

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 1 December 1997 No. 18-II

in the case concerning the review of the constitutionality of provisions of Article 1 of the Federal Law of 24 November 1995 “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’”.

Moscow, 1 December 1997

The Constitutional Court of the Russian Federation composed of Presiding Judge G. A. Gadzhiev and Judges N. V. Vitruk, L. M. Zharkova, 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 the representative of the party who filed the request with the Constitutional Court of the Russian Federation, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation S. M. Shakhray; V. F. Borodkin, D. H. Gabbasov and A. I. Zagorulko, who submitted their constitutional complaints to the Constitutional Court of the Russian Federation; Representative of the Council of the Federation as the party which adopted the challenged act, F. S. Heifets, PhD in Law,

pursuant to Subsection “a”, Section 2 and Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 1 “a” and Subsection 3, Section 1, Article 3, Subsection 1 “a” and Subsection 3, Section 2, Article 22, Articles 36, 74, 84, 85, 86, 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 certain provisions of Article 1 of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’” of 24 November 1995.

The reason for the consideration of the case is a request of the President of the Russian Federation for constitutionality review of certain provisions of Article 1 of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’” of 24 November 1995 in what concerns the norms recognized to be a subject of constitutionality review by the Decision of the Constitutional Court of the Russian Federation of 3 July 1997, and complaints of A. P. Borshchevsky, A. D. Burunova, V. F. Borodkin, D. H. Gabbasov, and A. I. Zagorulko

about a violation of their constitutional rights by certain provisions of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident” as amended by the Federal Law of 24 November 1995.

Insofar as the request of the President of the Russian Federation and the individuals’ 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 joined the proceedings on these applications.

Having heard the report of Judge-Rapporteur Yu. D. Rudkin, statements by the parties, the expert opinion of K. B. Yaroshenko, PhD in Law, interventions by O. A. Shenkarev, Deputy Chairman of the State Duma Committee on Labour and Social Policy; N. I. Timoshenkov for the Ministry of Labour and Social Development of the Russian Federation; A. S. Moiseev for the Ministry of Civil Defence, Emergency Situations and Liquidation of Natural Disaster Consequences of the Russian Federation; A. V. Korsakevich for the Ministry of Defence 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. On 15 May 1991, the Supreme Soviet of the Russian Soviet Federative Socialist Republic passed the Law of the RSFSR “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident”, which was amended by the Law of the Russian Federation of 18 June 1992. By adopting this Law the legislator aimed to protect the rights and interests of citizens who suffered in the Chernobyl Nuclear Power Plant disaster; the legislator assumed that the state recognizes its responsibility before the citizens for consequences of the largest environmental catastrophe in terms of biosphere radioactive pollution which has affected millions of people living on a vast territory.

This anthropogenic disaster of the 20<sup>th</sup> century, extraordinary in its consequences, has resulted in incalculable environmental and humanitarian losses. As a result, not only the constitutional right to a healthy environment (Article 42 of the Constitution of the Russian Federation) was violated, but as a consequence, other constitutional rights and interests of citizens related to the protection of life, health, housing, property, and the right to free movement and free choice of a place of residence were impaired to such an extent that the incurred damage has turned out to be irreparable. This gives rise to a special nature of relationships between a citizen and the state meaning that the state assumes the obligation to compensate the damage, which in regard of its scale and the number of injured persons, may not be repaired under the procedure provided by civil, administrative, criminal or any other area of legislation. This

constitutional obligation of the state is corresponding to the right of citizens to a healthy environment, to information on the state of the environment, and to reparation of the damage inflicted on the health or property by the environmental disaster. The same conclusion follows from provisions of Articles 2 and 18 of the Constitution of the Russian Federation stipulating that recognition, observance and protection of the rights and freedoms of man and citizen shall determine the meaning, contents and enforcement of laws, actions of legislative and executive bodies and provisions of Article 53 of the Constitution of the Russian Federation providing for the obligation of the state to compensate for the damages caused by the performance of state activities in different areas, regardless of holding accountable a particular body of state power and their officials.

