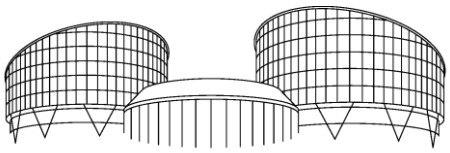

EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

SECOND SECTION

CASE OF PEJČIĆ v. SERBIA

(Application no. 34799/07)

JUDGMENT

STRASBOURG

8 October 2013

This judgment will become final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Pejčić v. Serbia,

The European Court of Human Rights (Second Section), sitting as a Chamber composed of:

Guido Raimondi, *President,*
Peer Lorenzen,
Dragoljub Popović,
András Sajó,
Nebojša Vučinić,
Paulo Pinto de Albuquerque,
Helen Keller, *judges,*
and Stanley Naismith, *Section Registrar,*

Having deliberated in private on 17 September 2013,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 34799/07) against the Republic of Serbia lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Serbian and Croatian national, Mr Blagoja Pejčić ("the applicant"), on 7 August 2007.

2. The applicant was represented by Mr J.M. Borić, a lawyer practising in Belgrade. The Serbian Government ("the Government") were represented by their Agent, Mr S. Carić. The Croatian Government exercised their right of third-party intervention in accordance with Article 36 § 1 of the Convention and were represented by their Agent, Ms Š. Stažnik.

3. The applicant alleged, in particular, that by refusing to reinstate payment of his military pension the respondent Government had violated his right to property under Article 1 of Protocol No. 1 to the Convention. He further alleged that the length of his proceedings was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention.

4. On 29 May 2012 the application was communicated to the Government. It was also decided to rule on the admissibility and merits of the application at the same time (Article 29 § 1) and to grant the case priority (Rule 41 of the Rules of Court).

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

5. The applicant was born in 1925 and lives in Novi Sad, Serbia.

A. Relevant background to the case

6. The former Socialist Federal Republic of Yugoslavia ("the SFRY") provided for twofold pension insurance – military and civil. The pension rights of military personnel were regulated and secured through the federal authorities (Article 281 § 6 of the 1974 Constitution of the SFRY). The members of the JNA, the armed forces of the former SFRY, paid their contributions to and received their pensions from the JNA Fund based in Belgrade. This was the only pension fund existing at the federal level. On the other hand, each republic had its own pension fund [set up] for the payment of civil pensions (for more information see *Janković v. Croatia* (dec.), no. 43440/98, ECHR 2000-X).

7. Following the dissolution of the SFRY, the JNA Fund generally stopped paying pensions to pensioners from the newly established states, and in the majority of cases the newly established states took over paying pensions to their citizens (see *Janković,* cited above, and *Kudumija v. Bosnia and Herzegovina and Serbia, and Remenović and Mašović v. Bosnia and Herzegovina,* (dec.), nos. 28233/08 *et al*., 4 June 2013). In 1994, pursuant to the Yugoslav Army Act, the JNA Fund was transformed into the Fund for Social Insurance of Military Personnel of the Federal Republic of Yugoslavia (succeeded in 2006 by Serbia; "the Military Fund").

8. The issue of the former military pensioners remained unresolved between the newly formed states and was thus one of the subjects dealt with in the Agreement on Succession Issues. On 29 June 2001 Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia[1], the former Yugoslav Republic of Macedonia, and Slovenia signed the Agreement on Succession Issues ("the Succession Agreement"), which entered into force on 2 June 2004. Annex E dealt with pensions. It was based on the principle of acquired rights, in that rights acquired under one system must be acknowledged and respected in another. Under Annex E each successor State assumed responsibility for the regular payment of pensions to its citizens who had been civil or military employees of the former SFRY, irrespective of their current residence, if those pensions were financed from federal funds. In the case of military pensions, if a person was a national of

[1] In 2003 the Federal Republic of Yugoslavia was transformed into the State Union of Serbia and Montenegro. After dissolution of the State Union in 2006, Serbia became its sole successor.

more than one republic of the former SFRY, the pension should be paid by the State where that person resided.

B. The applicant's personal circumstances

9. The applicant served as a military officer in the JNA until 1973, when he retired. On 11 June 1973 he was granted a pension by the JNA Fund. At that time the applicant was living in Split, Croatia. The pension continued to be paid to him from the JNA Fund following Croatia's declaration of independence in 1991.

