CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

THIRD SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 69524/01
by Mayya Filippovna BULGAKOVA
against Russia

The European Court of Human Rights (First Section), sitting on 5 April 2005 as a Chamber composed of

Mr B.M. ZUPANČIČ, *President*,
Mr L. CAFLISCH,
Mr C. BÎRSAN,
Mr A. KOVLER,
Mr V. ZAGREBELSKY,
Mrs A. GYULUMYAN,
Ms R. JAEGER, *judges*,
and Mr M. VILLIGER, *Deputy Section Registrar*,

Having regard to the above application lodged on 21 April 2001,

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

Having deliberated, decides as follows:

THE FACTS

The applicant, Ms Mayya Filippovna Bulgakova, is a Russian national, who was born in 1933 and lives in Novosibirsk. The respondent Government are represented by Mr P.A. Laptev, the Representative of the Russian Federation at the European Court of Human Rights.

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

Since 1988, the applicant had been receiving an old-age pension. From February 1998, her pension was to be calculated under the Law on Calculating and Upgrading State Pensions. The law introduced a new method for calculating pensions. This method, “a pensioner's individual multiplier” was meant to link the pensioner's pension to his or her previous earnings.

The authority in charge of the applicant's pension, the Pension Fund Agency of the Zayeltsovskiy District of Novosibirsk, fixed the applicant's multiplier at 0.525. The applicant considered that the agency had misread the law, and that her multiplier should be higher. On an unspecified date in 1999, she challenged the agency's decision in a court.

The case came before the Zayeltsovskiy District Court of Novosibirsk. On 21 October 1999, the court held for the applicant. It found that the agency had misread the law, and that the multiplier should be 0.7.

The agency appealed against the judgment, but on 14 December 1999 the Novosibirsk Regional Court dismissed the appeal, and the judgment came into force.

On 29 February 2000, a bailiff started the execution of the judgment. On 10 April 2000 the district court adjourned the execution because the agency had complained about the bailiff.

On 21 August 2000, the agency asked the district court to reopen the judgment due to discovery of new circumstances. The agency asserted that on 29 December 1999 the Ministry of Labour and Social Development had passed an Instruction on the Application of Limitations Established by the Law on Calculating and Upgrading State Pensions. The instruction clarified how to apply the law. The agency argued that it had not known about the instruction until after the litigation, and that the case should therefore be reconsidered.

On 16 January 2001, the district court granted the agency's request and reopened the judgment under Article 333 of the Code of Civil Procedure. Under this Article, a court might reopen a judgment, if a party discovered significant circumstances that were not and could not have been known to this party during the litigation.

Having reconsidered the case, on 12 February 2001 the district court dismissed the applicant's claims in full. On 22 March 2001, the regional court upheld the judgment on appeal.

COMPLAINTS

1. The applicant complained under Articles 6 and 13 of the Convention that the judgment should not have been reopened because the instruction was not a newly discovered circumstance.

2. The applicant complained under Articles 6 and 13 of the Convention that the litigation and execution had lasted longer than they should have under the law, that the execution had been stayed unlawfully, and that the judgments were incorrect.

THE LAW

1. The applicant complained under Articles 6 and 13 of the Convention that the State had reconsidered a favourable final judgment. The Court will consider this complaint under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1, because in essence the complaint falls to be examined under these Articles (see *Pravednaya* v. Russia (dec.), no. 69529/01, 25 September 2003).

Article 6 § 1, as far as relevant, reads as follows:

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

Article 1 of Protocol No. 1 reads as follows:

> "Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.
>
> The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The Government submitted that the complaint was manifestly ill-founded. First, the district court reopened the case not capriciously, but because of the instruction – an important clarification of the pensions law. Second, since the agency had learned about the instruction only after the litigation, the court had good reason to reopen the case. Third, the Constitutional Court recognised that changes in the law could be considered newly discovered circumstances.

The applicant insisted on her complaint. First, the instruction should not have been considered a newly discovered circumstance because it arose after the litigation, not before or during it. Second, the agency missed the time-limit for the reopening: it applied to the court eight months after it had

learned about the instruction, instead of three months as the civil procedure required. Third, the Constitutional Court's opinion was irrelevant, because it concerned only the changes caused by a law's unconstitutionality; the pensions law was constitutional.

The Court considers, in the light of the parties' submissions, that the complaint raises serious issues of fact and law under the Convention, the determination of which requires an examination of the merits. The Court concludes therefore that this complaint is not manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

2. The applicant complained under Articles 6 and 13 of the Convention that the litigation lasted too long, that the execution of the judgment was stayed, and that the courts' judgments were incorrect.

Nevertheless, in the light of all the material in its possession, and in so far as the matters complained of were within its competence, the Court finds that they do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols.

For these reasons, the Court unanimously

Declares admissible, without prejudging the merits, the applicant's complaint that the final judgment in her favour was reconsidered;

Declares inadmissible the remainder of the application.

Mark VILLIGER
Deputy Registrar

Boštjan M. ZUPANČIČ
President