CONSEIL DE L'EUROPE

COUNCIL OF EUROPE

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

FIRST SECTION

DECISION

AS TO THE ADMISSIBILITY OF

Application no. 944/02
by Nadezhda Petrovna LEVOCHKINA
against Russia

The European Court of Human Rights (First Section), sitting on 17 November 2005 as a Chamber composed of:

Mr C.L. ROZAKIS, *President*,
Mrs S. BOTOUCHAROVA,
Mr A. KOVLER,
Mrs E. STEINER,
Mr K. HAJIYEV,
Mr D. SPIELMANN,
Mr S.E. JEBENS, *judges*,
and Mr S. NIELSEN, *Section Registrar*,

Having regard to the above application lodged on 4 July 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, Mrs Nadezhda Petrovna Levochkina, is a Russian national who was born in 1941 and lives in Novosibirsk. The respondent Government are represented by Mr P. A. Laptev, Representative of the Russian Federation at the European Court of Human Rights.

A. The circumstances of the case

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

The applicant receives an old-age pension. The Law on Calculating and Upgrading State Pensions of 21 July 1997 introduced, since 1 February 1998, a new method for calculating pensions. This method, "Individual Pensioner Coefficient" ("IPC"), was meant to link the pensioner's pension to his or her work-life earnings.

The authority in charge of the applicant's pension, the Pension Fund Agency of the Kirovskiy District of Novosibirsk, fixed the applicant's IPC at 0.525. The applicant challenged the agency's decision in the Kirovskiy District Court of Novosibirsk. She argued in her application to the court of 5 July 1999 that the agency had misread the law, and that her IPC should be 0.7. She further claimed that the calculation of her pension should also be based on a statutory coefficient linked to a region of her residence ("Regional Coefficient" or "RC"), in which case the amount of her pension should be higher.

On 31 August 1999, the District Court held for the applicant with regard to the IPC. It found that the agency had misread the law, and that the IPC should be 0.7 since 1 February 1998. It dismissed the remaining part of the applicant's claims concerning RC. The applicant, who had been served a copy of the reasoned judgment on 6 September 1999, appealed against the judgment. She requested to quash it in a part by which her claim concerning RC was rejected.

On 7 October 1999 the Novosibirsk Regional Court upheld the judgment, which came into force on the same day.

Since the agency had failed to pay the applicant's pension in the amount prescribed by the judgment, she brought new proceedings against it claiming pension arrears, index-linking of the pension in line with inflation and other damages. On 17 March 2000 the Kirovskiy District Court of Novosibirsk granted the applicant's claims in a part concerning pension arrears and index-linking of the pension. On 27 March 2000 the applicant was served a copy of the judgment. On 25 April 2000 that judgment was upheld on appeal by the Novosibirsk Regional Court with some corrections as to the sums awarded. No execution of the judgment followed.

On 29 December 1999 the Ministry of Labour and Social Development ("the Ministry") 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.

On 23 August 2000 the agency lodged an application with the District Court for the review of the applicant's case due to newly-discovered circumstances. It asserted that the Ministry's interpretation of the law on

pensions in its instruction of 29 December 1999, of which the agency learned in January 2000, had differed from the court's findings.

On 16 January 2001 the District Court granted the agency's application, quashed the judgment of 31 August 1999, as upheld on 7 October 1999, and ordered a fresh examination of the case. It stated that the decision was not subject to appeal. The court considered that the Ministry's instruction and the decision of the Supreme Court of 24 April 2000 as upheld on 25 May 2000, by which the instruction was found lawful, were newly discovered circumstances.

A fresh examination of the case resulted in a judgment of 31 January 2001 by which the District Court rejected the applicant's claims concerning both IPC and RC. The applicant appealed on the grounds *inter alia* that there had been no grounds for reopening the case and quashing the judgment of 31 August 1999. On 13 March 2001 the Novosibirsk Regional Court dismissed the applicant's appeal and upheld the judgment of 31 January 2001 which, it noted, rightly took into account the Ministry's instruction of 29 December 1999.

B. Relevant domestic law

The Code of Civil Procedure of 1964 ("CCivP") in force at the material time provided as follows:

Article 333. Grounds for re-consideration

"[Judgments] which have come into force may be re-considered on the basis of newly-discovered circumstances. The grounds for re-consideration ... shall be:

1. significant circumstances which were not and could not have been known to the party who applies for re-consideration;...

4. cancellation of a court [judgment] or of another authority's decision which served as legal basis for the [judgment] in question."

Article 334. Making of application

"... [An application for re-consideration of a [judgment] due to discovery of new circumstances] is to be made within three months after the discovery of the circumstances."