The state's obligation to compensate damage resulting from environmental disasters is also predetermined by the right of the present and future generations to protection from radioactive emission related to the use of nuclear power, which is attributed to the competence of the Russian Federation, and facilities of the nuclear power industry are exclusively federal property pursuant to Subsection (i), Section 1, Article 71 of the Constitution of the Russian Federation. This constitutional obligation of the state is specified in the Federal Laws "On the Use of Nuclear Energy" of 21 November 1995 "On the Protection of the Population and Territories from Emergency Situations of Environmental and Anthropogenic Nature" of 21 December 1994, and "On Radioactive Security of the Population" of 9 January 1996. These statutory regulations provide for a system of measures aimed to ensure radioactive security and protection of the population from emergency situations, one of which is a situation created by the disaster of the Chernobyl Nuclear Power Plant.

The state's concern with the restoration of the constitutional rights and interests of citizens violated due to this disaster, including reparation of damages, is implemented along the lines of securing the environmental welfare and radioactive security according to the aims and principles of the social and rule of law state as set forth by the Articles 1, 2, and 7 of the Constitution of the Russian Federation.

2. The damage inflicted on citizens who happened to be in the zone of radioactive emission and other adverse factors, which emerged after the Chernobyl disaster and which has lasting effects through risk associated with residence (working) in radioactively polluted (above the permitted thresholds) areas, is incalculable and irreparable harm which the State is obliged to recover to the greatest extent possible. This conclusion is derived from the meaning of Articles 42 and 53 of the Constitution of the Russian Federation and is explicitly stated in Article 15 of the Federal Law "On the Use of Nuclear Energy" prescribing, in line with the constitutional principles, to recover in full any damage incurred due to radiation.

The provision of Section 1, Article 3 of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident”, which sets forth the obligation of the state to recover damage caused by the Chernobyl disaster by means of pecuniary and other compensations and benefits provided by the Law, is necessitated by the actual impossibility to compensate it in regular court proceedings, which are supposed to provide the plaintiffs with full restoration of their infringed rights.

Accordingly, regardless of the means of compensation provided by the challenged Law, be it benefits, pecuniary compensations, compensations in kind, pecuniary supplements to other social payments, they are all within the scope of recovery of damages on the basis of the principle of maximum possible use of the available state funds for securing sufficiency of such recovery. Along with that the legislator has the right to amend the means of recovery, to specify criteria for its differentiation or targeting. However, such decisions should not contradict the constitutional aims or limit or diminish the rights of citizens, *inter alia* those provided by Article 42 of the Constitution of the Russian Federation. From this standpoint, the scope of compensation for damages as recognized by the state should be fulfilled without doubt.

This conclusion also follows from the nature of constitutional relations between citizens and the state, where the latter should guarantee stability in the exercise of everyone’s right to recovery of damages as provided by Article 42 of the Constitution of the Russian Federation. Stability in the constitutional relations between citizens and the state should not be less than in any other relations regulated by specific statutory norms. As it is not permitted in any case to decrease the scope and amount of damages compensated in civil proceedings (Section 3, Article 1085 of the Civil Code of the Russian Federation, Article 4 of the Federal Law “On Amendments to Certain Statutory Acts of the Russian Federation on Compensation by the Employers of Damages Incurred by Employees due to Injury, Professional Disease or Deterioration of Health Related to the Performance of Labour Duties”).

3. The subject matter of the present proceedings is certain provisions of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’” challenged by the President of the Russian Federation and partly recognized admissible by the Constitutional Court of the Russian Federation (Decision of 3 July 1997), and amendments introduced by this Law to Subsection 6, Section 1, Article 18, Subsection 2(3), Section 1, Article 29 of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident” challenged by the applicants.

In the applicants’ opinion, the challenged norms either weaken the level of damages recovery in the form of compensations, benefits and supplementary payments to citizens affected

by radiation due to the Chernobyl disaster, or limit the scope of eligible persons, or derogate the right to recovery of damages in the form of compensations, supplementary or other payments to them for the damage to health and property. Therefore the challenged norms contradict provisions of Articles 10, 15 (Section 1), 19 (Sections 1 and 2), 40 (Section 3), 42, 55 (Section 2) of the Constitution of the Russian Federation.

