

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 15 January 1998 No. 2-II

in the case concerning the review of the constitutionality of Sections 1 and 3, Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” of 15 August 1996 in connection with a complaint of A. Ya. Avonov.

Moscow, 15 January 1998

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

in the attendance of A. Ya. Avonov, who submitted his constitutional complaints to the Constitutional Court of the Russian Federation; Representative of the Council of the Federation V. V. Nevsky, PhD in Law; and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation S. M. Shakhray,

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, Articles 96, 97, 99 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing examined the constitutionality of provisions of Sections 1 and 3, Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” of 15 August 1996.

The reason for the consideration of the case is the complaint of A. Ya. Avonov against Articles 2 and 8 of the above Federal Law, which infringe his constitutional right to freely exit from the Russian Federation.

Having heard the report of Judge-Rapporteur A. L. Kononov, statements by the parties, intervention by A. A. Aksyonov of the Ministry of Internal Affairs 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. A. Ya. Avanov, a Russian citizen whose permanent residence is registered in Tbilisi, Republic of Georgia, actually resided in Moscow for many years. In 1996 he applied for a travel passport to the Visa and Registration Department of Central Internal Affairs Department of Moscow. But he was denied the passport due to the absence of accommodation in Moscow, which was necessary to obtain a registration at a place of residence or at a place of stay.

The Tverskoy Intermunicipal People's Court of the Central District of Moscow rejected A. Ya. Avanov's complaint on the same ground. In particular it referred to Article 8 of the Federal Law "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation". The court explained that according to that norm A. Ya. Avanov was entitled to apply for a travel passport only to authorized bodies at the place of residence outside the Russian Federation, i.e. in the Republic of Georgia.

In his complaint, A. Ya. Avanov requests a review of the constitutionality of Articles 2 and 8 of the Federal Law "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation". In his opinion, the procedure of processing and issuance of a travel passport conditioned upon registration at a place of residence is unduly restrictive. It results in discrimination of citizens and unreasonably prevents the exercise of the constitutional right to freely exit from the Russian Federation, and therefore is inconsistent with Articles 19, 27 and 55 of the Constitution of the Russian Federation.

2. According to Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation", the complaint against violation of constitutional rights and freedoms by a law is admissible if the law affects constitutional rights and freedoms of citizens and was or is to be applied in a particular case.

The documents submitted by the complainant contain no reference to Article 2 of the Federal Law "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation", and therefore there is no evidence that it was applied in that particular case. Furthermore, the said Article contains only a general prohibition to restrict the right to exit "unless under and in accordance with the present Federal Law", which the complainant does not challenge. Accordingly, the complaint of A. Ya. Avanov is admissible only inasmuch as it concerns provisions of Article 8 of the said Federal Law, which was applied in his particular case and affected his constitutional rights, namely issuance of a travel passport to citizens of the Russian Federation at a place of residence (Section 1) and issuance of a passport to citizens of the Russian Federation residing outside the Russian Federation (Section 3). Thus, it is these particular provisions which are the subject of consideration in the present case.

3. Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” provides for a procedure of issuance of a passport which permits citizens of the Russian Federation to exit the country and enter it. According to Section 1 of this Article, the passport is issued upon the citizen’s application to the internal affairs body at the place of residence. According to Section 3 of this Article, the passport of a citizen of the Russian Federation residing outside Russia is processed and issued by the diplomatic mission or consular institution of the Russian Federation at the citizen’s state of residence.

The concept of a place of residence is not defined by the law under consideration. Other normative acts of the Russian Federation, in particular the Federal Law “On the Right of Citizens of the Russian Federation to Freedom of Movement, Choice of Place of Stay or Place of Residence within the Territory of the Russian Federation” of 25 June 1993 links it with an accommodation where a citizen predominantly or permanently resides as an owner, under a contract, or on some other basis provided for by the Russian legislation (Article 2). The existence of such accommodation is proven by the registration of a citizen by internal affairs bodies.

That is precisely the meaning given to the “place of residence” concept by internal affairs bodies and courts in application of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation”, which is clear from the materials submitted to the Constitutional Court of the Russian Federation. According to Subsection 1.7 of the Instruction “On the Procedure of Processing and Issuance of Travel Passports to Citizens of the Russian Federation for Exit from the Russian Federation and Entry into the Russian Federation” adopted by Decree No. 310 of the Ministry of Internal Affairs of the Russian Federation of 26 May 1997, an application for issuance of a travel passport may be accepted only if the document has a stamp of registration at a place of residence.

Therefore according to the abovementioned regulations and the enforcement practice, the place of residence, as a fact which produces legal effects, is actually determined not by the citizen himself but by a respective internal affairs body.

An alternative procedure of passport issuance, i.e. at a place of stay, not residence, is applicable only on extraordinary occasions provided for by Section 3, Article 10 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation”. The list of such occasions (need for urgent medical treatment, grave illness or immediate relative’s death) is limited and may not be subject to broad interpretation as the text of the provision indicates. However, even on such extraordinary occasions registration at a place of stay is necessary (Subsection 3.7 of the Instruction above). A place of stay as distinct from a place of residence is also an accommodation, but where a citizen resides temporarily rather than permanently (Article 2 of the Federal Law “On the Right of the Citizens of the Russian

Federation to Freedom of Movement, Choice of Place of Stay or Place of Residence within the Territory of the Russian Federation”).

