



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

FIRST SECTION

CASE OF VASILOPOULOU v. GREECE

(Application no. 47541/99)

JUDGMENT

STRASBOURG

21 March 2002

FINAL

21/06/2002

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 Vasilopoulou v. Greece,

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

Mrs F. TULKENS, *President*,

Mr C.L. ROZAKIS,

Mr G. BONELLO,

Mr E. LEVITS,

Mrs S. BOTOUCHAROVA,

Mr A. KOVLER,

Mrs E. STEINER, *judges*,

and Mr S. NIELSEN, *Deputy Section Registrar*,

Having deliberated in private on 28 February 2002,

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

PROCEDURE

1. The case originated in an application (no. 47541/99) against the Hellenic Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Greek national, Mrs Margarita Vasilopoulou (“the applicant”), on 28 January 1999.

2. The Greek Government (“the Government”) were represented by their Agent, Mr M. Apessos, Adviser at the State Legal Council, and Mrs M. Papida, Legal Assistant at the State Legal Council.

3. The applicant alleged, in particular, that the refusal of the authorities to comply with the judgment of the Court of Audit violated Articles 6 and 14 of the Convention and Article 1 of Protocol No. 1.

4. By a decision of 22 March 2001, the Court declared the application admissible.

5. On 1 November 2001 the Court changed the composition of its Sections (Rule 25 § 1). This case was assigned to the newly composed First Section (Rule 52 § 1). Within that Section, the Chamber that would consider the case (Article 27 § 1 of the Convention) was constituted as provided in Rule 26 § 1 of the Rules of Court.

THE FACTS

6. The applicant, a widow of an appeal-court judge, applied for a readjustment of her pension. On 4 December 1995 the State General Accounting Department turned her application down. In its decision the State General Accounting Department stated that any benefit paid to judges in service in any manner whatsoever, does not constitute an increase in their basic salary and cannot be taken into consideration for the calculation of the retirement pension or an adjustment of this pension. The applicant appealed to the Court of Audit.

7. On 9 September 1997 the Court of Audit upheld her appeal considering that she was entitled to an additional pension of 103,800 drachmas (GRD) per month for the period between 1 December 1991 and 31 December 1995 (judgment No. 1636/97). The court ordered the State to pay the applicant immediately the money owed for the period between 1 December 1991 and 30 June 1993. Moreover, the State was to pay the applicant on 1 April 1998 the money owed for the period between 1 July 1993 and 30 April 1994, on 1 April 1999 the money owed for the period between 1 May 1994 and 31 March 1995 and on 1 April 2000 the money owed for the period between 1 April 1995 and 31 December 1995.

8. The decision was served on the Minister of Finance on 9 October 1997. Because the State did not appeal within one year, the decision of the Court of Audit became final on 19 September 1998 as provided by domestic law.

9. In the meantime, on 27 June 1997 Law No. 2512/1997 was enacted. Section 3 of that statute interpreted Law No. 2320/1995 and provided that the scales established by various ministerial decisions could not be applied to the calculation of the judge's retirement pensions. Furthermore, any claim based on that statute was statute-barred, any pending judicial proceedings set aside and any sum paid out, other than pursuant to a final judgment, had to be refunded.

10. In a judgment of 17 December 1997 the Court of Audit, sitting as a full court, held that Section 3 of the above-mentioned statute was unconstitutional and contrary to Article 6 of the Convention.

11. However, the authorities refused to pay the applicant the additional pension as specified in the above decision.

12. By a decision No. 71320 of 30 June 2000 the Minister of Finance ordered that all judgments of the Court of Audit whereby retirement pensions had been adjusted should be enforced. The decision provides for the payment of the additional pensions for the period 1 December 1991 to 31 December 1995 by way of seven six-monthly instalments without interest in the form of State bonds. The sums are to be paid to the interested parties upon submission of a declaration certifying that they have not already received any other payment in this respect and that they will not raise any other similar claim for the above-mentioned period.

THE LAW

I. ALLEGED VIOLATION OF ARTICLES 6 § 1 AND 13 OF THE CONVENTION

13. The applicant alleges a violation of Articles 6 § 1 and 13 of the Convention which, insofar as relevant, read as follows:

Article 6 § 1

“In the determination of his civil rights and obligations ..., everyone is entitled to a fair ... hearing ... by [a] ... tribunal...”

Article 13

“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.”

14. The Government point out that after 1995 and following a decision by the Ministers of Justice and Finance, a great number of retired judges applied to the State General Accounting Department to have their pensions adjusted. Following the refusal of that body to satisfy their requests, these judges, including the applicant, applied to the Court of Audit which upheld their applications. Then the State appealed against some of the judgments before the Court of Audit, sitting as a full court. In order to fill the gap existing in the legislation in force at that time, the legislator adopted Law No. 2512/1997, which interpreted certain provisions relating to civil and military retirement pensions. Law No. 2512/1997 did not intend to apply in the proceedings instituted by the applicant. Its provisions were of a general and objective character and aimed merely at regulating similar situations which had already arisen or could arise in the future. Its retroactive effect was necessary to meet the legislator’s will in this respect. Moreover, according to the Greek legal theory and case-law, the legislator is entitled to intervene in judicial proceedings which are pending, provided that the regulation of the right concerned is compatible with the Constitution.

15. In the instant case, Law No. 2512/1997 was promulgated before judgment No. 1636/97 was delivered. Accordingly, enforcement of that judgment was impossible since that would have been in breach of the express provisions of Law No. 2512/1997.

