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

FIRST SECTION

CASE OF TRIČKOVIĆ v. SLOVENIA

(*Application no. 39914/98*)

JUDGMENT

STRASBOURG

12 June 2001

FINAL

27/03/2002

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 Tričković v. Slovenia,

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

Mrs E. PALM, *President*,
Mrs W. THOMASSEN,
Mr GAUKUR JÖRUNDSSON,
Mr R. TÜRMEN,
Mr C. BÎRSAN,
Mr T. PANȚÎRU,
Mr R. MARUSTE, *judges*,
and Mr M. O'BOYLE, *Section Registrar*,

Having deliberated in private on 9 November 1999 and 22 May 2001,

Delivers the following judgment, which was adopted on the last-mentioned date:

PROCEDURE

1. The case originated in an application (no. 39914/98) against Slovenia lodged with the European Commission of Human Rights ("the Commission") under former Article 25 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Slovene national, Mr Ljuben Tričković ("the applicant"), on 11 November 1997.

2. The applicant was represented by the Human Rights organisation Helsinki Monitor of Slovenia. The Government of the Republic of Slovenia ("the Government") were represented by their Agent, Mr Lucijan Bembič, the Attorney-General.

3. The applicant alleged, *inter alia*, that the length of the proceedings before the Constitutional Court was in breach of the "reasonable time" requirement of Article 6 § 1 of the Convention.

On 27 May 1998 the Commission requested the parties to submit memorials on the issues arising in the case (former Rule 48 § 2 b) and declared inadmissible the remainder of the application. The applicant and the Government each filed observations in writing.

4. The application was transmitted to the Court on 1 November 1998, when Protocol No. 11 to the Convention came into force (Article 5 § 2 of Protocol No. 11).

5. The application was allocated to the First Section of the Court (Rule 52 § 1 of the Rules of Court). Mr B. Zupančič, the judge elected in respect of Slovenia, withdrew from sitting in the case on the ground that he had participated in its examination as a judge of the Constitutional Court (Rule 28). The Government were invited to appoint another elected judge to sit in his place or any other person as an *ad hoc* judge. As the Government

did not reply, the President subsequently designated Mrs W. Thomassen, the first substitute judge, to complete the Chamber.

6. By a decision of 9 November 1999 the Chamber declared the application admissible.

7. On 24 November 1999 the parties were invited to submit additional evidence or written observations if they so wished (Rule 59 § 1). The applicant and the Government each filed submissions on the merits.

8. After consulting the Agent of the Government and the applicant's lawyer, the Chamber decided not to hold a hearing.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

9. The applicant is a Slovenian national of Serbian origin. He was born in 1944 and lives in Ljubljana. He was employed as a medical technician in the Yugoslav People's Army. In the summer of 1991, after Slovenia became independent following the dissolution of the former Yugoslavia, the applicant worked in the Federal Army Hospital in Ljubljana.

10. As the Federal Army withdrew from Slovenia in October 1991, the applicant, who had been declared disabled, applied for an invalidity pension. In December 1991 the Federal Military Social Security Fund in Belgrade granted him the right to retire on grounds of invalidity and paid him a pension until April 1992.

11. Following the dissolution of the former Yugoslavia and in the absence of an agreement on the succession or any relevant bilateral treaty, the Government of the Republic of Slovenia decided to provide for an advance payment of military pensions, since the Belgrade fund had ceased to pay former servicemen living in Slovenia. The purpose of this regulation was to find a temporary solution for retired military personnel and some other categories of military benefiting from the scheme, until the issues of the State succession had been settled.

12. The proceedings in question in the present case concern the applicant's claim for an advance on his military pension.

A. Proceedings before the Pension and Invalidity Insurance Fund and ordinary courts

13. On 5 June 1992 the applicant applied for an advance on his military pension under the Advance on Payment of Military Pensions Decree (Official Gazette no. 4/92 of 25 January 1992).

14. On 9 July 1992 the Pension and Invalidity Insurance Fund *(Skupnost pokojninskega in invalidskega zavarovanja*) found that the applicant had no right to advance payments. On 3 November 1992 the Pension and Invalidity Insurance Fund dismissed the applicant's appeal. The applicant sought judicial review of those decisions.

15. On 2 March 1993 the Labour and Social Court in Ljubljana (*Sodišče združenega dela pokojninskega in invalidskega zavarovanja Slovenije*) dismissed the applicant's action. On 7 July 1994 the Higher Labour and Social Court *(Višje delovno in socialno sodišče*) in Ljubljana upheld the lower court's decision. The second-instance decision was served on 30 July 1994.

