

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 15 June 1998 No. 18-II

in the case concerning the review of the constitutionality of the provisions of Articles 2, 5 and 6 of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993 in connection with complaints of certain citizens.

Moscow, 15 June 1998

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

in the attendance of L. S. Kigel, A. P. Merkhasin, who submitted their constitutional complaints to the Constitutional Court of the Russian Federation, and the attorney E. S. Donkovtseva, as a representative of A. M.-E. Lerner,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 85, 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 Articles 2, 5 and 6 of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993.

The reason for the consideration of the case is complaints of L. S. Kigel, A. P. Merkhasin, G. A. Dementyev, A. F. Kravitsky, A. M.-E. Lerner, V. N. Veib, and L. I. Veib about violation of their constitutional rights by the provisions of Articles 2, 5 and 6 of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993 as applied in their cases.

The ground for the consideration of the case is the discovered uncertainty of whether the provisions challenged by the applicants are in conformity with the Constitution of the Russian Federation to the extent that they deprive citizens who left for permanent residence outside the borders of the Russian Federation before 1 July 1993 or after this date but not from the territory

of the Russian Federation, of their right to receive pensions awarded and paid to them before leaving.

Insofar as all the complaints concern essentially the same subject matter and by virtue of 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.

Having heard the report of Judge-Rapporteur O. S. Khokhryakova, statements by the parties, interventions by T. M. Savitskaya for the Ministry of Labour and Social Development of the Russian Federation, L. V. Akinshina for the Pension Fund of the Russian Federation, M. Ya. Konovalov for the Chief Department of the Military Budget and Military Finance of 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. The Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993 provides that citizens leaving for permanent residence outside the Russian Federation are eligible before leaving for advance payment of six monthly amounts of their pensions (regardless of the type of pension) payable in Russian rubles (Article 1). On the basis of a written application of the citizen leaving for permanent residence outside the Russian Federation, his pension may be transferred abroad in foreign currency at the exchange rate of the Central Bank of Russia at the date of the transfer. Such transfer should be performed starting from the month following the month when the citizen left the territory of the Russian Federation, but in any case not earlier than the expiry of the period for which the pension has been already paid (Article 2). This statute is not applicable to citizens who left for permanent residence outside Russia in cases where Russian legislation or an international instrument (treaty) provide a different manner of pension security for such citizens (Article 5). This statute enters into force on 1 July 1993 (Article 6).

Under the rules applicable in the Russian Federation before the entry of this statute into force, the citizen leaving for permanent residence abroad was eligible for advance payment of the pension for six months, while for the period of his stay abroad the pension was neither entered on the payroll nor paid (with the exception of disability pensions due from a labour-related injury or professional disease).

On the basis of these rules, the entry on the payroll and payment of the old-age pension was suspended for L. S. Kigel, who left the Russian Federation for permanent residence to Israel in September 1992. Due to the adoption of the Law of the Russian Federation “On Payment of

Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993 L. S. Kigel submitted an application to resume payment of his labour pension and its transfer to his place of residence in Israel. This application was rejected. As was noted in response from the Ministry of Labour and Social Development of the Russian Federation, the Law in question provided for payment of pensions only for those citizens permanently residing abroad who left the territory of the Russian Federation after 1 July 1993.

On the same basis the law-enforcement authorities have denied to resume payment and transfer pensions to the place of permanent residence of A. P. Merkhasin residing in Germany since June 1992 and the Russian citizens A. M.-E. Lerner, V. N. Veib, L. I. Veib who left the Russian Federation in October 1990 and December 1991, respectively, for permanent residence in Israel.

The applicant A. F. Kravitsky residing in the Latvian Republic, a military pensioner and a citizen of Russia, was paid a service pension as awarded under the Law of the Russian Federation “On Pension Security of Military Servicemen, Servicemen of Internal Affairs Authorities and Their Families” of 12 February 1993. After A. F. Kravitsky left for permanent residence in Germany in August 1994, the payment of his pension was terminated. The Ministry of Defence of the Russian Federation and later the Presnensky Inter-Municipal Court of Moscow, where he filed his complaints, rejected his claims reasoning that the procedure of pensions payment as set out by the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” is applicable only to citizens residing in the territory of the Russian Federation before leaving abroad.

On the same grounds, the Russian citizen G. A. Dementyev, who resided permanently in the Republic of Bulgaria since 1996 and left for that country from the territory of Latvian Republic, was deprived of his pension, while in the Latvian Republic he received a service pension from the funds of the Russian Federation as a military pensioner.

In their complaints to the Constitutional Court of the Russian Federation, the applicants claim that the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” as applied in their cases deprives them of their right to the previously awarded pensions and earned by long-term labour; hence, it contradicts Articles 19 (Sections 1 and 2) and 39 (Section 1) of the Constitution of the Russian Federation.