16. The Court reiterates that the execution of a judgment given by any court should be regarded as an integral part of the “trial” for the purposes of Article 6. If the authorities were to refuse or omit to enforce a judgment, or to delay in doing so, the guarantees under Article 6 from which litigants had benefited during the judicial phase of the proceedings would lose its purpose. Furthermore, the principle of the rule of law and the notion of fair

trial precluded any interference by the legislature with the administration of justice designed to influence the judicial outcome of a dispute to which the State was a Party (*Antonakopoulos, Vortsela and Antonakopoulou v. Greece*, n° 37098/97, § 25).

17. In the present case the Court notes that although Section 3 of Law No. 2512/1997 was declared unconstitutional by the Court of Audit on 17 December 1997, the authorities persisted in their refusal to pay the applicant the additional pension as specified in the judgment of 9 September 1997.

18. Accordingly, there has been a violation of Article 6 § 1 of the Convention.

19. Having regard to its decision concerning Article 6, the Court takes the view that it does not have to examine the case under Article 13, as its requirements are less strict than, and are here absorbed by those of Article 6.

II. ALLEGED VIOLATION OF ARTICLE 1 OF PROTOCOL NO. 1

20. The applicant further alleges a violation of Article 1 of Protocol No. 1 which provides:

“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.”

21. The Government do not submit any observations as to the merits of the complaint under this Article.

22. The Court reiterates that the Court of Audit’s judgment of 9 September 1997 had created an established right to payment in the applicant’s favour (see the above-mentioned *Antonakopoulos, Vortsela and Antonakopoulou v. Greece* judgment and *Dimitrios Georgiadis v. Greece*, n° 41209/98, §§ 31-32). Undoubtedly, the State could have entered an appeal on points of law against this judgment but such an appeal could not have a suspensive effect according to Greek law. As a result, the fact that it was impossible for the applicant to have this judgment executed amounted to an interference with her right to the peaceful enjoyment of her possessions.

23. The Court further notes that on 30 June 2000 the Minister of Finance adopted decision No. 71320 which provided for the enforcement of all judgments of the Court of Audit whereby pensions were adjusted. However, the decision provided that the additional pensions would be paid by way of monthly instalments until 2004 without interest and in the form of State

bonds. Moreover it was taken approximately three years after the Court of Audit had rendered its decision in the present case as well as after the European Court had delivered its first judgment finding that there was a violation of the Convention in this type of cases (see the above-mentioned *Antonakopoulos, Vortsela and Antonakopoulou v. Greece* judgment).

24. The Court considers that a legislative measure adopted belatedly and regulating matters of pension in a manner unfavourable to the interests of a litigant, who has already obtained a judgment awarding him a supplementary pension, upsets the fair balance between the protection of the right to property and the requirements of the general interest. In the present case, the applicant had to bear an individual and excessive burden incompatible with the requirements of Article 1 of Protocol No.1.

25. There has therefore been a violation of Article 1 of Protocol No.1.

III. ALLEGED VIOLATION OF ARTICLE 14 OF THE CONVENTION

26. Finally, the applicant alleges a violation of Article 14 of the Convention on the ground that the Minister of Finance has enforced some judgments of the Court of Audit concerning other retired judges or their widows. Article 14 provides:

“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.”

27. The Court finds no indication of discrimination contrary to Article 14 on the facts of the case.

28. There has therefore been no violation of Article 14 of the Convention.

IV. APPLICATION OF ARTICLE 41 OF THE CONVENTION

29. 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.”

30. The applicant claims as pecuniary damage the sum awarded to her by the Court of Audit, that is 5,086,200 GRD, plus interest at a rate of 6% from the date on which her appeal was served to the Minister of Finance (15 January 1996) and plus interest at a rate of 10% from the date on which the Court of Audit’s judgment was served to the same Minister (20 May 2001). As regards the second interest, the applicant maintains that it corresponds to the annual deposit interest rate offered by banks to

individuals and which would have applied to her had she credited her bank account with the amount awarded by the Court of Audit.

31. The applicant further requests 10,000,000 GRD in compensation for non-pecuniary damage. She maintains that the refusal of the authorities to comply with the Court of Audit's judgment offended her personality, her well-being and proprietary rights and caused her over the period of many years insecurity as to the protection of her rights guaranteed by the Convention.

32. The Government submit that the applicant has suffered no pecuniary damage since the payment of the sum awarded by the Court of Audit has already begun, according to the provisions of decision no. 71320 of 30 June 2000. The applicant has received the first instalment of the above-mentioned sum on 11 January 2001 and has thus accepted the terms of the ministerial decision. As regards the non-pecuniary damage, the Government consider it excessive.

33. The applicant submits that although she has already received two instalments, she considers them as down payment until the whole pension is paid out by the Government without conditions and in full compliance with the Court of Audit's judgment. Furthermore, in a declaration sent to the Minister of Finance on 11 January 2001 she expressly reserved her right to submit further demands in relation to the execution of the judgment.

34. In the circumstances of the case, the Court considers that the question of the application of Article 41 is not ready for decision and that it must be reserved, having regard to the possibility of an agreement between the respondent State and the applicant.

FOR THESE REASONS, THE COURT UNANIMOUSLY

1. *Holds* that there has been a violation of Article 6 § 1 of the Convention;
2. *Holds* that it is unnecessary to rule on the complaint based on Article 13 of the Convention;
3. *Holds* that there has been a violation of Article 1 of Protocol No. 1;
4. *Holds* that there has been no violation of Article 14 of the Convention;
5. *Holds* that the question of the application of Article 41 is not ready for decision;
accordingly,
(a) *reserves* the said question in whole;

- (b) *invites* the Government and the applicant to submit, within the forthcoming three months, their written observations on the matter and, in particular, to notify the Court of any agreement that they may reach;
- (c) *reserves* the further procedure and *delegates* to the President of the Chamber the power to fix the same if need be.

Done in English, and notified in writing on 21 March 2002, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Søren NIELSEN
Deputy Registrar

Françoise TULKENS
President