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. 852/02
by Zoya Valeriyanovna SMIRNITSKAYA and Others
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 6 July 2001,

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

Having deliberated, decides as follows:

THE FACTS

The applicants, Mrs Zoya Valeriyanovna Smirnitskaya, Mrs Stolyarova Yelena Fedorovna and Mr Stolyarov Albert Semenovich, are Russian nationals who were born in 1925, 1933 and 1928 respectively and live in Novosibirsk. They are represented before the Court by Mr I. V. Novikov, a lawyer practising 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 applicants receive old-age pensions. 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 applicants' pensions, the Pension Fund Agency of the Zheleznodorozhniy District of Novosibirsk, fixed the applicants' IPC at 0.525. On 19 March 1999 the applicants challenged the agency's decision in the Zheleznodorozhniy District Court of Novosibirsk. They argued that the agency had misread the law, and that their IPC should be 0.7. They further claimed that the calculation of their pensions should also be based on a statutory coefficient linked to a region of their residence ("Regional Coefficient" or "RC"), in which case their pensions should be higher.

On 13 August 1999, the District Court held for the applicants. As regards IPC it found that the agency had misread the law, and that the IPC should be 0.7 since 1 February 1998.

The agency appealed against the judgment.

On 19 October 1999 the Novosibirsk Regional Court upheld the judgment in so far as it concerned IPC and quashed it in the remaining part concerning the applicants' claim in relation to RC which, it found on the basis of the relevant pension law, should be rejected. The judgment as upheld by the Regional Court came into force on the same day.

Enforcement proceedings were instituted on 25 October 1999.

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 30 August 2000 the agency lodged an application with the District Court for the review of the applicants' case due to newly-discovered circumstances.

On 7 February 2001 the District Court granted the agency's application under Articles 333 and 337 of the Code of Civil Procedure and quashed the judgment of 13 August 1999, as upheld on 19 October 1999. It found that the Ministry's Instruction of 29 December 1999, which had been found lawful by a decision of 24 April 2000 of the Supreme Court as upheld on appeal on 25 May 2000, was a substantial newly discovered circumstance. The court noted that the agency's application was not time barred.

A fresh examination of the case resulted in a judgment of 27 February 2001 by which the District Court relied on the Ministry's Instruction of

29 December 1999 and rejected the applicants' claims. On 7 March 2001 the applicants appealed. On 21 June 2001 the Novosibirsk Regional Court dismissed the appeal and upheld the judgment of 27 February 2001.

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 applicants complained under Articles 6 § 1 and 13 of the Convention that the final judgment of 13 August 1999, as upheld on 19 October 1999, in their favour had been quashed and that their case had been reopened and eventually dismissed after a fresh examination. The judgment was, thus, never executed and that entailed an interference with their right to pension in the amount established by the law. The ministerial instruction which had come into force after the judgment was not a newly discovered circumstance and it should not have served a ground for the quashing of the judgment. The agency's request for reopening was time barred.

2. They also complained under the same Convention provisions that the first instance court had examined their applications of 19 March 1999 on 13 August 1999 while it should have done so within ten days, as was provided for by Article 238 of the Code of Civil Procedure. The Novosibirsk Regional Court had also failed to comply with statutory time limits for examination of appeals and its findings in the decision of 19 October 1999 in relation to the claim concerning RC had been unclear. The judgment of 27 February 2001 should have been based on the pensions law and not the instruction of 29 December 1997 which ran counter to that law.

THE LAW

1. The applicants complained under Articles 6 § 1 and 13 of the Convention that the State had reconsidered a favourable final judgment, which came into force on 19 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 applicants' 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 applicants maintained their complaint. First, the instruction should not have been considered a newly discovered circumstance because it was issued after the judgment had come into force. It should not have been backdated. Second, the agency missed the time-limit for the reopening of the case: it applied to the court in August 2000, more than seven months after the instruction had been registered with the Ministry of Justice on 31 December 1999, instead of three months as the Code of Civil Procedure, notably its Article 334, required. Third, the Constitutional Court's opinion was irrelevant, because it only concerned the reopening of judgments due to a law's unconstitutionality and the pensions law was never declared unconstitutional.

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 applicants' complaints as submitted by them. 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 applicants' complaint that the final judgment in their favour was reconsidered;

Declares the remainder of the application inadmissible.

Søren NIELSEN
Registrar

Christos ROZAKIS
President