2. The applicants challenge the constitutionality of the mentioned Law as a whole. However, as follows from the submissions the law-enforcement authorities relied only on the *rationae temporis* and *rationae personae* provisions of the Law to reject the applicants’ claims to continue payment of pensions and transfer them to the place of their permanent residence abroad.

Therefore, these particular provisions of Articles 2, 5 and 6 of the Law are a subject matter of review before the Constitutional Court of the Russian Federation in the present proceedings.

It should be noted that the Constitutional Court of the Russian Federation, pursuant to Section 2, Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, considers not only the literal meaning of the normative act under review, but also the meaning these norms acquire in official and other interpretations and in the established law-enforcement practice.

3. The Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” entered into force on 1 July 1993. At the same time it is not explicitly stated whether its provisions apply to citizens who left abroad before the specified date.

Within the meaning of Article 5 of the Law stipulating that its effect is not extended to citizens who left for permanent residence outside the Russian Federation if a different manner of pension security is established by the Russian legislation or an international instrument (treaty) for such citizens, the rules of the statute (*inter alia* Article 2 of the Law) are applicable as of 1 July 1993 to all citizens who are not covered by any such different manner regardless of the date when they left the territory of the Russian Federation.

At the same time, the notion “citizens leaving for permanent residence outside the territory of the Russian Federation” is used in Article 2 of the Law in order to define its scope. In the context of this norm taken together with Article 6 of the Law this notion may be construed as applicable only to those citizens who left the territory of the Russian Federation after the entry of this Law in force. However, Articles 2 and 6 may also be construed as regulating purely the way of exercising the right to the pension pursuant to the terms and conditions set forth by the Law within the period of the citizen’s residence abroad, and not as a *rationae personae* limitation.

Pursuant to Article 3 of the Law, the procedure of pension payment under it should be determined by the Government of the Russian Federation in coordination with the Pension Fund of the Russian Federation. Such wording implies that an executive regulatory act to be passed in implementation of this provision should not contain any provisions regarding conditions serving as a basis of the right to the pension, since the legislator prescribes only to determine a procedure of its payment.

The Government of the Russian Federation exercised its powers by adopting the Regulation on the Procedure of Pension Payment to Citizens Leaving for Permanent Residence Outside the Russian Federation (Regulation No. 981 of 19 August 1994). This Regulation provides in particular that its effect shall be extended to citizens who were awarded their pensions under the Russian legislation if they left for permanent residence outside the Russian

Federation after 1 July 1993 (Section 2). Thus the Russian Government determined the scope of application of the statute both in the sense of *rationae temporis* and *rationae personae*, while the provisions of Articles 2 and 5 of the Law were construed narrowly. Accordingly, citizens who left abroad before 1 July 1993 are not entitled to request entry on the payroll and payment of the pension to be resumed.

The uncertainty of the contents of these legal provisions has led to their interpretation by the enforcement authorities as not applicable to individuals who received pensions awarded under the Russian legislation but did not reside in Russia before leaving abroad, and, accordingly, left for permanent residence not from the territory of Russia. Consequently, citizens of the Russian Federation residing after the dissolution of the Soviet Union *inter alia* in the Latvian Republic, Lithuanian Republic, Estonian Republic and receiving their pensions there from the funds of the Russian Federation pursuant to provisions of the Law of the Russian Federation “On Pension Security of Military Servicemen, Servicemen of Internal Affairs Authorities and their Families” were deprived of their pensions after leaving for permanent residence from these states to other countries. Precisely due to such understanding of the Law the payment of service pensions was terminated for G. A. Dementyev and A. F. Kravitsky after they left for permanent residence from the territory of the Latvian Republic to Bulgaria and Germany, respectively.

Thus, on the basis of the challenged provisions of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” the right to the pension and the possibility to exercise this right are dependent for citizens residing outside the Russian Federation exclusively on such factors as the date of the citizen’s leaving the territory of Russia and the citizen’s residence in the territory of Russia immediately before leaving. Accordingly, a certain part of pensioners who left for permanent residence outside the territory of the Russian Federation is deprived of their right to the pension.

4. The Constitution of the Russian Federation guarantees everyone social security on the ground of age, illness, disability, loss of a provider, upbringing of children and in other cases prescribed by law (Section 1, Article 39). The constitutional right to social security also includes the right to the pension in cases and in amounts prescribed by law.

The citizen’s rights in the area of pension security are derivative from his labour or any other socially beneficial activities. Old age pensions, service pensions and other pensions awarded in connection with labour or other activities recognized by the legislator as socially beneficial are well deserved and acquired through previous labour, service, or performance of certain socially beneficial duties. This predetermines the contents and character of the duties of the state regarding citizens who are eligible for such pensions.