No other exceptions are not foreseen even for citizens of the Russian Federation who permanently or predominantly reside abroad. Under Sections 1 and 3, Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” they may apply for a passport only at a state of registered permanent residence. The law does not provide for any other procedure.

4. The citizen’s exercise of his constitutional right to freely exit from the Russian Federation is rigidly connected to registration at a place of residence and with a certain territorial executive body which may issue a travel passport. However, an impossibility to follow such procedure (in the absence of any other alternatives) results in an infringement of the mentioned right. It becomes complicated or impossible to exercise the right due to it being conditioned to registration, and, consequently, an existing accommodation recognized as the place of permanent or predominant residence of a citizen.

Pursuant to the law, the exercise of every person’s constitutional right to freely exit from the Russian Federation provided for by Article 27 (Section 2) of the Constitution of the Russian Federation is dependent on possession of a travel passport. The current procedure for issuing a passport restricts the constitutional rights of those who are absent from their registered place of residence for one reason or another. For those citizens who permanently reside outside the Russian Federation, forced migrants, and all citizens of the Russian Federation who have no accommodation recognized as a registered place of residence or place of stay or have no accommodation at all, it becomes practically impossible to obtain a travel passport.

5. Constitutional rights and freedoms are guaranteed to all citizens irrespective of their place of residence, regardless of the existence or absence of accommodation for permanent or temporary residence (place of residence, place of stay). Even more so, considering that the State is not obliged to provide housing for all citizens. Thus, the citizen’s exercise of his constitutional right to freely exit from the Russian Federation and, consequently, the issue and receipt of a travel passport should not be dependent on the existence or absence of a certain accommodation.

The procedure of travel passport issuance only at a place of residence is discriminatory. It expressly contradicts Article 19 (Sections 1 and 2) of the Constitution of the Russian Federation which guarantees equality of rights and freedoms of man and citizen, *inter alia* regardless of the place of residence, and, moreover, of a registration at place of residence or stay. All citizens of the Russian Federation shall be equal in their exercise of the right to exit from the country.

Article 3 of the Federal Law “On the Right of the Citizens of the Russian Federation to Freedom of Movement, Choice of Place of Stay or Place of Residence within the Territory of the

Russian Federation” expounds the constitutional norms in a similar way. Pursuant to it, registration or lack of registration shall not be a basis for restriction or a condition of exercise of citizens’ rights and freedoms as provided for by the Constitution of the Russian Federation, laws of the Russian Federation, constitutions and laws of republics within the Russian Federation.

The Constitutional Court of the Russian Federation expressed analogous legal opinion in the Judgment of 25 April 1995 in the case concerning the review of the constitutionality of Sections 1 and 2, Article 54 of the Housing Code of RSFSR upon a complaint of L. N. Sitalova and Judgment of 04 April 1996 in the case concerning the review of the constitutionality of certain normative acts of the city of Moscow, Moscow Region, Stavropol Territory, Voronezh Region and the city of Voronezh regulating the registration procedure of citizens arriving to reside permanently in these regions.

6. The Constitution of the Russian Federation (Section 3 of Article 55) provides that the rights and freedoms of man and citizen may be restricted only by federal law to the extent necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure the defense of the country and the security of the State.

Article 15 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” contains an exhaustive list of circumstances where the right of a citizen of the Russian Federation to exit from the Russian Federation may be temporary restricted. Restrictions are imposed on persons cleared for access to State secrets, drafted to the armed forces, suspects, convicted persons, persons evading obligations imposed by a court, or providing false information to obtain documents. These restrictions are imposed regardless of the citizen’s place of residence or stay and are not linked to the existence or absence of a registration.

Circumstances preventing a citizen’s exit from the Russian Federation are mainly examined by territorial internal affairs bodies at the citizen’s place of residence. It is determined only by the purpose of rationalizing their activities. And if such procedure is a condition restricting citizen’s rights it may not be recognized as conforming to Article 18 of the Constitution of the Russian Federation, which provides that the rights and freedoms of man and citizen shall determine the meaning, contents, and enforcement of laws. Equally it contradicts the purposes specified in Article 55 (Section 3) of the Constitution of the Russian Federation, which permits certain restrictions on citizens’ rights by federal law.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 75 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 provision of Section 1, Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” as non-conforming to the Constitution of the Russian Federation and its Articles 19 (Sections 1 и 2), 27 (Section 2), 55 (Section 3), to the extent that it substantively prevents issuance of a travel passport through an alternative procedure to a citizen of the Russian Federation who is not registered at a place of residence or stay; and the provision of Section 3 of the abovementioned Article to the extent that it substantively prevents issuance of a travel passport in the Russian Federation to a citizen of the Russian Federation having his place of residence outside the Russian Federation.

2. 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.

3. Pursuant to Section 4, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, until the federal legislator regulates the procedure for issuing documents for exit from the Russian Federation to persons not registered at a place of residence or a place of stay, instead of the provisions recognized by this Judgment as non-conforming to the Constitution of the Russian Federation, Article 27 (Section 2) of the Constitution of the Russian Federation shall be applied (with regard for this Judgment).

4. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the decisions delivered in the case of A. Ya. Avonov on the basis of the provisions of Sections 1 and 3, Article 8 of the Federal Law “On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation” of 15 August 1996, which this Judgment recognizes as unconstitutional, are to be reconsidered by competent authorities according to the established procedure.

5. 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.

Constitutional Court
of the Russian Federation