10. On 23 November 1993 the applicant requested the discontinuation of payment of the pension from the JNA Fund, since he had been granted a pension in Croatia in accordance with the relevant Croatian legislation at the time, starting from 1 December 1993. On 8 December 1993 the JNA Fund stopped paying the applicant's pension.

11. By 18 January 2002 the applicant had taken up residence in Novi Sad, Serbia.

12. On 31 March 2004 the Split branch of the Croatian Pension Fund stopped paying his pension, because he no longer had residence in Croatia. It held that the payment of pensions abroad was possible under the relevant domestic law only if there was an international treaty or a reciprocal agreement, which did not exist in respect of Serbia.

13. On 18 January 2005 that decision was upheld by the competent second-instance administrative body and the applicant was advised to request payment of his pension from the Military Fund in Belgrade.

14. On 11 November 2004 the applicant lodged a request with the Military Fund for the reinstatement of payment of his pension with effect from 1 April 2004.

15. On 11 March 2005 the Military Fund refused the request finding that, according to section 8(2) of the Decree on the Pension Rights of Military Personnel 1994 and section 82(4) of the Pension and Disability Insurance Act 2003 (see paragraphs 28 and 29 below), the applicant had the right to choose a pension fund only once, and he had already used this right by transferring his pension to Croatia in 1993.

16. On 31 May 2005 the Appeals Commission of the Military Fund ("the Appeals Commission") upheld that decision. On 17 June 2005 the applicant initiated proceedings for judicial review before the Court of Serbia and Montenegro.

17. On 31 January 2008 the Supreme Court (following the transformation of the State Union of Serbia and Montenegro and ensuing judicial reform) quashed the decision of 31 May 2005 and remitted the case to the Appeals Commission for reconsideration, advising it to take the Succession Agreement into consideration.

18. On 15 August 2008 the Appeals Commission rejected the applicant's appeal finding that, regardless of the Succession Agreement, the applicant was not entitled to a pension in Serbia. It again relied on section 8(2) of the Decree on the Pension Rights of Military Personnel 1994 and section 82 of the Pension and Disability Insurance Act 2003, noting that at the moment of the entry into force of the Succession Agreement the applicant had had residence in Croatia and had been a beneficiary of the Croatian Fund. The Appeals Commission thus found that the applicant was expected to move to Croatia and re-establish residence there, so that he could re-apply for a pension from the Croatian Fund.

19. On 9 September 2008 the applicant initiated proceedings for judicial review before the Supreme Court. On three occasions thereafter he urged the court to decide on his case and on 22 May 2009 he wrote to the president of the Supreme Court urging her to give his case priority treatment, in view of his age and the importance of the case for him, since it concerned his very subsistence.

20. On 8 October 2009 the Supreme Court quashed the decision of 15 August 2008, as the Appeals Commission had failed to provide proper reasoning for the assertion that the applicant was only entitled to request the transfer of his pension once.

21. On 30 October 2009 the Chairman of the Appeals Commission made an official note in relation to the applicant's request, noting that within sixty days a decision should be drafted allowing his appeal and ordering the Military Fund to recognise his right to a pension. A further note dated 7 December 2009 and also signed by the Chairman of the Appeals Commission suggests that staff members of the Fund, a certain M. and J., had refused to prepare the draft decision as instructed by him, as they considered that the applicant did not have the right to enjoy a pension in Serbia.

22. On 30 December 2009 the Appeals Commission again rejected the applicant's appeal and instructed the applicant to move to Croatia. It found that, since the applicant had had residence in Croatia on 2 June 2004 when the Succession Agreement entered into force, the Croatian Fund was solely responsible for the payment of his pension.

23. On 17 December 2010 the Administrative Court upheld that decision, applying the Pension and Disability Insurance Act. It did not respond to the applicant's claim that the Succession Agreement had precedence over the domestic laws and by-laws or to his claim that he had established residence in Serbia prior to the entry into force of the said agreement.

24. On 28 January 2011 the applicant lodged an appeal on points of law (*zahtev za preispitivanje sudske odluke*). On 4 February 2011 the Supreme Court of Cassation rejected his appeal.

25. On 8 February 2011 the applicant lodged a constitutional complaint. It would appear that these proceedings are still pending.

