31-37). However, the Court does not consider it necessary to enter into a discussion in this respect, as it cannot be overlooked that the reduction in pension payments was, in fact, a temporary measure that lasted four years – from November 2014 until September 2018 (see paragraphs 7 and 50-52 above, including on the occasional pension increase during the relevant period), when the application of the Act was terminated and the authorities were able once again to commence paying pensions in their full amounts and to reintroduce the use of annual indexation (see paragraphs 10 and 53 above).

(c) Conclusion

105. In the light of State's wide margin of appreciation, and given the limited extent and the temporary nature of the reduction in the applicants' pension payments as part of the effort to balance State expenditure, the Court considers that the applicants' complaints under Article 1 of Protocol No. 1 are manifestly-ill-founded and must be rejected, in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

2. Other alleged violations of the Convention

106. Relying on Article 14 of the Convention, read in conjunction with Article 1 of Protocol No. 1 and/or Article 1 of Protocol No. 12, the second, third and eleventh applicants complained of their discriminatory treatment under the contested legislation in comparison with (i) other pensioners to whom the reduction in pension payments had not applied because the level of their pensions had fallen below the provided threshold, and (ii) those pensioners to whom it had applied, but to a lesser extent than it had to the applicants (see paragraph 62 above). According to the applicants, all pensioners should have been equal before the law and should have contributed equally to the effort to overcome any budgetary crisis. This difference in treatment had not had any objective justification, particularly given the fact that the applicants had contributed significantly more to the Pension Fund than had those whose pensions had been exempted from the reduction.

107. The Court observes that this complaint amounts in substance to the same grievance as that which has been examined under Article 1 of Protocol No. 1, albeit seen from a different angle. The Court considers that

the purpose of the legislature's decision to place a cut-off point at a particular amount does not appear to have been done with the intention of creating a distinction between the different categories of pensioners in the present case in order to put one particular category in a less favourable position. Instead, that decision appears to have been taken in order to contribute to the careful balancing exercise, while at the same time reflecting the principles of solidarity and social justice given that pensioners with higher pensions also benefited from this exemption – as their pensions were reduced only in respect of the amounts above this minimum amount of RSD 25,000 (see paragraph 102 above). The Court sees no cause for arriving at a different conclusion in relation to Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 and/or Article 1 of Protocol No. 12: having regard to its margin of appreciation in assessing whether and to what extent differences in otherwise similar situations justify a different treatment, particularly when it comes to general measures of economic and social strategy, the Serbian legislature did not transgress the principle of proportionality (see, *mutatis mutandis*, *Valkov*, cited above, § 114).

108. It follows that the second, third and eleventh applicants' complaints are equally manifestly ill-founded and must be rejected in accordance with Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Decides to strike the fourth, fifth and eighth applications (nos. 7697/16, 7705/16 and 20743/16) out of its list of cases;

Decides to join the remaining applications and *declares* them inadmissible;

Done in English and notified in writing on 9 February 2023.

Ilse Freiwirth Section Registrar	Gabriele Kucsko-Stadlmayer President

APPENDIX I

List of cases

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Determined (i) and reduced pension payments (ii) Difference (iii)
1.	54805/15* **Žegarac v. Serbia** 21/10/2015	**Nikola ŽEGARAC** 1956 Belgrade Croatian, Serbian		(i) RSD 72,608-77,785 (ii) RSD 61,156 -65,479 (iii) RSD 11,452-12,305
2.	56814/15 **Ugrin v. Serbia** 04/12/2015	**Srećko UGRIN** 1937 Belgrade Serbian		(i) RSD 84,676-91,371 (ii) RSD 70,207-75,669 (iii) RSD 14,469-15,702
3.	7204/16 **Jovanović v. Serbia** 25/01/2016	**Milica JOVANOVIĆ** 1946 Belgrade Serbian		(i) RSD 69,397- 74,885 (ii) RSD 58,748-63,304 (iii) RSD 10,649-11,580

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Determined (i) and reduced pension payments (ii) Difference (iii)
4.	7697/16 **Popović v. Serbia** 29/01/2016	**Vesna POPOVIĆ** 1946 Belgrade Serbian		(i) RSD 71,058-76,676 (ii) RSD 59,994- 64,648 (iii) RSD 11,064-12,028
5.	7705/16 **Popović v. Serbia** 29/01/2016	**Branimir POPOVIC** 1933 Belgrade Serbian		(i) RSD 63,198-68,195 (ii) RSD 54,098-58,287 (iii) RSD 9,100-9,908
6.	10314/16* **Nikolić v. Serbia** 11/02/2016	**Miroslav NIKOLIĆ** 1959 Zavlaka Serbian		(i) RSD 53,053-56,541 (ii) RSD 46,490-49,546 (e) (iii) RSD 6,563-6,995
7.	19130/16 **Rajčić v. Serbia** 01/04/2016	**Živorad RAJČIĆ** 1950 Požarevac Serbian	Dragica ŽIVKOVIĆ Požarevac	(i) RSD 63,280-68,727 (ii) RSD 54,160-58,685 (iii) 9,120-10,041
8.	20743/16 **Ćulić v. Serbia** 09/04/2016	**Milka ĆULIĆ** 1946 Belgrade Serbian		(i) RSD 59,601-64,314 (ii) RSD 51,401-55,376 (iii) RSD 8,200-8,938

No.	Application no. Case name Introduction date	Applicant's name Year of birth Place of residence Nationality	Representative's name Location	Determined (i) and reduced pension payments (ii) Difference (iii)
9.	21856/16* **Bunjak v. Serbia** 24/03/2016	**Nada BUNJAK** 1946 Belgrade Serbian	Jovica KOSIĆ Belgrade	(i) RSD 43,562-47,007 (2011) (ii) RSD 39,371-42,395 (iii) RSD 4,190-4,611
10.	26751/16 **Sekulić v. Serbia** 05/05/2016	**Bratislav SEKULIĆ** 1949 Belgrade Serbian	Čedo BOJANIĆ Belgrade	(i) RSD 55,950-60,374 (ii) RSD 48,663-52,421 (iii) RSD 7,288-7,953
11.	39151/20* **Veličković v. Serbia** 11/08/2020	**Tomislav VELIČKOVIĆ** 1947 Belgrade Serbian	Franc Branko BUTOLEN Belgrade	(i) RSD 64,282-73,923 (ii) RSD 54,912-62,583 (iii) RSD 9,370-11,340

APPENDIX II

Calculation on effective pension reduction based on the Pension Reduction Act[8]

Payments under the Pensions Act	25 000	30 000	40 000	50 000	60 000	70 000	80 000	90 000	100 000	120 000
Reduced pension payments	25 000	28 900	36 700	44 200	51 700	59 200	66 700	74 200	81 700	96 700
Effective reduction of the overall pensions payments	0%	3.7%	8.3%	11.6%	13.8%	15.4%	16.6%	17.6%	18.3%	19.4%

[8] SIPRU, Government of Serbia: *Third National Report for Social Inclusion and Poverty Reduction in the Republic of Serbia: The Status of Social Exclusion and Poverty Trends in the Period 2014–2017 and Future Priorities* Government of Serbia, 2018, p. 217