The challenged Federal Law has indeed introduced, for many categories of citizens, smaller amounts of payments aimed at recovery of the damage, and that means reduction of the scope of obligations assumed by the state. In passing the amendments to the rules on recovery of damages to those who suffered in the Chernobyl disaster, the legislator, however, was obliged to consider the existing radioactive emissions levels, including analysis of the reasonableness of maintaining the status attributed to certain territories, and was entitled to decrease the amount of payments related to residence and work in the polluted territories, but only to those persons, who arrived in these territories after the respective Federal Law entered into force.

4. In the challenged Federal Law, the extraordinary one-off provision of citizens evacuated from the exclusion zone and moved (being moved) from the resettlement zone, with living premises from the housing stock having a certain status, is conditioned to surrender of the existing living premises in the original place of residence. This additional condition (as introduced by Subsection 1(11), Section 11, Article 1 of the Federal Law of 24 November 1995, in Subsection 7, Section 1, Article 17 of the Law of the Russian Federation of 18 June 1992) has impaired, in the President's opinion, the right of the specified citizens to extraordinary provision with housing.

As follows from the norm of Section 1, Article 37 of the Housing Code of the RSFSR, in cases where the citizen's housing has become inappropriate for living due to natural disasters, such a citizen is eligible for provision of living premises on an extraordinary basis without any further conditions. This approach of the legislator is justified by a social reason as it applies in situations of emergency caused by natural disasters and is aimed at protecting the life and health of citizens, and at restoring the normal living conditions.

The anthropogenic emergency such as the Chernobyl disaster has caused, *inter alia*, the impossibility of living in the exclusion zone and resettlement zone: the housing has become inappropriate for living due to radioactive emission, and this precludes the possibility of its use in the way similar to natural disaster. Thus, for the purposes of extraordinary provision with living premises of citizens who were evacuated from the exclusion zone and moved (are being moved) from the resettlement zone, the original housing of these citizens should be regarded as inappropriate for living on the same grounds as set forth by Section 1, Article 37 of the Housing Code of the RSFSR.

Any additional requirements for extraordinary provision with living premises of citizens who suffered from an anthropogenic emergency like the Chernobyl disaster, if introduced by the legislator, violate the constitutional principle of justice and equality of all before law, as set out in Article 19 (Section 1) of the Constitution of the Russian Federation.

Besides, by this amendment the legislator extended the institute of surrender of housing, which is property of the State, to living premises having different legal status (*inter alia* being private property). Thus the guarantees of private property provided by the Constitution of the Russian Federation (Article 35, Section 3) were infringed.

Restrictions of this kind may not be justified by any of the constitutional aims set forth by Article 55 (Section 3) of the Constitution of the Russian Federation. Accordingly, the restricting requirement to surrender the premises in the original place of residence for purposes of extraordinary provision with living premises in a new place of residence represents a hindrance for creating living conditions necessary for recovery of damage caused to citizens by radioactive emission and contradicts Articles 19, 35, 42, 55 (Section 3) of the Constitution of the Russian Federation. The use of such a restricting condition in certain particular cases could only be justified by preventing abuse of the right to extraordinary provision with housing.

5. The request of the President of the Russian Federation further challenges: the substantial decrease of monthly compensations payable to citizens permanently residing (working) in the zone of residence with a resettlement option and the resettlement zone before resettlement to other territories takes place; the abolition of such compensations payable to citizens permanently residing (working) in the zone of residence with a preferential socio-economical status due to the introduction of a differentiation criterion of the period of residence (work); the imposition of different rules for determining the amount of compensatory payments supplementary to pensions and allowances, which are one of the forms of damages recovery, including alteration of the fixed percentage ratio applicable to such payments (these amendments are introduced in Subsections 1, 5 and 6, Section 1, Article 18 of the Law of the Russian Federation of 18 June 1992, by Subsection 2 (1, 3, and 4), Section 12, Article 1 of the Federal Law of 24 November 1995, respectively; in Subsections 1, 2 and 3, Section 1, Article 19 of the Law of the Russian Federation of 18 June 1992, by Subsection 2 (2, 3 and 4), Section 13, Article 1 of the Federal Law of 24 November 1995, respectively; in Sections 1, 3 and 4, Article 20 of the Law of the Russian Federation of 18 June 1992, by Subsections 2, 4 and 5, Section 14, Article 1 of the Federal Law of 24 November 1995, respectively). The provision of Subsection 6, Section 1, Article 18, as amended on 24 November 1995 is challenged by A. D. Burunova, who is a non-employed old-age pensioner residing in the zone of residence with a resettlement option since May 1995. The introduction of the abovementioned criteria caused a

