

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 23 May 1995 No. 6-II

in the case concerning the review of the constitutionality of Articles 2¹ and 16 of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” of 18 October 1991 (as amended on 3 September 1993) in connection with complaints of Z. V. Aleshnikova.

Moscow, 23 May 1995

The Constitutional Court of the Russian Federation composed of Presiding Judge G. A. Gadzhiev and Judges A. L. Kononov, T. G. Morshchakova, Yu. D. Rudkin, N. V. Seleznev, O. I. Tiunov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of Z. V. Aleshnikova, who submitted her complaint to the Constitutional Court of the Russian Federation; Representative of the State Duma of Federal Assembly of the Russian Federation L. N. Zavadsкая; the invited representatives A. T. Kopylov for the Commission on Human Rights at the President of the Russian Federation; A. S. Novikov for the Commission on Rehabilitation of Victims of Political Repressions at the President of the Russian Federation; G. F. Vesnovskaya for Office of the Prosecutor General of the Russian Federation; V. A. Shalaev for Ministry of Finance of the Russian Federation;

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3 of Article 3, Subsection 3, Section 2 of Article 22, Article 36, Sections 1, 2, and 3 of Article 74, Section 1 of Article 96, Articles 97 and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Articles 2¹ and 16 of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” of 18 October 1991 (as amended on 3 September 1993).

The reason for the consideration of the case is a complaint of Z. V. Aleshnikova against violation of her constitutional rights by Articles 2¹ and 16 of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions”.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions of Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” are in conformity with the citizens’ constitutional rights and freedoms.

Having heard the report of Judge-Rapporteur V. G. Yaroslavtsev, statements by the parties, testimony of a witness, an expert opinion, interventions by the invited representatives; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

e s t a b l i s h e d :

1. The applicant Z. V. Aleshnikova, born in 1931, lived with her parents in the Stalingrad Region until 1942 when her parents were administratively repressed for the second time as socially dangerous persons. As a result, she and her family were forcibly removed from their place of residence.

In 1993, Z. V. Aleshnikova's parents were rehabilitated by the Internal Affairs Department of the Volgograd Region under Section "c", Article 3 of the Law of the RSFSR "On Rehabilitation of the Victims of Political Repressions", and she was recognized as a person aggrieved by political repressions, under Article 2¹.1.1 of the said Law.

Z. V. Aleshnikova, who believed herself to be a repressed person, requested social security authorities and the Ministry of Justice of the Russian Federation to recognize her as an unjustifiably repressed person and provide her with all compensations prescribed for this category of persons by Article 16 of the Law of the RSFSR "On Rehabilitation of the Victims of Political Repressions" and Article 110 of the Law of the RSFSR "On State Pensions in the RSFSR". Her request was denied on the ground that by the time the repressive measures stopped being applied to her parents she had not attained the age of sixteen. According to the legislation in force at that time this was the minimal age for the abovementioned political repressions to be applied. The Leningrad District People's Court of Kaliningrad, too, rejected her action against violation of her constitutional rights by the application of Articles 2¹ and 16 of the Law of the RSFSR "On Rehabilitation of the Victims of Political Repressions".

2. The applicant complained to the Constitutional Court of the Russian Federation requesting to recognize the whole Article 2¹ of the Law of the RSFSR "On Rehabilitation of the Victims of Political Repressions" as unconstitutional. However, this Article cannot be a subject of review as a whole since the only provision applied in the applicant's case was Paragraph 1, Section 1 of this Article concerning recognition of children who accompanied their parents in detention facilities, exile, banishment and special settlements as persons aggrieved by political repressions.

Under Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the complaint is inadmissible to the extent that it relates to other provisions

of Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” and cannot be considered in the present case.

Section 3, Article 16 of the said Law, which is also referred to in the complaint, has no significance of its own in the present case since it only refers to provisions of the Article 2¹ and concerns all victims of political repressions listed in it.

3. The purpose of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions”, as is stated in its preamble, is rehabilitation of all victims of political repressions, restoration of their civil rights, elimination of other consequences of arbitrariness, and undertaking to compensate damages and psychological distress as far as possible at the present time.

Recognition of children who accompanied their parents in detention facilities, exile, banishment and special settlements not as repressed persons, but as persons aggrieved by political repressions under Section 1, Article 2¹ of the said Law does not serve this purpose since it restricts the possibility of rehabilitation of such persons, creates a legal status different from those who are rehabilitated, and in particular lessens the amount of prescribed compensations.

