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. 560/02
by Nikolay Vasilyevich ZHUKOV
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 28 November 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, Mr Nikolay Vasilyevich Zhukov, is a Russian national who was born in 1928 and lives in Novosibirsk. He is 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 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 Sovetskiy District of Novosibirsk, fixed the applicant's IPC at 0.525. The applicant challenged the agency's decision in the Sovetskiy District Court of Novosibirsk. He argued that the agency had misread the law, and that his IPC should be 0.7. He further claimed that the calculation of his pension should also be based on a statutory coefficient linked to a region of his residence ("Regional Coefficient" or "RC"), in which case the amount of his pension should be higher.

On 26 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 agency and the applicant appealed against the judgment. The applicant requested to quash the judgment in a part by which his claim concerning RC was rejected.

On 11 November 1999 the Novosibirsk Regional Court upheld the judgment, which came into force on the same day. It was not executed.

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.

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 had differed from the court's findings. It pointed out that the Ministry was empowered to give official interpretation of laws.

On 6 June 2001 the District Court examined the agency's request. The agency further submitted at a hearing that the Instruction of 29 December 1999 had been challenged in the Supreme Court which, by its decision of 24 April 2000, upheld it. The applicant argued that the Instruction could not be considered a newly-discovered circumstance and that the agency had missed a statutory time limit for requesting the review of the case. The court noted that the Ministry's Instruction was issued after the judgment in the case had come into force. It considered that the official interpretation of the law on pensions of 21 July 1997 by the Ministry's Instruction and the

ensuing decision of the Supreme Court were newly discovered circumstances. It noted that the agency's application had reached the court on 24 January 2000 and, therefore, it was not time barred.

By the decision of 6 June 2001 the District Court granted, under Article 337 of the Code of Civil Procedure, the agency's application, quashed the judgment of 26 August 1999, as upheld on 11 November 1999, and ordered a fresh examination of the case. It stated that the decision was final and not subject to appeal.

A fresh examination of the case resulted in a judgment of 21 June 2001 by which the District Court relied on the Ministry's Instruction of 29 December 1999 and rejected the applicant's claims concerning both IPC and RC. The applicant appealed on the grounds *inter alia* that the court had unlawfully reopened the case and quashed the judgment of 26 August 1999. On 11 September 2001 the Novosibirsk Regional Court dismissed the applicant's appeal and upheld the judgment of 21 June 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

The applicant complained under Articles 6 § 1 and 13 of the Convention that the final judgment of 26 August 1999, as upheld on 11 November 1999, in his favour had been quashed and that his case had been reopened and eventually dismissed after a fresh examination. The judgment was, thus, never executed and that entailed an interference with his 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 LAW

The applicant complained under Articles 6 § 1 and 13 of the Convention that the State had reconsidered a favourable final judgment, which came into force on 11 November 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 his complaint. First, the instruction should not have been considered a newly discovered circumstance because it was issued after the judgment had come into force. The instruction was registered with the Ministry of Justice on 31 December 1999 and published on 2 February 2000. 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 May 2001, sixteen months after it had learned about the instruction, 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.

For these reasons, the Court unanimously

Declares the application admissible, without prejudging the merits of the case.

Søren NIELSEN
Registrar

Christos ROZAKIS
President