B. Proceedings before the Constitutional Court

16. On 29 August 1994 the applicant lodged a constitutional appeal with the Constitutional Court (*Ustavno sodišče*) alleging breaches of his constitutional rights in the aforementioned proceedings.

17. On 23 May 1995 the Constitutional Court invited the applicant to complete his appeal. The Ljubljana Labour and Social Court and the Pension and Invalidity Insurance Fund were requested to submit records. The applicant filed supplementary submissions on 6 June 1995 but the Constitutional Court did not receive them until 13 June 1995.

18. On 6 October and 20 December 1995 a panel of three judges considered the case in the preliminary proceedings. On 20 December 1995 the Constitutional Court declared the applicant's constitutional appeal admissible.

19. On 21 December 1995 the Constitutional Court asked the Higher Labour and Social Court to submit a statement, which was supplied on 17 January 1996.

20. On 5 December 1996 the plenary court began consideration of the merits of the applicant's case.

21. In addition, the Pension and Invalidity Insurance Fund was asked on 6 December 1996 to submit its opinion. They complied with the request on 3 January 1997.

22. On 20 March, 10 April and 17 April 1997 the plenary Court held further deliberations.

23. On 17 April 1997 the Constitutional Court, by a majority, rejected the constitutional appeal as being manifestly ill-founded. The decision was served on 17 May 1997.

C. New proceedings before the Pension and Invalidity Insurance Fund

24. On 12 February 1999 the applicant applied for a pension under general pension and invalidity insurance regulations.

25. On 14 February 2000 the Pension and Invalidity Insurance Fund granted the applicant the right to his pension from 1 September 1998 onwards.

II. RELEVANT DOMESTIC LAW

A. The Constitution of the Republic of Slovenia

26. Article 160 of the Constitution of the Republic of Slovenia (*Ustava Republike Slovenije*) reads, so far as it is relevant:

> "The Constitutional Court shall hear:
>
> ...on constitutional appeals of violation of human rights and fundamental freedoms by specific acts; ...
>
> Unless otherwise provided by law, the Constitutional Court shall hear a constitutional appeal only if legal remedies have been exhausted. The Constitutional Court shall decide whether a constitutional appeal is admissible for adjudication on the basis of statutory criteria and procedures."

Article 162

> "Proceedings before the Constitutional Court shall be regulated by law.
>
> The law shall determine who may require proceedings to be instituted before the Constitutional Court. Anyone who demonstrates a legal interest may request the institution of proceedings before the Constitutional Court.
>
> The Constitutional Court shall decide on a majority vote of all its judges unless otherwise provided for in individual cases by the Constitution or by statute. The Constitutional Court may decide whether to institute proceedings following a constitutional appeal with such lesser number of judges as may be provided by statute."

B. The Constitutional Court Act

27. The Constitutional Court Act (*Zakon o Ustavnem sodišču*) governs the composition and functioning of the Constitutional Court.

Section 1

"The Constitutional Court is the highest body of judicial authority for the protection of constitutionality, legality, human rights and basic freedoms…

Decisions of the Constitutional Court are legally binding."

Sections 50 to 60 of that Act concern constitutional appeals by individuals (see paragraph 26 above).

Section 50

"Any one who believes that his or her human rights and basic freedoms have been violated by a particular act of a state body, local community body or statutory authority may lodge a constitutional appeal with the Constitutional Court, subject to compliance with the conditions laid down by this Act. ..."

Section 51

"A constitutional appeal may be lodged only after all legal remedies have been exhausted.

Before all special legal remedies have been exhausted, the Constitutional Court may exceptionally hear a constitutional appeal if a violation is probable and if certain irreparable consequences for the appellant would occur as a result of the implementation of a particular act."

Section 52

"A constitutional appeal shall be lodged within sixty days after the date of the decision against which the constitutional appeal lies.

...

In specially founded cases the Constitutional Court may exceptionally hear a constitutional appeal lodged after the expiry of the time-limit stated in the first paragraph of this section."

Section 53

"The constitutional appeal must indicate the particular act which is the subject-matter of the appeal and the facts that give rise to the allegation of a violation of human rights and basic freedoms on which the appeal is based.

A constitutional appeal shall be lodged in writing. There shall be enclosed with it a copy of the particular act that is the subject-matter of the appeal and all documents forming the basis of the appeal.

