

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment

of 16 October 1995 No. 11-II

in the case concerning the review of the constitutionality of Article 124 of the Law of the Russian Soviet Federal Socialist Republic of 20 November 1990 “On State Pensions in the RSFSR”, in connection with complaints of G. G. Arderikhin, N. G. Popkov, G. A. Bobyrev, and N. V. Kotsubka.

Moscow, 16 October 1995

The Constitutional Court of the Russian Federation composed of Presiding Judge Yu. M. Danilov and Judges N. T. Vedernikov, V. D. Zorkin, V. O. Luchin, V. G. Strekozov, V. A. Tumanov, O. S. Khokhryakova,

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, Articles 36, 96, 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 Article 124 of the Law of the Russian Soviet Federal Socialist Republic “On State Pensions in the RSFSR” of 20 November 1990.

The reason for the consideration of the case is complaints of G. G. Arderikhin, N. G. Popkov, G. A. Bobyrev, N. V. Kotsubka about violation of their constitutional rights to pension security by the provisions of Article 124 of the Law of the Russian Soviet Federal Socialist Republic “On State Pensions in the RSFSR”, of 20 November 1990, as applied in their cases by the social security authorities.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions of Article 124 of the specified law are in conformity with the Constitution of the Russian Federation to the extent that they provide for suspension of the payment of the labor pension for a period of the pensioner’s imprisonment following a court’s sentence.

Having heard the report of Judge-Rapporteur O. S. Khokhryakova, the parties’ statements, the expert opinions of Yu. I. Kalinin, Head of the Central Department of Execution of Punishments of the Ministry of the Interior of the Russian Federation; Yu. V. Voronin, Director, Department of Pension Security of the Ministry of Social Security of the People of the

Russian Federation; expert opinion of M. L. Zakharov, and interventions by E. Ya. Vasilyev, Representative of the Pension Fund of the Russian Federation, and A. I. Dovgiallo, Deputy Chairman of the Committee on Social Policy of the Council of the Federation of the Federal Assembly of the Russian Federation; 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. G. G. Arderikhin received a third-degree disability pension due to injuries caused to him during military service. Later, when G. G. Arderikhin was convicted to serve a prison term, the payment of the pension was suspended. G. G. Arderikhin, who believed that his right to receive a pension was violated, complained to the Ministry of Social Security of the Population of the Russian Federation and other authorities, and lodged a lawsuit in court; however, both his complaints and the lawsuit were rejected with reference to Article 124 of the Law of the Russian Soviet Federal Socialist Republic “On State Pensions in the RSFSR”, of 20 November 1990, which prescribes the payment of the pension to be suspended for the period of imprisonment.

G. G. Arderikhin filed a complaint with the Constitutional Court of the Russian Federation challenging the constitutionality of that statutory provision, because in his opinion it contradicts Article 39 (Sections 1 and 2) of the Constitution of the Russian Federation.

Similar complaints were filed with the Constitutional Court of the Russian Federation by N. G. Popkov, G. A. Bobyrev, N. V. Kotsubka, who were also denied payment of previously payable old-age pensions on the basis of Article 124 of the Law of the Russian Soviet Federal Socialist Republic “On State Pensions in the RSFSR” for the duration of imprisonment.

Insofar as all the complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

2. Article 124 of the Law of the Russian Soviet Federal Socialist Republic “On State Pensions in the RSFSR” provides for suspension of payment of the awarded pension for the period of the pensioner’s imprisonment following a court-imposed sentence. Both the interpretation of this norm and its enforcement practice demonstrate that in fact the pension which the person received prior to conviction was neither entered in the payroll nor paid. Such suspension of pension payments in its nature and legal effect equals deprivation of the right to a pension for the definite period of time triggered by imprisonment under a court-imposed sentence and placement of the pensioner in a penitentiary facility.

3. The Constitution of the Russian Federation guarantees everybody's social security on the ground of age, illness, disability, loss of a provider, child-raising and in other cases provided by law (Section 1, Article 39). One of the most significant elements of social security is the pension, hence, the constitutional right to social security of every individual as a member of society includes his right to receive a pension within the limits and on the grounds prescribed by law.

The citizen's right to a pension directly depends on his labor or other activities for the common good, its scope and nature. Labor and its esteem by society determine the differences in the conditions and rules of pension payments. This idea is reflected in the classification of all pensions into two categories: labor pensions (old-age, disability, survivor's pension, service and superannuate pensions) and social pensions, which are awarded to the elderly and disabled citizens in cases when they are not entitled to a labor pension with the aim to provide them with minimal subsistence.