decrease of her pension by more than 30 percent, and, in the applicants' opinion, these amendments infringe upon the right of citizens to recovery of damages as provided by Article 42 of the Constitution of the Russian Federation.

The challenged Federal Law differentiates the amounts of monthly compensations and additional payments to pensions and allowances as a form of recovery for damage caused to health due to the Chernobyl disaster for non-employed pensioners, disabled persons, disabled children, unemployed persons residing in the zone of residence with a resettlement option and in the resettlement zone before resettlement to other territories takes place on the basis of the residence periods in the following manner: since 26 April 1986, since 1 January 1987, and since 1 January 1991. Monthly compensations and payments to the specified groups of citizens before introducing these amendments were paid regardless of the period of residence in the respective zones. Accordingly, the amount of the damage compensated to citizens residing in these zones since 1 January 1987 and since 1 January 1991 has substantially decreased.

Apart from that, the introduction of a new procedure to determine compensatory payments to pensions and allowances considered in Subsection 6, Section 1, Article 18, Subsection 3, Section 1, Article 19, and Section 4, Article 20 of the Law of the Russian Federation dated 18 June 1992 has led to an increase or, in other cases, to a decrease of payments (depending on the amount of pension or allowance awarded earlier). However, it is the living conditions of citizens residing in territories with the same level of radioactive pollution that determine their equal need for additional costs due to damage caused to their health, and the state previously recognized the equal level of compensation for all those citizens.

Having introduced these amendments to the amounts of compensations, the state impaired the right of the mentioned groups of citizens to recovery of damages as provided by Article 42 of the Constitution of the Russian Federation. Thus, the provision of Article 55 (Section 2) of the Constitution of the Russian Federation was violated, and, in respect of certain groups of citizens, the constitutional principle of equality of all before the law (Section 1, Article 19 of the Constitution of the Russian Federation) was infringed.

As for citizens permanently residing (working) in the zone of residence with a preferential socio-economical status (Subsections 1, 2 and 3, Section 1, Article 19 of the Law of the Russian Federation of 18 June 1992), amendments to the mentioned norms provide that the right to monthly compensation and monthly additional payments to pensions and allowances (which also have compensatory nature) is granted in the initial amount only to persons who arrived in the mentioned zone before 1 January 1991. Those citizens who arrived in that zone after 1 January 1991 and who have permanently resided there ever since consequently lost their right to recovery of damages in the mentioned form after the enactment of the challenged Law.

Depriving those citizens of their right to recovery of damages incurred due to the radioactive disaster at the Chernobyl Nuclear Power Plant on the ground mentioned above is also in contradiction to Articles 42 and 55 (parts 2 and 3) of the Constitution of the Russian Federation.

6. The request of the President of the Russian Federation further challenges the substantial decrease in the duration of the additional annual paid leave or its abolition for persons residing (working) in zones of radioactive pollution who previously benefited from such leaves (these amendments are introduced in Subsection 2, Section 1, Article 18, Subsection 4, Section 1, Article 19, Section 2, Article 20 of the Law of the Russian Federation of 18 June 1992, by Subsection 2 (2), Section 12, Subsection 2 (6), Section 13, Subsection 3, Section 14, Article 1 of the Federal Law of 24 November 1995, respectively). In the applicant's opinion, the introduction of these amendments infringed upon the right of citizens to recovery of damages as provided by Article 42 of the Constitution of the Russian Federation.

The additional annual paid leave was provided by the Law of the Russian Federation of 18 June 1992 as a form of compensation of damage caused to the health of citizens affected by radiation due to the Chernobyl disaster. The statute sets forth that granting such additional leave also aims to compensate the negative effect of psycho-emotional stress associated with the Chernobyl disaster and its consequences.