26. On 1 August 2012, following the changes in the pension system (see paragraph 29 below), the Novi Sad branch of the Fund for Pension and Disability Insurance of the Republic of Serbia, acting of its own motion, established the applicant's right to receive a pension from that Fund with effect from 1 January 2012. The relevant part of the decision reads:

> "It was established that
>
> - ... Blagoja Pejčić was granted a military pension by a decision of 1 January 1973 ...
>
> - payment was effected by the Military Fund in Belgrade until 30 November 1993, when it was terminated at Blagoja Pejčić's request in order for him to be able to receive a pension from the Croatian Fund, as he had residence in Split, Croatia, at the time.
>
> - the Croatian Fund paid his pension until 1 April 2004, when it was terminated because [Blagoja Pejčić] had moved to Serbia.
>
> - Blagoja Pejčić is a national of the Republic of Serbia and has residence on the territory of the Republic of Serbia.
>
> In view of the established facts, it is concluded that the conditions for establishing the payment of his pension with effect from 1 January 2012 are met ..."

II. RELEVANT DOMESTIC LAW AND PRACTICE

A. Constitution of the Republic of Serbia

27. Under Article 194 § 4 of the Constitution international agreements and general rules of international law form part of the legal order in Serbia; ratified international agreements may not be in contravention of the Constitution, while other legislation in the Republic may not be in contravention of ratified international instruments and general rules of international law (Article 194 § 5).

B. Decree on Pension Rights of Military Personnel 1994

28. Section 8(2) of the Decree on the Pension Rights of Military Personnel 1994 (*Uredba o načinu ostvarivanja i prestanku prava iz penzijskog i invalidskog osiguranja vojnih osiguranika*, Official Gazette of the Federal Republic of Yugoslavia "OG FRY", no. 36/94) provides that a beneficiary of the military pension who obtains the right to two or more pensions can only enjoy one, of his own choosing.

C. Pension and Disability Insurance Act 2003

29. Section 82(1) of the Pension and Disability Insurance Act 2003 (*Zakon o penzijskom i invalidskom osiguranju*, Official Gazette of the Republic of Serbia ("OG RS"), nos. 34/03, 64/04, 84/04, 85/05, 101/05, 63/06, 5/09 and 107/09), provides that rights arising from pension and disability insurance are to be sought from the fund where the applicant was last insured. Section 83(3) of this Act provides that an insured person can realise the right to a pension with the fund with which he had the longest period of insurance, while paragraph 4 of the same section provides that the right to choose the fund from paragraph 3 can only be exercised once. In the period relevant to the present case the Pension and Disability Insurance Act 2003 was amended several times. The amendment of 1 January 2008 repealed paragraphs 2, 3 and 4 of section 83.

With effect from 1 January 2012 the system of separate pension insurance for military beneficiaries in Serbia was abandoned, and the Military Fund ceased to exist. Its rights and obligations were taken over by the Fund for Pension and Disability Insurance of the Republic of Serbia ("the Fund"). Section 79(1) of the Law Amending the Pension and Disability Insurance Act 2003 (*Zakon o izmjenama i dopunama zakona o penzijskom i invalidskom osiguranju*, OG RS no. 101/10) provides for the Fund to take over the payment of military pensions from the Military Fund with effect from 1 January 2012 for all beneficiaries who had been receiving payment of military pensions up to 31 December 2011.

D. Civil Obligations Act 1978

30. Section 372 § 1 of the Civil Obligation Act 1978 (*Zakon o obligacionim odnosima*, Official Gazette of the Socialist Federal Republic of Yugoslavia ("OG SFRY"), nos. 29/78, 39/85, 45/89, 57/89 and OG FRY no. 31/93), provides that the negative prescription period for seeking compensation for unpaid periodic benefits (such as pensions) shall be three years following maturity of (the start of entitlement to) each individual benefit.

E. Relevant domestic practice

31. On 29 October 2004 the Ministry of Foreign Affairs of the then Serbia and Montenegro1 expressed the view that the Military Fund should directly apply Annex E to the Succession Agreement when granting requests for reinstatement of payment of military pensions.

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[1] See footnote 1 on page 2.

32. On 10 April 2008, in three cases concerning similar issues to those in the present case, the Supreme Court quashed decisions of the Military Fund and Appeals Commission (refusing requests for reinstatement of payment of military pensions to JNA pensioners who had moved from Croatia to Serbia). It held that those bodies did not have subject-matter jurisdiction to deal with the cases since they concerned requests for enforcement of final administrative decisions establishing pecuniary rights (pension rights) which lay within the competence of the civil courts.