The differences in the legal nature and essence of the specified categories of pensions also call for divergences in the State's obligations as regards those entitled to such pensions.

4. Labor pensions are granted in relation to labor or other activity recognized by the legislator as serving the common benefit. Working citizens including those in penitentiary facilities contribute to the system of mandatory pension deductions to the Pension Fund of the Russian Federation by transferring a part of their income to funds deemed for labor pension payments. Thus, these pensions are well deserved and acquired through previous labor, service, or performance of certain socially beneficial duties.

Suspension of labor pension payments for the period of detention in a penitentiary facility is a restriction of the constitutional right to social security. Such restriction in accordance with Article 55 (Section 3) of the Constitution of the Russian Federation may be imposed by a federal law only to the extent necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defense of the country and security of the State. The provisions of Article 124 of the Law of the Russian Soviet Federal Socialist Republic "On State Pensions in the RSFSR" restricting the payment of labor pensions do not meet these requirements.

Suspension of labor pension payments deprives the pensioner of the possibility to receive its share, which exceeds the costs of his living in a penitentiary facility, and thus becomes a supplementary punishment. Besides, it also limits the rights of the pensioner's dependants.

Article 39 (Section 1) of the Constitution of the Russian Federation does not allow a situation where members of society incapable of labor are left without assistance, *inter alia* in case of the provider's imprisonment. However, as a result of prohibition to pay the pension to the

imprisoned pensioner set forth by Article 124 of the Law in question and due to absence in a legislation of any rule to pay his dependants a part of the pension due to them, the pensioner's dependants lose this source of subsistence. Thus, a special legal regime is established for the dependants of imprisoned pensioners differentiating them from dependants of all other categories of pensioners. Such regime violates the principle of equality of the rights and freedoms of man and citizen guaranteed by the State (Sections 1 and 2, Article 19 of the Constitution of the Russian Federation).

The provisions of Article 124 of the Law of the Russian Soviet Federal Socialist Republic "On State Pensions in the RSFSR", do not comply with the requirements set forth by Article 52 of the Constitution of the Russian Federation either, because suspension of pension payments precludes the possibility of withholding amounts due as compensation to the victims of crime from such pension, disregarding the constitutional guarantee of compensation of the incurred damage to victims of crimes.

5. Unlike labor pensions, social pensions do not have immediate relationship to labor or any other socially beneficial activity. Having regard to the purpose and nature of the social pensions, which are funded by contributions from the Federal Budget of the Russian Federation to the Pension Fund of the Russian Federation, and bearing in mind the economical capabilities of the State the legislator has discretion to decide when such pension is payable, its amount and whether certain categories of pensioners are eligible to receive it during periods when such means of subsistence is substituted by any other source of income, and, so, the payment of a social pension is not necessary anymore.

Concluding from the above and pursuant to Section 1 of 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 Article 124 of the Law of the Russian Soviet Federal Socialist Republic "On State Pensions in the RSFSR", of 20 November 1990, to the extent that they provide for suspension of labor pension payments for the period of the pensioner's imprisonment following a court's sentence as non-conforming to the Constitution of the Russian Federation, its Articles 19 (Sections 1 and 2), 39 (Section 1), 52 and 55 (Section 3).

2. Pursuant to Section 3, Article 79 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the provisions of Article 124 of the Law of the Russian Soviet Federal Socialist Republic "On State Pensions in the RSFSR" of 20 November 1990, recognized by Subsection 1 of the holding of this Judgment as non-conforming to the

Constitution of the Russian Federation shall be invalid from the pronouncement of this Judgment.

3. Federal legislative and executive bodies shall regulate the manner of payment of labor pensions and deductions from it for the period of the pensioner's imprisonment following a court's sentence.

4. The issue of reasonableness of suspending social pension payments for the period of a pensioner's imprisonment following a court-imposed sentence shall be subject to legislative review with regard to the purpose and nature of this type of pensions.

5. Pursuant to Section 2, Article 100 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the pension cases of the citizens G. G. Arderikhin, N. G. Popkov, G. A. Bobyrev, N. V. Kotsubka rejected with reference to Article 124 of the Law of the Russian Soviet Federal Socialist Republic "On State Pensions in the RSFSR", of 20 November 1990, which are recognized as unconstitutional by this Judgment, are to be reconsidered by social security authorities according to the established procedure and this Judgment.

6. 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.

7. 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.

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