In 1995 the legislator differentiated the duration of the additional annual paid leave granted as compensation for damage to health of citizens working in the zone of residence with a resettlement option and in the resettlement zone before resettlement to other territories takes place on the basis of the residence period in the following manner: since 26 April 1986, since 1 January 1987, and since 1 January 1991. Previously the duration of the additional annual paid leave was differentiated for each of the specified zones, but not differentiated on the basis of the residence period.

The introduced differentiation decreased substantially the duration of the annual leave for citizens residing (working) in the specified zones since 1 January 1987 and since 1 January 1991. As a result, the scope of recovery of damages as was recognized previously by the state and compensated in such form has also decreased. At the same time, citizens residing (working) in the zone of residence with a preferential socio-economical status after 1 January 1991 altogether lost their right to an additional paid leave of seven calendar days, for which they were eligible before the enactment of the Federal Law of 24 November 1995.

Accordingly, the amendments introduced by the legislator are in contradiction with Articles 42 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation as they impair the right to recovery of damages caused to the health of the specified groups of citizens,

while this damage was previously subject to compensation by means of granting an additional annual paid leave.

7. The request of the President of the Russian Federation further challenges the norm which relates to children residing in the zone of residence with a resettlement option or evacuated from the exclusion zone, resettlement zone or zone of residence with a resettlement option, who do not attend school or pre-school institutions. The challenged norms deprives these children of their right to monthly pecuniary compensation in the amount of the average cost of catering at a school or pre-school institution, when they are paid other pecuniary compensations provided by the Law of the Russian Federation of 18 June 1992 (this amendment is introduced in Subsection 3, Section 2, Article 25 of the Law of the Russian Federation of 18 June 1992, by Subsection 2, Section 19, Article 1 of the Federal Law of 24 November 1995). In the applicant's opinion, such limitation of the right to recovery of damages contradicts Article 55 (Section 2) of the Constitution of the Russian Federation.

The challenged norm deprived the mentioned groups of children of their right to receive such catering compensations in all cases when they are paid any other pecuniary compensation. A similar limitation is not imposed on other groups of children receiving compensation, in particular those mentioned in Subsection 22, Section 1, Article 14, Section 1, Article 17, Subsections 1, 9 and 10, Section 1, Article 18, Subsections 1 and 7, Section 1, Article 19, Section 1, Article 20 of the Law of the Russian Federation of 18 June 1992, as amended by the Federal Law of 24 November 1995.

In this way children covered by this limitation are put without any reasons in an unequal position as compared to other groups of children. Such inequality in the right to recovery of damages in the form of a special catering compensation is aggravated by the fact that generally these children do not attend school or pre-school institutions precisely due to a poor state of health.

Accordingly, the limitation set forth in the last sentence of Subsection 3, Section 2, Article 25 of the Law of the Russian Federation of 18 June 1992, as amended by the Federal Law of 24 November 1995 is in contradiction with Articles 19 (Section 1), 42 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation.

8. The applicants V. F. Borodkin, D. H. Gabbasov and A. I. Zagorulko request to review the constitutionality of provisions of Subsection 2 (3), Section 1, Article 29 of the Law of the Russian Federation of 18 June 1992, as amended by the Federal Law of 24 November 1995. On the basis of this norm military servicemen who became disabled due to the Chernobyl disaster are not eligible for recovery of damages payments if they receive a regular military service

pension. In the applicants' opinion, this norm contradicts Articles 15 (Section 4), 19 (Sections 1 and 2), 42 and 55 (Section 3) of the Constitution of the Russian Federation.

