CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

SECOND SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application No. 47541/99
by Margarita VASILOPOULOU
against Greece

The European Court of Human Rights (Second Section), sitting on 22 March 2001 as a Chamber composed of

Mr A.B. BAKA, *President*,
Mr C.L. ROZAKIS,
Mr G. BONELLO,
Mrs V. STRÁŽNICKÁ,
Mr P. LORENZEN,
Mr M. FISCHBACH,
Mr A. KOVLER, *judges*,
and Mr E. Fribergh, *Section Registrar*,

Having regard to the above application introduced on 29 January 1999 and registered on 19 April 2000,

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 is a Greek national, born in 1940 and living in Athens.

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

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.

On 9 September 1997 the Court of Audit upheld her appeal considering that she was entitled to an additional pension of 103,800 drachmas 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.

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

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.

In a judgment of 9 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.

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

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.

COMPLAINTS

The applicant complains under Articles 6 § 1, 13 and 14 of the Convention of the failure of the authorities to comply with the decision of the Court of Audit. She specifies that she

cannot have the decision enforced because domestic law grants the State immunity from execution.

THE LAW

1. The Government request the Court to strike the application out of the list of cases in accordance with Article 37 § 1 (b) of the Convention. Following decision No. 71320 of 30 June 2000 of the Minister of Finance, the applicant cannot claim any more to be a victim.

The applicant declares that she cannot accept the terms of that decision, because it amounts to a defective enforcement of the judgment of the Court of Audit. In fact, the State, which has lost the case in the impugned proceedings, still tries to put off compliance with the judgment since the last payment provided for in the above-mentioned decision should take place only in 2004. What one would expect from a State governed by the rule of law is immediate enforcement of judgments without recourse to legislative interventions which contain discouraging conditions for such an enforcement.

Having regard to the facts of the case, the Court considers that "the matter has not been resolved" within the meaning of Article 37 of the Convention and thus the conditions for striking out of the list the present application are not met.

2. 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."

(a) In the first place, the Government request the Court to dismiss the application as the applicant has not lodged her application with the Court within six months of the date when the judgment of the Court of Audit had been served on the Minister of Finance, that is on 9 October 1997. The Government submit that the six-month time-limit should be observed in cases where the alleged violation of the Convention consists in the refusal of the administrative authorities to comply with a court judgment allowing certain sums to an applicant notwithstanding relevant legislation setting aside judicial proceedings.

The applicant's primary submission is that the violation of Article 6 of the Convention is of a continuing nature. In the alternative, she contends that the fact which generated her application to the Court was the refusal of the Minister of Finance to comply with a final judicial decision and not the judgment of the Court of Audit itself. It follows that the critical date is that of 10 October 1998 when the time-limit within which the State could have appealed on points of law had elapsed.

The Court notes that the situation complained of by the applicant began with the authorities' refusal to pay the applicant the additional pension as specified in the decision of the Court of Audit and continued even after the lodging of her application to the Court on 29 January 1999.

This objection must therefore be dismissed.

(b) The Government further invite the Court to declare the application incompatible *ratione materiae* with the provisions of the Convention. The granting or adjustment of retirement pensions is governed by public law and effected by individual administrative acts, issued in the framework of the administration's regulatory activity. The applicant's right to an adjusted pension does not fall within the notion of civil rights protected by the Convention because it forms part of the more general category of social security benefits, a matter which is governed by public law.

The applicant stresses the pecuniary nature of her claims and concludes that the proceedings before the Court of Audit were decisive for a "civil right".

The Court notes that the instant case concerns the State's duty to pay pension back payments to a civil servant's widow pursuant to the legislation in force. The applicant relied on a subjective pecuniary right arising from specific provisions of national legislation, which must be considered as a "civil" right (*Antonakopoulos, Vortsela and Antonakopoulou v. Greece*, n° 37098/97, § 21).

(c) As regards the merits of the complaint, 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.

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.

In view of the arguments of the parties, the Court considers that this part of the application raises serious issues under Article 6 § 1 of the Convention which require examination of the merits. It follows that this complaint cannot be considered manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

3. 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."

The Government submit that the applicant does not complain in her application about the violation of that Article. As to the merits, they refer to their observations under Article 6 of the Convention.

The applicant admits that she had not raised such a complaint in her application. However, she stresses that the Court examines the applications introduced before it on the basis of the

principle *iura novit curia*. This is the reason why the Court put a specific question on that Article when it communicated the application to the Government. In any event, the illegal refusal by the authorities to comply with the judgment of the Court of Audit allowing her a certain sum entails a violation of Article 1 of Protocol No. 1.

The Court notes that the subject matter of the present case is not confined to the Articles mentioned in the application before it. In this respect, it recalls that it may take cognisance of all questions of fact or law arising in the course of the proceedings instituted before it (see, *mutatis mutandis*, *Iatridis v. Greece*, [GC], no.31107/96, CEDH1999-II).

In view of the arguments of the parties, the Court considers that this part of the application raises serious issues which require examination of the merits. It follows that this complaint cannot be dismissed as manifestly ill-founded within the meaning of Article 35 § 3 of the Convention. No other ground for declaring it inadmissible has been established.

4. 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."

The Court considers that this complaint is linked to the complaints examined under p. 2 and 3 above. It should therefore also be declared admissible.

It follows that it must be rejected in accordance with Article 35 §§ 3 and 4 of the Convention.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits.

Erik FRIBERGH
Registrar

András BAKA
President