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SECRETARIAT OF THE COMMITTEE OF MINISTERS
SECRETARIAT DU COMITE DES MINISTRES



Contact: Abel Campos
Tel: 03 88 41 26 48

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Documents distributed at the request of a Representative shall be under the sole responsibility of the said Representative, without prejudice to the legal or political position of the Committee of Ministers.

Meeting: 1164 DH meeting (5-7 March 2013)

Item reference: Communication from a NGO (Moscow Helsinki Group) (07/01/13) in the case of Senchenko and others and 35 other cases against Russian Federation (Application No. 32865/06).

Information made available under Rule 9.2 of the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements.

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Les documents distribués à la demande d'un/e Représentant/e le sont sous la seule responsabilité dudit/de ladite Représentant/e, sans préjuger de la position juridique ou politique du Comité des Ministres.

Réunion : 1164 réunion DH (5-7 mars 2013)

Référence du point : Communication d'une ONG (Moscow Helsinki Group) (07/01/13) dans l'affaire Senchenko et autres et 35 autres affaires contre Fédération de Russie (Requête n° 32865/06) (**anglais uniquement**)

Informations mises à disposition en vertu de la Règle 9.2 des Règles du Comité des Ministres pour la surveillance de l'exécution des arrêts et des termes des règlements amiables.

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МОСКОВСКАЯ ХЕЛЬСИНКСКАЯ ГРУППА
123056, Москва, пер. Красина, д. 15, стр. 1, офис 1

+7 (499) 553-03-12
mhg@mhg.ru
http://www.mhg.ru

MOSCOW HELSINKI GROUP
of. 1, 15-1, per. Krasna, Moscow 123056, Russian Federation

ООО «Московская группа содействия выполнению Хельсинкских соглашений». Основана 12 мая 1976 года.

Людмила Алексеева (председатель), Валерий Абракин, Борис Альтшулер, Вячеслав Бахмин, Валерий Борцов, Иосиф Дядкин, Алексей Головань, Борис Золотухин, Сергей Ковалев, Сергей Кривенко, Виктория Маликова, Даниил Мещеряков, Владимир Мионов, Каринна Москаленко, Сергей Пашин, Александр Петров, Мара Полякова, Лев Пономарев, Генри Резник, Алексей Симонов, Сергей Сорокин, Лилия Шибанова, Георгий Эдельштейн, Глеб Якунин

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07 JAN. 2013

SERVICE DE L'EXECUTION
DES ARRETS DE LA CEDH

To the Committee of Ministers of the Council of Europe

Memorandum of the Moscow Helsinki Group concerning the failure of the Russian Federation to observe the European Court of Human Rights (ECHR) judgment in the case “ ‘Senchenko and Others’ and 35 other ‘Yakut pensioners’ cases vs. Russia” (“Senchenko and Others...”) with regard to the adoption of general measures.

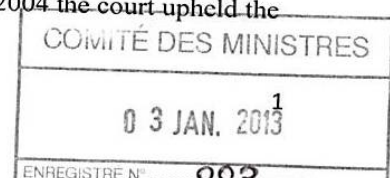
Dear Sirs and Madams,

The Moscow Helsinki Group is the oldest contemporary human rights organization in Russia. One of our main missions is to assist in the protection of basic human rights and freedoms, including the Right to a Fair Trial, as stipulated by national laws and international standards.

Maslikov A.T., Maslikova L.P., Zubarev V.I. and Ergakova L.M. (“The Applicants”) are pensioners and citizens of Krasnoyarsk territory who contacted us for help.

The Applicants worked on the construction of the South-Yakut coal station in the town of Neryungri. Their salary was calculated with the coefficient 1.7. Following their retirement, their pensions should also have been calculated with this coefficient, however they were calculated with the coefficient 1.4 instead.

The Applicants appealed to the Ermakovsky district court to raise the coefficient and on the 26th December 2003 the court satisfied their appeal. On the 7th April 2004 the court upheld the judgment and it came into force.



But then, on the 20th December 2005, the Presidium of the Krasnoyarsk territorial court quashed the judgments of the Ermakovsky district court and put the case under review. On the 26th January 2006, the Ermakovsky district court refused the claims of the applicants.

We recommended that the Applicants appeal to the court as a matter of special procedure, in order to establish the facts of legal importance, in particular the fact that they are in exactly the same situation as those in the case of “Senchenko and Others...”, on which the ECHR has already ruled.