The termination of entering on the payroll and payment of labour pensions to citizens who left for permanent residence outside the territory of the Russian Federation for the period of their residence abroad is a limitation of the constitutional right to social security as guaranteed by Article 39 (Section 1) of the Constitution of the Russian Federation. Pursuant to Article 55 (Section 3) of the Constitution of the Russian Federation, the rights and freedoms of man and citizen may be limited by federal law only to the extent necessary for the protection of the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and for ensuring the defense of the country and the security of the State. The limitation prescribed by the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” is not compatible with the specified aims and therefore contradicts Article 55 (Section 3) of the Constitution of the Russian Federation.

Depriving a citizen of the right to the awarded labour pension within the period of permanent residence outside Russia is not in compliance with Article 4 of the International Covenant on Economic, Social and Cultural Rights which stipulates that the states, in recognition of everyone’s right to social security, may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting general welfare in a democratic society.

By virtue of the legal nature of labour pensions, the citizen’s right to the pension may not be dependent on such condition as his permanent residence in the Russian Federation: the state is obliged to guarantee this right irrespective of the place of the citizen’s residence, be it within or outside Russia. Any other approach would result in refusal of the Russian state to perform its obligation under Article 39 (Sections 1 and 2) of the Constitution of the Russian Federation to secure labour pensions to citizens eligible to them under law.

5. The uncertainty of the contents of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” in terms of *rationae personae*, and therefore a possibility of its arbitrary interpretation and enforcement lead to violation of the principle of everyone’s equality before the law and court guaranteed by the Constitution of the Russian Federation (Article 19, Section 1). In fact it means that unreasonable and unjust differentiations in the right to the labour pension are drawn between pensioners residing in the territory of the Russian Federation and pensioners permanently residing abroad, as well as between pensioners residing abroad who left Russia on various dates (before 1 July 1993 and after). These differences are conditioned exclusively to the place of permanent residence of the pensioners and the date of their departure abroad, which is not compatible with Article 19 (Section 2) of the Constitution of the Russian Federation, which

stipulates that the state shall guarantee equality of the rights and freedoms of man and citizen regardless of the sex, race, ethnicity, language, origin, property and official status, place of residence, religion, convictions, membership in public associations, and other circumstances.

The discriminatory character of the challenged provisions is also confirmed by the practice of pension payment to citizens after their return for permanent residence in the Russian Federation. In particular, citizens who left for permanent residence outside Russia after 1 July 1993 are eligible under Article 4 of the Law for payment of the previously awarded pensions, which they did not receive during the period of residence abroad, unlike citizens who left abroad before the entry of the Law into force, for whom the pension is payable only after the date of filing an application with the social security authorities after their return to Russia.

6. It follows from Article 2 of the Constitution of the Russian Federation that the recognition, observance and protection of the rights and freedoms of man and citizen shall be a duty of the state. In this connection the procedure for the exercise of the right to the labour pension by the citizen as set forth by the legislation should not hinder enjoyment of other rights and freedoms guaranteed by the Constitution of the Russian Federation, e.g. everyone's right to choose a place of stay and residence, the right to freely leave the Russian Federation (Sections 1 and 2, Article 27). The citizen's exercise of these rights, which are universally recognized rights, may not serve as a ground for limiting his constitutional right to pension security.

The imposition of a contradiction between the constitutional right to freely leave the Russian Federation and the constitutional right to pension security constitutes a violation of the principle declared in UN General Assembly Resolution No. 41/117 of 4 December 1986, "Indivisibility and Interdependence of Economic, Social, Cultural, Civil and Political Rights" (A/RES/41/117), pursuant to which all human rights and fundamental freedoms are indivisible and interdependent and the promotion and protection of one category of rights can never exempt or excuse states from the promotion and protection of the other rights.

Concluding from the above and pursuant to Sections 1 and 2, 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 provisions of Articles 2, 5 and 6 of the Law of the Russian Federation "On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation" of 2 July 1993 to the extent that they permit deprivation of pensioners of their right to receive the awarded labour pensions in case of leaving for permanent residence abroad before 1 July 1993, or after that date without having prior permanent residence in the territory of the

Russian Federation, as non-conforming to the Constitution of the Russian Federation and its Articles 19 (Sections 1 and 2), 39 (Section 1) and 55 (Section 3).

2. Pursuant to Section 2, Article 100, Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the court judgments delivered in the cases of L. S. Kigel, A. P. Merkhasin, G. A. Dementyev, A. F. Kravitsky, A. M.-E. Lerner, V. N. Veib, L. I. Veib on the basis of the provisions of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993, which are recognized as unconstitutional by this Judgment, are to be reconsidered by courts 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 serves as a ground for annulment of normative acts relying on or reproducing or containing provisions of the Law of the Russian Federation “On Payment of Pensions to Citizens Leaving for Permanent Residence Outside the Russian Federation” of 2 July 1993, which are recognized by this Judgment as non-conforming to the Constitution of the Russian Federation. The provisions of such normative acts may not be applied by courts or other law-enforcement authorities or officials.

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, shall be directly applicable, and shall not require any confirmation by other authorities and state officials.

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

No. 18-II