The appeal and annexed documents shall be lodged in triplicate."

Sections 54 and 55 govern the preliminary procedure.

Section 54

"A decision on whether a constitutional appeal is admissible and to institute proceedings shall be taken in private by a committee of three judges of the Constitutional Court.

If the appeal is incomplete or if the Constitutional Court is unable to examine it because it does not contain all the required information or documents referred to in the preceding section of this act, the Constitutional Court shall require the appellant to complete the appeal within a specified time."

28. Sections 56 to 60 set out the procedure for the adjudication of the constitutional appeal and provide:

Section 56

"If the constitutional appeal is found to be admissible, it shall be sent to the body which issued the act and against which the constitutional appeal has been lodged, so that it may reply to the constitutional appeal within a determined period."

Section 57

"If a constitutional appeal is admissible, it shall be examined by the Constitutional Court in private unless the Constitutional Court decides to hold a public hearing."

Section 59

"The Constitutional Court shall issue a decision declaring that the appeal was unfounded or shall accept the appeal and quash the act that was the subject of the appeal or declare it null and void in whole or in part, and return the matter to the competent body. ..."

29. Section 60 concerns the Constitutional Court's decision if the appeal is upheld and reads:

"If the Constitutional Court quashes an individual act, it may also decide a contested right or freedom if such procedure is necessary in order to put an end to consequences that have already occurred as a result of that act or if such is the nature of the constitutional right or freedom and provided that a decision can be reached on the basis of information in the record."

PROCEEDINGS BEFORE THE COMMISSION

30. Mr Ljuben Tričković applied to the Commission on 11 November 1997. He alleged, *inter alia*, a violation of Article 6 § 1 of the Convention as regards the length of the proceedings before the Constitutional Court.

31. On 27 May 1998, the Commission decided to communicate the applicant's appeal concerning the length of the proceedings before the

Constitutional Court to the respondent Government and invited them to submit their observations on its admissibility and merits. It declared inadmissible the remainder of the application.

FINAL SUBMISSIONS TO THE COURT

32. In their memorial the Government requested the Court to hold that the Republic of Slovenia had not violated Article 6 § 1 of the Convention.

33. The applicant referred to his previous submissions to the Commission and asked the Court to find that the facts of the case disclosed a violation of Article 6 § 1 of the Convention and to award him just satisfaction under Article 41.

AS TO THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 § 1 OF THE CONVENTION

34. The applicant complained about the length of the proceedings before the Constitutional Court. He alleged a violation of Article 6 § 1 of the Convention, which in so far as relevant provides:

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

35. The Government contended that the facts of the case disclosed no breach of that provision.

A. Applicability of Article 6 § 1

36. The Court recalls that it is fully aware of the special role and status of a Constitutional Court, whose task is to ensure that the legislative, executive and judicial authorities comply with the Constitution and which, in those States that have made provision for a right of individual petition, affords additional legal protection to citizens at national level in respect of their fundamental rights guaranteed by the Constitution (see the Süßmann v. Germany judgment of 16 September 1996, *Reports of Judgments and Decisions* 1996-IV, p. 1170, § 37; the Pammel v. Germany judgment of 1 July 1997, *Reports* 1997-IV, p. 1108, § 49, and the Probstmeier v. Germany judgment of 1 July 1997, *Reports* 1997-IV, p. 1135, § 44).

37. The Court has had to examine the question of the applicability of Article 6 § 1 of the Convention to proceedings in a Constitutional Court in a

number of cases and has consistently held that Constitutional-Court proceedings do not in principle fall outside the scope of Article 6 § 1 (see the Süßmann judgment cited above, p. 1171, § 39).

38. The Court must now determine whether Article 6 § 1 applies to the proceedings in the instant case.

39. The Court notes that the proceedings complained of concerned the applicant's claim for an advance on his military pension. The Court reiterates that under its settled case-law the relevant test in determining whether proceedings come within the scope of Article 6 § 1, even if they are conducted before a Constitutional Court, is whether their outcome is decisive for the determination of the applicant's civil rights and obligations (see the Süßmann judgment cited above, p. 1171, § 41; and the Pammel and Probstmeier judgments cited above, pp. 1109 and 1135, §§ 53 and 48, respectively).