Thus, on the 28th May 2009, the judgment of the ECHR satisfied the claims of 90 pensioners from the Yakut town of Neryungri, as per the case of “Senchenko and Others...”. In this case, Senchenko and Others worked in the Yakut region and their dispute also concerned the lowering of their pension coefficient from 1.7 to 1.4, which was established by the reviewing institution. They appealed to the ECHR claiming the violation of Articles 6 and 13 of the European Convention as well as Article 1 of Protocol 1. ECHR admitted the violation and decided that Russia should pay each applicant within three months of the date on which the judgment was finalized (in accordance with Article 44 § 2 of the Convention) EUR 2,000 plus any tax that may be chargeable, in respect of pecuniary damage, nonpecuniary damage, and costs and expenses.

Despite the fact that the Applicants were in exactly the same situation as those in the case of “Senchenko and Others...” as considered by the ECHR, the Russian court declined the claim. In fact, the Russian court eliminated the possibility of appealing the courts’ decision.

First of all we would like to note that the unwillingness of Russian judiciaries to consider the judgments brought into force by the ECHR is nothing more than “legal nihilism” in relation to their international obligations. All other negative consequences for The Applicants aside, this leads to the overflow of cases which have been misdirected to the European Court and the creation of the notorious “back-log”.

There is one more circumstance to which we would like to draw your attention. In the Russian Federation there is still no official body responsible for the translation of the judgments of the ECHR, which are produced in either English or French. These translations are made by different organizations which, as a rule, conducted the case itself. In this regard, it is possible

that in the translations, prepositional phrasing may not be translated fully, or that something which the translator considers unimportant may not be translated at all. For example, in the judgment “Senchenko and Others...”, it was not translated that the claimants did not work in the Yakut region in general, but specifically in Neryungri, which in our opinion makes the situation of The Applicants even more similar that of the claimants in this ECHR case. Furthermore, Russian judiciaries should not ignore the institute of analogy in civil procedural law, particularly the process of application to public relations which must be legally regulated. These rules are not expressly provided by the laws which regulate similar legal relationships (analogy of the law) or the general basic principles of justice in civil cases (analogy of the right).

In its Decree dated the 26th February 2010 N 4-Ĭ, in the case of the examination of the constitutionality of Part 2 of Article 392 of the Civil Procedural Code, the Constitutional Court states that the principles of legal equality regarding the realization of the right to judiciary protection (Parts 1-2 of the Article 19, Part 1 of the Article 46 and Part 3 of the Article 123 of the Constitution of the Russian Federation) lead to the requirement for all relations which are homogeneous in their legal nature to be regulated in the same way.

The observance of the constitutional principles of equality, which guarantees the protection from discrimination during the implementation of rights and freedoms, means, among other things, that the prohibition of such restrictions to a person's rights (belonging to one category) does not have an objective and logical explanation – that is, the prohibition of treating people who are in the same situation differently. Any kind of differentiation leading to inequality in citizens' rights in any sphere of legal regulation has to meet the requirements of the Constitution of the Russian Federation, according to which such a differentiation is only admissible if it is objectively justified, proved and pursues constitutionally significant aims.

The decision on the possibility to revise the appealed judicial act has to be taken by the court of appeal, recognizing the comprehensive and complete examination of the arguments of the claimant and the circumstances of the case itself.

The same Decree of the Constitutional court declared that the judgments of the ECHR are obligatory for the Russian Federation. The State has not only to pay all compensational payments to the claimant whose rights were recognized as violated, but also to ensure, as far as

possible, the complete restoration of the violated rights, including the rights of other people in the same situation as the claimant.

By ratifying the European Convention on human rights, the Russian Federation has undertaken the responsibility not only to make personal considerations (that is to restore the violated right of the claimant), but also, and this is no less important, to take general measures. This task is the most difficult but also the most important because these measures are essential for preventing the emergence of an identical situation, leading to the identical violation of human rights in the future. That is, general measures must prevent future human rights violations of this type.

According to the statistics of the ECHR, Russia is the leader in the quantity of applications submitted.

The majority of these applications contain identical claims and bears witness to the unsatisfactory implementation of law in the country, in the sphere of human rights.

As for Russia, the implementation of general measures has already been recognized as unsatisfactory.

And the present case only confirms the presence of this systematic problem.

Taking all of this into account, we kindly ask you to once more draw the attention of the authorities of the Russian Federation to the problem of the failure to observe such general measures because, judging by the situation presented in this memorandum, it is leading to discrimination and the violation of human rights.

Yours Sincerely,

Alexeeva L.M. MHC Chair