Following this ruling, the Belgrade First-Instance Court, in a judgment of 30 June 2010 (case no. P 19327/2010), directly relied on Annex E in a dispute concerning the right to a JNA pension of a plaintiff who had moved from Croatia to Serbia. That judgment was upheld by the Belgrade Appellate Court on 28 April 2011 (case no. Gž.15764/10). The relevant part of the second-instance judgment reads as follows:

> "[T]he appeal wrongly disputes the claimant's right to payment of outstanding pension ... by relying on Article 82 of the Pensions and Disability Insurance Act; therefore the claim in the appeal that the claimant had residence on the territory of the Republic of Croatia and that hence by lodging the request with the Croatian Pension Fund ... he had used his right to choose the fund which would pay his pension ... is unfounded. This is due to what had been indisputably established in the proceedings: the applicant is a national of the Republic of Serbia, he has been resident on the territory of the Republic of Serbia for many years, and ... he lodged a request with the [Military Fund] for the payment of outstanding pension .... [A]pplying the ... provision of Article 2 of Annex E to the Succession Agreement, which has a higher legal force than the provisions of laws and by-laws, the [Military Fund] was under an obligation to pay the claimant the outstanding pension due, and to continue paying it in future."

III. RELEVANT INTERNATIONAL LAW

33. On 29 June 2001 Bosnia and Herzegovina, the Republic of Croatia, the Republic of Macedonia, the Republic of Slovenia and the Federal Republic of Yugoslavia entered into the Agreement on Succession Issues ("the Succession Agreement"). The Agreement entered into force on 2 June 2004.

Annex E of the Succession Agreement regulates pensions. Article 1 of this Annex provides that each State should assume responsibility for, and regularly pay, legally grounded pensions funded from the pension funds of the former SFRY republics. The relevant parts of Article 2 of the Succession Agreement read as follows:

> "Each State shall assume responsibility for and regularly pay pensions which are due to its citizens who were civil or military servants of the SFRY, irrespective of where they are resident or domiciled, if those pensions were funded from the federal budget or other federal resources of the SFRY; provided that in the case of a person who is a citizen of more than one State ... if that person is domiciled in one of those States, payment of the pension shall be made by that State."

34. The Vienna Convention on the Law of Treaties of 23 May 1969 (Official Gazette of the SFRY, no. 30/72) provides:

Article 27

International law and observance of treaties

"A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty ..."

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1 TO THE CONVENTION

35. The applicant complained that by refusing to reinstate payment of his military pension the respondent State had violated his right to property under Article 1 of Protocol No. 1, which 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."

A. The parties' submissions

1. The Government

36. The Government advanced several objections as regards the admissibility of this complaint. Firstly, they argued that, although the domestic proceedings in the present case were initiated after Serbia had ratified the Convention on 4 March 2004, the applicant's claim was inextricably connected with events which had occurred before that time and which were thus outside the Court's temporal jurisdiction (in particular, the dissolution of the former SFRY in 1991 and the applicant's decision to move to Serbia in January 2002). The Government further submitted that the application raised issues as to its compatibility *ratione personae* in view of the proceedings conducted in Croatia. The Croatian administration had deprived the applicant of his pension right established back in 1973 by refusing to continue the payment after he moved to Serbia.

37. The Government further maintained that the applicant had failed to exhaust all available domestic remedies for his complaint in Croatia (see paragraph 13 above) and that he had failed to use a constitutional appeal to the Constitutional Court of Serbia in an appropriate manner. The applicant had initiated constitutional proceedings almost five years after the constitutional appeal had been incorporated in the legal system of the country. Moreover, the applicant should have submitted a new request for payment of his pension following the changes to the pension system in January 2012, when the Fund took over the payment of military pensions even for those military beneficiaries who did not receive their pension from the Military Fund (including the present applicant) in accordance with the Succession Agreement. The Fund had acted of its own motion after it had learned of the applicant's case before this Court. It is still open to the applicant to initiate civil proceedings seeking compensation for unpaid pension in accordance with the general rules of liability for damage caused by the competent authorities, provided he can prove that they were acting unlawfully in his case. In this connection the Government submitted that, in a few other cases similar to the present, plaintiffs had been successful in obtaining damages in civil proceedings (see paragraph 32 above).