40. In the Court's view, the dispute as to the applicant's entitlement to the advance on his military pension was of a pecuniary nature and indisputably concerned a civil right within the meaning of Article 6 § 1 of the Convention (see the Schuler-Zgraggen v. Switzerland judgment of 24 June 1993, Series A no. 263, p. 17, § 46; the Massa v. Italy judgment of 24 August 1993, Series A no. 265-B, p. 20, § 26; and the Süßmann judgment cited above, pp. 1171-1172, § 42).

41. Indeed, the Government did not contest that the right to a trial without undue delay applied also to proceedings before the Constitutional Court. Moreover, the parties do not dispute that the proceedings concerned the determination of the applicant's "civil rights" within the meaning of Article 6 § 1 of the Convention and, in the light of the aforementioned arguments, the Court finds no reason for reaching a different conclusion.

B. Compliance with Article 6 § 1

1. Period to be taken into consideration

42. The Court is concerned only with the length of the proceedings before the Constitutional Court. Thus the relevant period began on 29 August 1994, the date on which the applicant lodged an appeal before the Constitutional Court, and ended on 17 May 1997, the date on which the decision was notified to him. It therefore lasted two years, seven months and nineteen days.

43. The Court notes that Slovenia ratified the Convention and recognised the right of individual petition on 28 June 1994 and the Convention only governs facts, which are subsequent to its entry into force with respect to the Contracting Party concerned.

2. Applicable criteria

44. The reasonableness of the length of proceedings must be assessed in the light of the particular circumstances of the case and with regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the conduct of the applicant and of the authorities dealing with the case and what was at stake for the applicant in the litigation (see the Süßmann judgment cited above, pp. 1172-73, § 48; the Pammel and Probstmeier judgments cited above, pp. 1100 and 1136, §§ 60 and 55, respectively; and *Gast and Popp v. Germany*, no 29357/95, § 70, ECHR 2000-II).

(a) Complexity of the case

45. The applicant contended that the length of the proceedings before the Constitutional Court had been excessive and amounted in fact to a denial of justice. According to him, the case could have been decided much sooner.

46. The Government argued that the case was a particularly complex one, going far beyond an ordinary appeal, and that the time and effort invested had been necessary and reasonable. They stressed that the Constitutional Court had had to tackle in the present case legal problems caused by the dissolution of the former Yugoslavia, given that no agreement has been reached between the States successors of the former Yugoslavia on the division of the assets and on the reciprocal regulation of obligations to individuals in cases in which their rights had been acquired under the former Federation.

47. Therefore, in the Government's view, the Constitutional Court had had to find legal solutions where there had been no precedents in legal opinions or jurisprudence. In the applicant's case, the Constitutional Court had also had to establish a principle on how to judge regulations that temporarily governed a transitional regime and on how to decide whether or not such regulations were valid.

48. The Government further maintained that while discussing the case, the Constitutional Court had addressed issues other than those that appeared in the decision; other legal solutions to the problem had been considered as well as the more favourable solution sought. The Government pointed out that the reasons for the Constitutional Court's decision were set out in nineteen paragraphs.

49. The Government also stressed that the Constitutional Court had referred to the applicant's case as a legal authority in more than forty decisions. Some subsequent appellants had been granted the right to an advance payment of their military pension.

50. The Court considers that the subject-matter of the litigation was of considerable complexity. The case was the first of a large number of constitutional appeals concerning the pensions of former Yugoslav military personnel, each of which raised similar difficult legal issues. As such, the

Constitutional Court had to examine its merits in detail. Also the fact that the reasons for the decision were set out at some length attests to the legal difficulty of the issues raised.

51. Furthermore, it is true that the case was made even more complex by the special circumstances of the dissolution of former Yugoslavia, which gave rise to questions of public international law, by uncertainty regarding the correct approach and by the evolving nature of the domestic legal system at the relevant time.

(b) The applicant's conduct

52. The applicant argued that his conduct had not caused any delay in the proceedings, as he had responded promptly to the Constitutional Court's notice to complete his appeal. According to him, the initial application contained sufficient information concerning the alleged violations.

53. The Government contended that the applicant's constitutional appeal was incomplete when submitted, which had caused some delay in the proceedings. At the request of the Constitutional Court, the applicant had completed the application, stating the alleged violations and the position in the proceedings.

54. The Court observes that, although the applicant may have contributed to some extent to the delay in the proceedings by lodging an appeal that was incomplete initially, that delay was not significant when compared to the overall length of the proceedings.

(c) Conduct of the Constitutional Court

55. According to the applicant, there was no justification for the Constitutional Court's taking nearly three years to dismiss his appeal.