The legislation in force during the period of repressions did not formally require decisions applying repressive measures against children under the age of sixteen. However, these children were indeed repressed and *de facto* subjected to coercive measures. The mere fact that they did not attain the age necessary to be *de jure* liable by the moment their parents were unjustifiably repressed is of no importance for the determination of their legal status and cannot be a ground for the restriction of their rights and freedoms in the rehabilitation process. Such children who were forcibly or involuntarily placed in detention facilities, exile, banishment, special settlements, i.e. under conditions of obvious deprivation of rights and freedoms, must be recognized as repressed on political grounds under Article 1 of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” with all the relevant legal consequences.

4. The restrictions contained in Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” are aggravated by the enforcement authorities. The Office of the Prosecutor General of the Russian Federation and Ministry of Internal Affairs of the Russian Federation in their internal regulations rely on the legislation which was in force at the time of repressions and take into account only the existence of documentary evidence of repressions applied. It is expressly specified that children who were younger than sixteen or were not registered in special regime settlements with their parents cannot be regarded repressed. A similar rule can be found in Article 1 of the Regulation on Procedure of Granting Benefits to Rehabilitated Persons and Persons Aggrieved by Political

Repressions, adopted by Decree of the Government of the Russian Federation No. 419 of 3 May 1994.

Such interpretation of the statutory provision in fact results in age discrimination of the victims of political repressions since it deliberately deprives a specific category of persons of the right to rehabilitation.

5. Thus, the provisions of Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” in their essence and within the meaning they acquired in practice unreasonably and unjustly differentiate (*inter alia* in relation to age) between a certain category of citizens who are recognized as persons aggrieved by political repressions and others, who were unjustifiably repressed, although the same repressive measures were applied to all of them on political grounds.

The provisions of Section 1, Article 2¹ of the said Law, which stipulate that children who accompanied their parents in detention facilities, exile, banishment, and special settlements are recognized merely as persons aggrieved by political repressions contradict Section 1 of Article 19 of the Constitution of the Russian Federation guaranteeing equality of all before the law and court. Also, they contradict Section 1, Article 46 and Article 52 of the Constitution of the Russian Federation by failing to equally protect the rights of recognized victims of political repressions and others, who suffered from abuse of state power; limiting their access to court and compensation for damages.

The provisions of Paragraph 1, Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of Victims of Political Repressions” cannot be a basis for age or other kind of discrimination in case of citizens who suffered from political repressions. Neither can they be a basis for denial of access to court and failure to recognize their status as unjustifiably repressed persons on the grounds and according to the rules of Articles 1 and 7 of the said Law.

These conclusions are re-affirmed by the requirements of Article 26 of the International Covenant on Civil and Political Rights, which establishes that all persons are equal before the law and are entitled without any discrimination to equal protection of the law. According to the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power adopted by the UN General Assembly on 25 November 1985, the term “victims” also means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.

Concluding from the above and pursuant to Section 1, Article 71, Articles 72, 74, 75, Section 2 of Article 86, and Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation

h e l d :

1. To recognize the provisions of Paragraph 1, Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” of 18 October 18 1991 (as amended on 3 September 1993), which consider children who accompanied their parents in detention facilities, exile, banishment, special settlements as persons aggrieved by political repressions instead of repressed persons, inconsistent with Section 1, Article 19 and Article 52 of the Constitution of the Russian Federation.

2. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the case of Z. V. Aleshnikova decided on the basis of the provisions in Paragraph 1, Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions”, which are recognized as unconstitutional by this Judgment, is to be reconsidered by competent authorities according to the established procedure.

3. Pursuant to Section 2, Article 87 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment is a ground for the repeal, according to the established procedure, of all the provisions of the normative acts based on the unconstitutional provision of Paragraph 1, Section 1, Article 2¹ of the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions”, replicating it, or containing similar norms. The provisions of such acts shall not be applied by courts or any other authorities or officials.

4. The Federal Assembly of the Russian Federation shall amend the Law of the RSFSR “On Rehabilitation of the Victims of Political Repressions” in order to restore the rights of children referred to in Section 1, Article 2¹ of the said Law to the maximum extent by eliminating the inconsistencies and discriminatory provisions which were not subject of review in the present case.

5. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be final and shall not be subject to any appeal, it shall come into force immediately upon pronouncement, and shall be directly applicable.

6. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be published in the Collection of Laws of the

Russian Federation and *Rossiyskaya Gazeta*. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

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