As follows from the submissions, the applicants were sent on a mission to liquidate the consequences of the Chernobyl Nuclear Power Plant disaster in the course of their military service. The expert medical and labour commissions have recognized them disabled due to injuries sustained in military service and related to the Chernobyl Nuclear Power Plant disaster. At present, the Law of the Russian Federation "On Pension Security of Military Servicemen, Servicemen of Internal Affairs Authorities and their Families" of 12 February 1993 provides that they are eligible for a service pension increased by a threefold minimal old-age pension (for the 1<sup>st</sup> and 2<sup>nd</sup> degrees of disability) or one-and-a-half minimal old age pensions (for the 3<sup>rd</sup> degree of disability). Such increase of the service pension is provided to all groups of disabled military servicemen who have sustained military injuries, including those who have become disabled due to the Chernobyl Nuclear Power Plant disaster.

Apart from that, provisions of Subsection 25, Section 1, Article 14 of the Law of the Russian Federation of 18 June 1992, as amended by the Federal Law of 24 November 1995, set forth recovery of damage caused to health for citizens recognized disabled due to the Chernobyl disaster in the amount of income (or its respective part) depending on the degree of loss of the labour capacity. The amount of recovery of damages should be determined in the manner prescribed by the legislation of the Russian Federation for recovery of damages incurred in connection with the performance of labour duties by employees. Such norm is contained in Article 1085 of the Civil Code of the Russian Federation and in the Rules for Compensation by Employers of Damages Incurred by Employees due to Injury, Professional Disease or Deterioration of Health Related to the Performance of Labour Duties (adopted by the Decision of the Supreme Soviet of the Russian Federation of 24 December 1992, as amended on 24 November 1995).

However, on the basis of the challenged provision of Subsection 2 (3), Section 1, Article 29 of the Law of the Russian Federation of 18 June 1992 as amended by the Federal Law of 24 November 1995, recovery of damages provided by Subsection 25, Section 1, Article 14 of this Law is not effected in favour of disabled military servicemen who receive service pensions increased as described above.

The citizen's rights in the area of pension security are derivative from his labour or other socially beneficial activity. Military servicemen earn their service pensions by previous military service. These pensions are essentially labour pensions, so it is not possible to attribute them a meaning which is not inherent in them, namely to be payment recovering damage caused to health due to the Chernobyl Nuclear Power Plant disaster. Moreover, under the norms applied to

the applicants in the present case, payments additional to service pensions are assigned the status of a disability pension, and thus such payments are regarded as a form of recovery of damages to the specified groups of military servicemen. This interpretation does not comply with the legal purpose of the mentioned payments made in addition to the service pension. This conclusion is coherent with Section 2, Article 1085 of the Civil Code of the Russian Federation, stipulating that in determining the lost earnings (income) the disabled pension granted to the injured person in connection with mutilation or any other injury to his health, and equally other pensions, benefits and other similar payments granted both before and after the infliction of injury to his health, shall not be taken into account and shall not cause reduction of the amount of compensation for the injury (i.e. shall not be counted towards the redress).

Within the meaning of Article 42 of the Constitution of the Russian Federation, military servicemen who have become disabled due to the Chernobyl Nuclear Power Plant disaster should have the right to recovery of damages regardless of payment of the service pension like all other citizens who have suffered in the Chernobyl disaster. Deprivation of this right on the basis of the challenged norms contradicts Article 42 and Article 19 (Sections 1 and 2) of the Constitution of the Russian Federation. Such discriminate impairment of rights also contradicts the aims specified in Article 55 (Section 3) of the Constitution of the Russian Federation precluding any restriction of citizen's rights which is not coherent with these aims.

Thus, as follows from the contents of the challenged norms considered above, in recovery of damage caused by the extraordinary radiation disaster the legislator departed in the mentioned cases from its constitutional obligation derived from the meaning of Articles 1, 2, 7, 18, 42 and 53 of the Constitution of the Russian Federation and impaired or, in certain cases, even impermissibly limited the constitutional rights and interests of citizens.

9. The request of the President of the Russian Federation challenges the amended wording of Subsection 1 Section 1 Article 29 of the Law of the Russian Federation of 18 June 1992, providing for the abolition of such a guarantee as a minimal amount of pension equal to a sevenfold minimal salary set forth by the legislation, which was previously applicable to the disability pensions and survivor's pensions due to the Chernobyl disaster.