38. As regards the merits of the complaint, the Government argued that by moving to Serbia the applicant had himself created the legal situation of which he complains. He should have made the necessary enquiries of the competent authorities as to whether his pension could be paid in Serbia from the Croatian Fund. The competent bodies of the respondent State applied the relevant legislation when refusing his request since the applicant had already used his right to choose the fund for the payment of his pension. The respondent State had a general interest in refusing the applicant's request, which was the protection of its pension system.

2. The applicant

39. The applicant argued that for the purpose of the Court's temporal jurisdiction neither the date of his move to Serbia nor the date of his request to the Croatian authorities for the continuation of the payment of his pension were of relevance. What was important was the date when he initiated proceedings in the respondent State. The applicant further submitted that, when he initiated proceedings in the respondent State on 11 November 2004, the Succession Agreement, which clearly defined the responsibility for payment of military pension between the successor states, was already in force. Given that he was a citizen of both Croatia and Serbia, with residence in the territory of Serbia, it was clear that the respondent State was responsible for the payment of his pension.

40. The competent bodies of the respondent State, however, refused his request relying on the Decree on Pension Rights of Military Personnel 1994 and the Pension and Disability Insurance Act 2003 which had lower legal

force than a ratified international agreement. The applicant also submitted that the view expressed by the competent bodies was in fact the view of one of its members, who had verbally told him on several occasions that "as long as she was there his request would never be granted". It was only after the respondent State had been notified of the proceedings before this Court that the applicant's right to receive a pension from the respondent State's pension fund was recognised. However, the right was established only with effect from 1 January 2012. The decision of 1 August 2012 relied on the very same reasons he had been advancing throughout the proceedings. In view of that it was even more puzzling why his request had not been granted before. The change in the pension system was irrelevant to his case, as it concerned only the change in the identity of the fund responsible for the payment of his pension.

41. The applicant further submitted that, only after the decision of 1 August 2012 when the Fund assumed responsibility for the payment of his pension, did he acquire a legal basis for requesting compensation in the civil courts. However, he had decided to await the outcome of the proceedings before this Court. The applicant also contested the Government's argument concerning the effectiveness of civil proceedings in this type of case. Firstly, in the cases of two other JNA pensioners which the Government offered as examples, the Supreme Court held that the administrative bodies lacked subject-matter jurisdiction to deal with their requests, and instructed them to initiate civil proceedings. In the applicant's case, on the other hand, the Supreme Court twice remitted the case to the administrative bodies for reconsideration, and instructed them to apply the Succession Agreement. Secondly, those plaintiffs had to initiate new sets of civil proceedings, despite having received judgments in their favour, because they had not yet begun receiving full payment of their pensions from the Fund.

B. The third-party intervener's comments

42. The Croatian Government submitted that the applicant's entitlement to a pension had been recognised by the former SFRY authorities. Croatia had simply acknowledged that fact and continued to pay his pension following its independence in June 1991 and the dissolution of the SFRY. The applicant was a military pensioner and the payment of his pension abroad would only have been possible under the relevant domestic law if there had been an international treaty or a reciprocal agreement. However, there was no such international treaty or reciprocal agreement between Croatia and Serbia at the time. The Croatian Government further submitted that the respondent State's admissibility objections should be dismissed: it was clear from the facts of the case that the Court had temporal jurisdiction; the respondent State's arguments concerning the compatibility *ratione personae* of the case and the exhaustion of domestic remedies in Croatia

were aimed solely at shifting responsibility for the applicant's situation to the Republic of Croatia.

43. The question of payment of JNA pensions between the former SFRY republics was resolved by the Succession Agreement, which came into force on 2 June 2004. It was clear that under the Succession Agreement the payment of the applicant's pension was the responsibility of the respondent State.

C. The Court's assessment

1. Admissibility

(a) Compatibility ratione temporis and ratione personae

44. As regards these objections of the Government, the Court notes that the applicant's complaint relates to the proceedings before the competent authorities of the respondent State which he initiated after the State had ratified the Convention. Consequently, these objections should be rejected.

(b) Exhaustion of domestic remedies

45. At the outset, the Court notes that since the application was introduced before 7 August 2008, the applicant was not obliged to lodge a constitutional appeal before bringing his case to this Court (see *Vinčić and Others v. Serbia*, nos. 44698/06 *et al*., § 51, 1 December 2009).