Article 337. Court decision for re-consideration of the case

"After examination of an application for re-consideration of a [judgment] due to discovery of new circumstances the court either grant the application and quash the [judgment], or reject the application.

The court decision by which the application for re-consideration of a [judgment] due to discovery of new circumstances is granted is not subject to appeal. ..."

On 24 April 2000 the Supreme Court of the Russian Federation dismissed a complaint lodged by a number of individuals against the

Instruction of the Ministry of Labour and Social Development of 29 December 1999 on the Application of Limitations Established by the Law on Calculating and Upgrading State Pensions. The Supreme Court found that, contrary to the complaint, the Ministry of Labour had not exceeded its authority when it issued the Instruction, and that the Ministry's interpretation of the Pensions Law had been correct. On 25 May 2000 the Cassation Section of the Supreme Court upheld this judgment on appeal.

The judgment of the Constitutional Court of 14 January 1999 read:

> "If a law is found unconstitutional, judgments may be reconsidered ... both in supervisory-review proceedings and due to newly discovered circumstances."

COMPLAINTS

1. The applicant complained under Articles 6 § 1 and 13 of the Convention that the final judgment of 31 August 1999, as upheld on 7 October 1999, in her favour had been quashed and that her case had been reopened and eventually dismissed after a fresh examination. The ministerial instruction which had come into force after the judgment and the ensuing decisions of the Supreme Court, by which it was found lawful, were not newly discovered circumstances and they should not have served a ground for the quashing of the judgment. The agency's request for reopening the case was time barred. She further complained under Article 1 of Protocol No. 1 that as a result of such unlawful interference with her right to pension she was deprived of a part of her pension.

2. The applicant also complained under the same Convention provisions that it took the first instance court about two months until 31 August 1999 to examine her application, while it should have done so within ten days, as was provided for by the Code of Civil Procedure. The Novosibirsk Regional Court had also failed to comply with statutory time limits for examination of appeals. She received a copy of the judgments of 31 August 1999 and 17 March 2000 six and ten days after their adoption in breach of the statutory three days time limit. The judgment of 31 August 1999 failed to specify the term of its execution and the judgment of 17 March 2000 failed to indicate the defendant's bank details.

THE LAW

1. The applicant complained under Articles 6 § 1 and 13 of the Convention and Article 1 of Protocol No. 1 that the State had reconsidered a favourable final judgment, which came into force on 7 October 1999, on the

basis of the Instruction of the Ministry of Labour and Social Development of 29 December 1999.

The Court considers that this complaint falls to be examined under Article 6 § 1 of the Convention and Article 1 of Protocol No. 1 (see *Pravednaya v. Russia*, no. 69529/01, §§ 19 and 35, 18 November 2004).

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 argued that this complaint should be rejected as manifestly ill-founded for the following reasons. First, when reopening the case the district court was governed by the Instruction of the Ministry of Labour and Social Development of 29 December 1999 on the Application of Limitations Established by the Law on Calculating and Upgrading State Pensions which clarified the enforcement of the said law. By the decision of the Supreme Court of Russia of 24 April 2000, which was upheld by the Presidium of the Supreme Court on 3 August 2000, that instruction was found consistent with the federal legislation. Second, since the agency had learned about the instruction only after the litigation, the court had good reason to reopen the case by virtue of Article 333 of the Code of Civil Procedure. Third, the Constitutional Court, in its decision of 14 January 1999, held that court judgments can be reopened where relevant provisions of law have been found unconstitutional. Therefore, the quashing of the judgment, by which the applicant's claim had been granted, due to newly discovered circumstances did not violate Article 6 § 1 of the Convention and Article 1 of Protocol No. 1.

The applicant maintained her complaint. There were no lawful grounds for quashing the judgment of 31 August 1999, as upheld on 7 October 1999. The pensions law underlying the judgment had not changed and the Ministry of Labour and the Supreme Court could not replace the law by their decisions. Furthermore, the agency had missed the time-limit for the reopening of the case: it applied to the court on 23 August 2000, more than eleven months after it had learned about the instruction, instead of three months as the Code of Civil Procedure, notably its Article 334, required. The applicant concluded that there have been violations of Article 6 § 1 and Article 1 of Protocol No. 1 in her case.

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 Court has examined the remainder of the applicant's complaints as submitted by her. However, having regard to all material in its possession, the Court finds that these complaints do not disclose any appearance of a violation of the rights and freedoms set out in the Convention or its Protocols. It follows that this part of the application must be rejected as being manifestly ill-founded, pursuant to Article 35 §§ 3 and 4 of the Convention.

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 the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President