As this guarantee was abolished by the legislator before the proceedings in the Constitutional Court of the Russian Federation commenced, and the applicant did not provide any evidence proving decrease in the level of pension security thresholds due to this change for disability pensions and survivor's pensions, the proceedings in this regard are discontinued pursuant to Section 2, Article 43 and Article 68 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

10. The complaint of A. P. Borshchevsky challenges the constitutionality of the provision of Subsection 1, Section 1, Article 29 of the Law of the Russian Federation of 18 June 1992 as amended by the Federal Law of 24 November 1995. On the basis of this provision the disability pension due to the Chernobyl disaster should be awarded in the amount set forth by the Law of the Russian Federation “On State Pensions in the Russian Federation” of 20 November 1990 for pensions due to labour injury or professional disease, and not in the amount of the actual damage as was provided before.

As follows from the submissions, A. P. Borshchevsky was sent in 1987 on a mission to participate in the liquidation of the consequences of the Chernobyl Nuclear Power Plant disaster. In 1989 the 2<sup>nd</sup> degree of disability was attributed to him due to loss of 80 percent of labour capacity, and the pension was awarded in the amount of the actual damage. After the enactment of the Federal Law of 24 November 1995 the pension amount was set for A. P. Borshchevsky relying on the provisions regulating pensions due to labour injury or professional disease, which resulted in a substantial decrease of the pension awarded to him. Decreasing the level of pension security, in the applicant’s opinion, impairs his right to social security guaranteed by Article 39 of the Constitution of the Russian Federation, and the right to recovery of damages guaranteed by Article 42 of the Constitution of the Russian Federation.

According to Article 39 (Section 2) of the Constitution of the Russian Federation, state pensions, and in particular their amount, are subject to statutory regulation. The disability pension was awarded to A. P. Borshchevsky under the provisions of Subsection 1, Section 1, Article 29 of the Law of the Russian Federation of 18 June 1992 as amended by the Federal Law of 24 November 1995. However, the contents of this provision should be assessed in conjunction with the amended wording of Subsection 25, Section 1, Article 14 of this Law, providing that the state guarantees people disabled in the Chernobyl disaster recovery of the damage caused by health deterioration due to the Chernobyl Nuclear Power Plant disaster out of federal budget funds.

Before amendments to Subsection 1, Section 1, Article 29, the disability pension fulfilled functions which were not inherent in it as it was in fact payment recovering incurred damage. As of 2 March 1996 (date of entry into force of the relevant part of the Federal Law of 24 November 1995) the disability pension was restored in its initial socio-legal nature, namely as the main and permanent source of income for people disabled in the Chernobyl disaster. Besides, with regard to provisions of Subsection 25, Section 1, Article 14, the challenged provision in essence did not decrease the level of social protection guaranteed by the state to citizens who have become disabled due to the Chernobyl Nuclear Power Plant disaster.

Accordingly, the challenged provision of Subsection 1, Section 1, Article 29 of the Law of the Russian Federation of 18 June 1992 as amended by the Federal Law of 24 November 1995 does not contradict the Constitution of the Russian Federation.

11. The request of the President of the Russian Federation further challenges the new wording of Article 47 of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident”, which provides that legislative (representative) and executive authorities of subjects of the Russian Federation have the right to control the implementation of the abovementioned Law. In the applicant’s opinion, this provision contradicts the constitutional principle of separation of powers stipulated by Article 10 of the Constitution of the Russian Federation, to the extent that it permits such control by legislative authorities.

The control function is inherent in all public authorities within their competence as set forth by the Constitution of the Russian Federation, constitutions and charters of subjects of the Russian Federation, federal statutes, which implies their independence in the performance of this function, and the forms of performance specific to each of them.

The Constitution of the Russian Federation attributes to the joint competence of the Russian Federation and its subjects matters of ensuring conformity of statutes and other normative acts of subjects of the Russian Federation with the Constitution of the Russian Federation and federal statutes. Thus, following the provisions of Subsections (a) and (b), Section 1, Article 72 of the Constitution of the Russian Federation, enforcement of statutes and other federal normative acts, legality and order, and protection of the rights and freedoms of man and citizen are ensured. Performance of these functions by subjects of the Russian Federation is not possible without exercising control over implementation of the federal legislation by the public authorities of the subjects of the Russian Federation in their territories in forms inherent to them and to the extent provided by the federal legislation.