46. As regards the Government's argument that the applicant should have initiated new administrative proceedings following the change in the pension system (after the merger of the civil and military pension funds), the Court agrees with the applicant that the change concerned only the change in the identity of the fund responsible for the payment of his pension. The Military Fund effectively ceased to exist, and with effect from 1 January 2012, all its rights and obligations were taken over by the Fund (see paragraph 29 above).

47. However, the Court considers that this did not engender any substantial changes to the substance of the applicant's claim suggesting any need to initiate any new proceedings about that claim before the Fund.

48. In particular, it would not have been reasonable to expect the applicant to pursue the same proceedings before the legal successor of the authority which had previously rejected his request. This was all the more so, because the decision of 1 August 2012, allowing for payment of the applicant's pension from the Fund, was based on the same reasons on which the applicant had based his request to the Military Fund of November 2004.

49. Furthermore, as regards the Government's argument concerning the civil proceedings, the Court notes that it is not relevant for the applicant's case. In the two cases which the Government offered as examples, unlike in the applicant's case, the Supreme Court held that the administrative bodies

lacked subject-matter jurisdiction to deal with the requests and instructed the plaintiffs to initiate civil proceedings. It is also noted that the applicant submitted that the two military beneficiaries to whom the Government had referred had to initiate new sets of civil proceedings despite the fact that they had received judgments in their favour, because the Fund refused to pay their pensions. The Government did not contest this argument.

50. Moreover, in civil proceedings the applicant could be awarded damages, provided he could prove that the competent authorities had acted unlawfully in his case. The Court agrees with the applicant that this was not effectively possible before the Fund's decision of 1 August 2012. Furthemore, in accordance with the relevant provisions of the Civil Obligations Act 1978, the applicant could recover only part of the damages in the civil proceedings (the relevant negative prescription period being three years: see paragraph 30 above).

51. Against the above background, the Court finds that the Government's objections must be rejected.

52. Finally, in view of its finding concerning *ratione personae* compatibility, the Court rejects the Government's objection regarding the exhaustion of available remedies for the applicant's complaint in Croatia.

(c) Conclusion

53. The Court notes that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention. It further notes that it is not inadmissible on any other grounds. It must therefore be declared admissible

2. Merits

54. The Court reiterates that Article 1 of Protocol No. 1 to the Convention does not create a right to acquire property. It places no restriction on the Contracting States' freedom to decide whether or not to have in place any form of social security or pension system, or to choose the type or amount of benefits or pension to provide under any such scheme. However, where a Contracting State has in force legislation providing for the payment as of right of a welfare benefit or pension – 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. Therefore, where the amount of a benefit or pension is reduced or eliminated, this may constitute an interference with possessions which requires to be justified in the general interest (see *Stec and Others v. the United Kingdom* (dec.) [GC], nos. 65731/01 and 65900/01, § 54, ECHR 2005-X; *Kjartan Ásmundsson v. Iceland*, no. 60669/00, § 39, ECHR 2004-IX; and *Valkov and Others v. Bulgaria*, nos. 2033/04 et al., § 84, 25 October 2011).

55. The present parties do not dispute that the applicant's continuing pension entitlements constitute a possession within the meaning of Article 1 of Protocol No. 1 to the Convention (see, for example, *Stec and Others,* cited above, § 51).

56. The Court notes that the Succession Agreement entered into force on 2 June 2004. Under its Annex E each successor State assumed responsibility for the regular payment of pensions to its citizens who had been civil or military employees of the former SFRY, irrespective of their current place of residence, if those pensions were financed from federal funds. In the case of military pensions, if a person was a national of more than one republic of the former SFRY, the pension should be paid by the State where that person resided.

57. As regards the applicability of the Succession Agreement, the Court notes that the Ministry of Foreign Affairs of the then Serbia and Montenegro, as well as the domestic courts, expressed the view that it should be directly applicable in granting requests for reinstatement of the payment of military pensions (see paragraph 31 above). In this respect the Court notes that under the Serbian Constitution international agreements have precedence in terms of their legal effects over domestic statues (see paragraph 27 above). Furthermore, according to international law, including the Vienna Convention on the Law of Treaties, Serbia cannot hinder its obligation to perform an international treaty by citing provisions of its internal law (see paragraph 34 above).