56. The Government contended that the Constitutional Court had had a heavy workload over that period, as it had had to tackle issues of prior importance for the transition from the old socialist legal system towards a new, democratic one. Those issues included denationalisation, referenda and local self-government. In addition, as already noted, the Constitutional Court had had to deal with further legal problems arising from the dissolution of the former Yugoslavia.

57. Secondly, the Government stressed the special features of the two-stage procedure of deciding constitutional appeals, a procedure that had been introduced into the Slovenian legal system in 1991. It also pointed out that the Constitutional Court started its work in April 1994, after the entry into force of the Constitutional Court Act (Official Gazette no. 15/94 of 18 March 1994), which was virtually contemporaneous with the entry into force of the Convention for Slovenia.

58. According to a statistical survey submitted by the Government, the Constitutional Court already had 97 applications pending when it had begun dealing with the constitutional appeals, and their number had grown

constantly. At the same time, the court had received many requests for abstract judicial review requiring urgent decision.

59. Thirdly, in the Government's view, the Constitutional Court was aware that the right to a fair trial should be guaranteed also in its proceedings. In the critical period, the Constitutional Court had adopted special administrative and organisational measures with the aim of ensuring better and more efficient protection of human rights, especially those protecting individual liberty.

60. The Government further stressed the special nature of the present case that was demonstrated by the fact that the Constitutional Court had exceptionally declared Mr Tričković's appeal admissible as raising important issues, even though he had not exhausted all legal remedies.

61. The Government also pointed out that the panel of three judges considered the case twice in the preliminary proceedings, in which the merits of the case were already examined to a certain extent, and that the plenary court had held three sets of deliberations. Moreover, the Constitutional Court had had to obtain the opinions of different authorities before giving its decision.

62. The Court reiterates, as it has repeatedly held, that Contracting States are under a duty to organise their judicial system in such a way that their courts can meet each of the requirements of Article 6 § 1, including the obligation to hear cases within a reasonable time.

63. Although this obligation applies also to constitutional courts, when so applied it cannot be construed in the same way as for an ordinary court. Its role as guardian of the Constitution makes it particularly necessary for a Constitutional Court sometimes to take into account considerations other than the mere chronological order in which cases are entered on the list, such as the nature of the case and its importance in political and social terms.

64. Furthermore, while Article 6 requires that judicial proceedings be expeditious, it also lays emphasis on the more general principle of the proper administration of justice (see the Süßmann judgment cited above, p. 1174, §§ 55-57; and *Gast and Popp* judgment cited above, § 75).

65. Regard being had to the importance of the decision of the Constitutional Court in the present case, the impact of which reached far beyond the individual application, the latter principle is of special pertinence here.

66. Therefore, the Court finds that the Constitutional Court did not act unreasonably in holding lengthy discussions and consulting other bodies in order to obtain a comprehensive view of the different legal issues.

67. Moreover, bearing in mind the specific legal, political and social implications of transition from a socialist to a democratic legal order and of the dissolution of the former Yugoslavia, in the absence of any agreement on succession, the Constitutional Court was entitled to give priority to

issues such as denationalisation, referenda and local self-government (see, *mutatis mutandis,* the Süßmann judgment cited above, p. 1174, § 60).

68. The Court has further noted the Government's explanations regarding the overall management of the Constitutional Court's work that began in the same year as the year in which the applicant lodged his constitutional appeal. According to the Court's case-law, a temporary backlog of court business does not entail a Contracting State's international liability if it takes appropriate remedial action with the requisite promptness (see the Unión Alimentaria Sanders S.A. v. Spain judgment of 7 July 1989, Series A no. 157, p. 15, § 40). In this regard, the respondent State has also indicated measures which the Constitutional Court has taken to reduce its workload.

(d) What was at stake for the applicant?

69. In view of the nature of the civil right, the Court considers that what was at stake for the applicant required special diligence. Nevertheless, in the Court's opinion, as stated above (see paragraphs 64 and 65), in the present case, the degree of diligence required has to be considered in terms of the need for proper administration of justice.

(e) Conclusion

70. In the light of all the circumstances of the case, the Court finds that a reasonable time within the meaning of Article 6 § 1 was not exceeded and that there has accordingly been no breach of that provision on this point.

FOR THESE REASONS, THE COURT UNANIMOUSLY

Holds that there has been no violation of Article 6 § 1 of the Convention.

Done in English, and notified in writing on 12 June 2001, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Michael O'BOYLE
Registrar

Elisabeth PALM
President