Thus, if every public authority, legislative or executive, on the federal level or on the level of a subject of the Russian Federation, acts within its competence in exercising control over implementation of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident”, it does not contradict the constitutional principle of separation of powers stipulated by Article 10 of the Constitution of the Russian Federation.

Concluding from the above and pursuant to Articles 71, 72, 75, 87 and 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 following regulations of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’” of 24 November 1995 as violating the constitutional obligation of the state to compensate damage caused by the Chernobyl disaster, and hence non-conforming to the Constitution of the Russian Federation:

a) requirement for citizens affected by the Chernobyl disaster to surrender their living premises in the original place of residence for the purposes of extraordinary provision with living premises in a new place of residence, as introduced by Subsection 1 (11) Section 11 Article 1, since it contradicts Articles 19 (Section 1), 42 and 55 (Section 3) of the Constitution of the Russian Federation;

b) decreasing the amount of monthly pecuniary compensations and benefits additional to pensions and allowances for citizens who arrived in the zone of residence with a resettlement option and the resettlement zone in the period after 1 January 1987 before the enactment of the challenged Law, as provided by Subsection 2 (1, 3, and 4) Section 12, Subsections 2, 4 and 5 Section 14 Article 1, since it contradicts Articles 19 (Section 1), 42 and 55 (Section 2) of the Constitution of the Russian Federation;

c) depriving citizens who arrived for permanent residence in the zone of residence with a preferential socio-economical status after 1 January 1991 before the enactment of the challenged Law of their monthly compensations and benefits additional to pensions and allowances, as provided by Subsection 2 (2, 3, and 4) Section 13 Article 1,

decreasing the duration of the additional annual paid leave for citizens who arrived in the zone of residence with a resettlement option and the resettlement zone in the period after 1 January 1987 before the enactment of the challenged Law, as provided by Subsection 2 (2), Section 12 and Subsection 3, Section 14, Article 1,

depriving citizens who arrived in the zone of residence with a preferential socio-economical status after 1 January 1991 before the enactment of the challenged Law of their additional annual paid leave, as provided by Subsection 2 (6), Section 13, Article 1,

since it contradicts Articles 42 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation;

d) limiting children’s right to pecuniary catering allowances, as provided by Subsection 2 (2), Section 19, Article 1,

since it contradicts Articles 19 (Section 1), 42 and 55 (Sections 2 and 3) of the Constitution of the Russian Federation;

e) depriving military servicemen who receive service pensions and have become disabled due to the Chernobyl disaster of their right to recovery of damages, as provided by Subsection 1 (4), Section 23, Article 1,

since it contradicts Articles 19 (Sections 1 and 2), 42 and 55 (Section 3) of the Constitution of the Russian Federation.

2. To recognize the following regulations of the Federal Law “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’” of 24 November 1995 as conforming to the Constitution of the Russian Federation:

a) new calculation rules for disability pensions and survivor’s pensions due to the Chernobyl disaster, as provided by Subsection 1 (1), Section 23, Article 1;

b) allocation of control functions over the implementation of the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident” to legislative (representative) and executive authorities of subjects of the Russian Federation, as provided in Section 31 (2), Article 1.

3. The provisions recognized by Section 1 of the holding of this Judgment as non-conforming to the Constitution of the Russian Federation (except for Subsection “a”(1)) shall lose their force after six months from the pronouncement of this Judgment.

Within six months from the pronouncement of this Judgment the Federal Assembly shall, in compliance with this Judgment, introduce amendments to the Law of the Russian Federation “On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident” as amended by the Federal Law of 24 November 1995.

4. 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.

5. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Judgment shall be immediately 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 simultaneously with the Decision of the Constitutional Court of the Russian Federation of 3 July 1997 on dismissal of the request of the President of the Russian Federation in what concerns certain provisions of Article 1 of the Federal Law of 24 November 1995 “On Amendments to the Law of the Russian Federation ‘On Social Security of Citizens Affected by Radiation in the Chernobyl Nuclear Power Plant Accident’”.

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