58. Therefore, it is clear that under the Succession Agreement, which is applicable, the relevant criterion for establishing the responsibility for payment of military pensions in the cases such as the present one was the country of residence. The applicant moved to Serbia before the entry into force of the Succession Agreement, in January 2002 (see paragraph 11 above). From 2 June 2004 onwards the respondent State had assumed responsibility for the payment of military pensions to its citizens with dual nationality who resided in its territory. The present applicant clearly belongs to this category. While he had requested that his pension be paid from the Military Fund starting from 1 April 2004, the Court reiterates that this responsibility was established only with effect from 2 June 2004. The refusal of the competent administrative bodies to reinstate payment of the applicant's pension undoubtedly amounted to an interference with his right to the peaceful enjoyment of his possessions for the purposes of the first sentence of the first paragraph of Article 1 of Protocol No. 1.

59. The main question is whether the interference was in accordance with the law.

60. The competent administrative authorities in the applicant's case refused to apply the Succession Agreement despite the clear instruction from the Supreme Court, but relied on the Decree on the Pension Rights of Military Personnel 1994 and the Pension and Disability Insurance Act 2003

(see paragraphs 15 and 18 above). In a decision of 30 December 2009 the Appeals Commission found that since the applicant had residence in Croatia on 2 June 2004, when the Succession Agreement entered into force, the Croatian Pension Fund was solely responsible for the payment of his pension (see paragraph 22 above). However, this argument does not have any support in the facts of the case drawn from the case-file, and, indeed, the Government did not argue the contrary. Moreover, the payment of the applicants' pension from the Croatian Pension Fund was terminated on 31 March 2004, precisely because he no longer lived in Croatia.

61. Furthermore, from the copy of the official note in the case file it is clear that a certain M. and J., employed at the Military Fund, refused to follow their superior's instructions to draft a decision granting the applicant's request (see paragraph 21 above). The Government did not contest the veracity of this note. In these circumstances, the Court could not but consider that there was an evident legal irregularity in the present case.

62. Moreover, on 1 August 2012 the Novi Sad branch of the Fund, acting of its own motion, established the applicant's right to receive pension payments from that Fund with effect from 1 January 2012, relying on precisely the same reasons as those on which the applicant had based his requests throughout the proceedings, from November 2004 onwards. As already stated above in its findings on admissibility (see paragraph 47 above), the Court does not consider that the reform of the pension system engendered any substantial changes to the substance of the applicant's claim. Whatever the reason for the grant on 1 August 2012, it was not a change in his legal rights.

63. In view of the above, the Court considers that the refusal of the applicant's claim for reinstatement of payment of his pension for the period following the entry into force of the Succession Agreement until 1 August 2012, amounted to an interference with his property rights which was not in accordance with domestic law. There has therefore been a breach of Article 1 of Protocol No. 1 to the Convention.

II. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

64. The applicant complained that the length of his proceedings was incompatible with the "reasonable time" requirement of Article 6 § 1 of the Convention which, in so far as relevant, reads as follows:

> "In the determination of his civil rights and obligations ... everyone is entitled to a ... hearing within a reasonable time by [a] ... tribunal ..."

65. The Government contested that argument.

66. The third party agreed with the applicant.

A. Admissibility

67. The Court notes that this complaint is linked to the one examined above and must therefore likewise be declared admissible.

B. Merits

68. The Court has already held that when under the national legislation an applicant has to exhaust all preliminary administrative procedures before having recourse to a court, the proceedings before the administrative authorities are to be included when calculating the overall length of the proceedings for the purposes of Article 6 of the Convention (see, for example, *König v. Germany*, 28 June 1978, § 98, Series A no. 27; *Kiurkchian v. Bulgaria*, no. 44626/98, § 51, 24 March 2005; and *Božić v. Croatia*, no. 22457/02, § 33, 29 June 2006).

69. As regards the period to be taken into consideration, the Court firstly observes that the administrative proceedings were instituted on 11 November 2004, and that on 11 March 2005 the Military Fund gave a decision refusing the applicant's request. However, the period to be taken into consideration began only when the applicant appealed against that decision, since it was only then that a "dispute" within the meaning of Article 6 § 1 arose (see, *inter alia*, *Janssen v. Germany*, no. 23959/94, § 40, 20 December 2001). The applicant did not provide the exact date of the appeal, but in any event it could not have been lodged later than 26 March 2005, since the time-limit for appealing against the first-instance decision was fifteen days. The Court further observes that the proceedings are apparently still pending before the Constitutional Court. They have so far lasted more than eight years. During that period, eight decisions have been rendered, the case has been examined at three levels of jurisdiction, and there have been two remittals.

70. The Court reiterates that the reasonableness of the length of proceedings must be assessed in the light of the circumstances of the case and with reference to the following criteria: the complexity of the case, the conduct of the applicant and the relevant authorities, and what was at stake for the applicant in the dispute (see *Mikulić v. Croatia*, no. 53176/99, § 44, ECHR 2002-I, and, among many other authorities, *Frydlender v. France* [GC], no. 30979/96, § 43, ECHR 2000-VII). The Court further reiterates that special diligence is necessary in pension disputes (see, *inter alia*, *H.T. v. Germany*, no. 38073/97, § 37, 11 October 2001).

71. The Court does not consider the present case one of such complexity as to justify proceedings of this length. Furthermore, there is nothing in the case file to suggest that the excessive length has been caused by the conduct of the applicant. The delay was caused mainly by the successive remittals of

the case and it is therefore primarily attributable to the authorities (see *Wierciszewska v. Poland*, no. 41431/98, § 46, 25 November 2003).

72. In the light of the criteria laid down in its case-law and having regard to all the circumstances of the case, especially what was at stake for the applicant in the dispute, and in the absence of any justification offered by the Government, the Court considers that the length of the proceedings complained of was excessive and failed to satisfy the reasonable time requirement. There has accordingly been a violation of Article 6 § 1 of the Convention.

III. ALLEGED VIOLATION OF ARTICLE 13 OF THE CONVENTION

73. The applicant also complained that he did not have an effective domestic remedy for his substantive complaints, in breach of Article 13 of the Convention. Article 13 provides:

> "Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."

74. The Government contested that argument.

75. The third party agreed with the applicant.

76. The Court notes that this complaint is linked to the two complaints already examined above and must therefore likewise be declared admissible.

77. Having regard to its findings under Article 6 of the Convention and Article 1 of Protocol No. 1 to the Convention, the Court considers that it is not necessary to examine whether, in this case, there has also been a violation of Article 13 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

78. Article 41 of the Convention provides:

> "If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party."

A. Damage

79. The applicant claimed 10,000 euros (EUR) in respect of non-pecuniary damage. He further claimed compensation for the pecuniary damage with statutory interest as regards the outstanding pension instalments (1 April 2004 - 31 December 2011), in the amount of approximately EUR 31,000.

80. The Government considered the amounts claimed excessive and unjustified.

81. The Court considers that the applicant in the present case has certainly suffered some non-pecuniary damage. Making its assessment on an equitable basis, as required by Article 41 of the Convention, it awards the applicant EUR 3,900 in respect of non-pecuniary damage, plus any tax that may be chargeable. As regards the claimed pecuniary damage, the respondent Government must pay to the applicant his pensions due from 2 June 2004 (the date the respondent State became responsible for the payment of his pension under the Succession Agreement (see paragraph 58 above)) until 31 December 2011, together with statutory interest.

B. Costs and expenses

82. The applicant also claimed EUR 4,335 for the costs and expenses incurred before the domestic courts and before this Court.

83. The Government considered that amount excessive.

84. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the requested sum of EUR 4,335, covering costs under all heads.

C. Default interest

85. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible;

2. *Holds* that there has been a violation of Article 1 of Protocol No. 1 to the Convention;

3. *Holds* that there has been a violation of Article 6 of the Convention;

4. *Holds* that there is no need to examine the complaint under Article 13 of the Convention;

5. *Holds*

(a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, on account of the pecuniary damage suffered, his pension due from 2 June 2004 until 31 December 2011, together with statutory interest, and the following amounts, to be converted into Serbian dinars at the rate applicable at the date of settlement:

(i) EUR 3,900 (three thousand nine hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage; and

(ii) EUR 4,335 (four thousand three hundred and thirty-five euros), plus any tax that may be chargeable to the applicant, in respect of costs and expenses;

(b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

6. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 8 October 2013, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Stanley Naismith
Registrar

Guido Raimondi
President