

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment

of 24 October 2000 No. 13-II

in the case concerning the review of the constitutionality of the provisions of Subsection 13, Article 39 of the Law of the Russian Federation “On Education”, Article 1 of the Federal Law “On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization”, and Subsection 7, Article 27 of the Federal Law “On Higher and Postgraduate Professional Education”, in connection with a request of the Maynsky District Court of the Ulyanovsk Region and complaints of Ye. Ye. Nasonova and N. P. Yarushina.

Moscow, 24 October 2000

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

in the attendance of Ye. Ye. Nasonova and N. P. Yarushina, who submitted their complaints to the Constitutional Court of the Russian Federation, the attorney S. Ye. Chistyakova as Ye. Ye. Nasonova’s representative, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, representative of the Council of the Federation A. V. Popov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 2 and 3, Article 3, Articles 36, 74, 86, 96, 97, 99, 101 and 102 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Subsection 13, Article 39 of the Law of the Russian Federation “On Education” of 10 July 1992 (as amended on 16 November 1997), Article 1 of the Federal Law “On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization” of 16 May 1995 (as amended on 12 April 1999), and Subsection 7, Article 27 of the Federal Law “On Higher and Postgraduate Professional Education” of 22 August 1996.

The reason for the consideration of the case is a request of the Maynsky District Court of the Ulyanovsk Region and complaints of Ye. Ye. Nasonova and N. P. Yarushina, who challenge the constitutionality of the mentioned legal provisions to the extent that they prohibit

privatization of living premises owned by state and municipal educational institutions and higher educational institutions, which are located in rural areas.

Having heard the report of Judge-Rapporteurs Y. D. Rudkin and V. G. Yaroslavtsev, submissions by the parties and their representatives, the expert opinion of V. N. Litovkin, PhD in Law, and statements of the following representatives invited to the hearing: B. A. Gorokhov, representative of the Supreme Court of the Russian Federation, Z. P. Dashchinskaya, representative of the Ministry of Education 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 Maynsky District Court of the Ulyanovsk Region is considering the lawsuit of V. G. Prokhorova against the Veshkaymsky District Department of Public Education and the Committee for Property Management of the Veshkaymsky District Administration concerning the recognition as ungrounded of the denial of privatization of the living premises occupied by the applicant and recorded on the balance sheet of the District Department of Public Education. In its request the court challenges the constitutionality of the provision of Subsection 13, Article 39 of the Law of the Russian Federation “On Education”, which prohibits privatization of living premises owned by state and municipal educational institutions based on the right of day-to-day management, which are located in rural areas.

A similar legal provisions of Article 1 of the Federal Law “On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization”, which is challenged by Ye. Ye. Nasonova, is to be applied in her lawsuit considered by the Odintsovo Town Court of the Moscow Region, and of Subsection 7, Article 27 of the Federal Law “On Higher and Postgraduate Professional Education”, which is challenged by N. P. Yarushina, was used as a ground for the dismissal of her lawsuit against the Kurgan State Agricultural Academy by the Ketovsky District Court of the Kurgan Region.

In the applicants’ opinion the challenged provisions violate citizens’ constitutional rights and freedoms, including equality of all before the law and the court, freedom of movement, choice of place of stay and residence, the right to home, and contradict Articles 2, 19 (Sections 1 and 2), 20 (Section 1), 27 (Section 1), 40, 46 (Sections 1 and 2), and 55 of the Constitution of the Russian Federation.

Insofar as the request of the Maynsky District Court of the Ulyanovsk Region and the complaints of Ye. Ye. Nasonova and N. P. Yarushina 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.

Thus, the Constitutional Court of the Russian Federation reviews in the present case the constitutionality of provisions of Subsection 13, Article 39 of the Law of the Russian Federation “On Education”, Article 1 of the Federal Law “On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization”, and Subsection 7, Article 27 of the Federal Law “On Higher and Postgraduate Professional Education” to the extent that they prohibit privatization of living premises owned by state and municipal educational institutions and higher educational institutions, which are located in rural areas.

2. Article 19 of the Constitution of the Russian Federation establishes that everyone shall be equal before the law and the court; the state shall guarantee equality of the rights and freedoms of man and citizen, regardless of the sex, race, nationality, language, origin, property and official status, place of residence, religion, convictions, membership of public associations, and of other circumstances. Within the meaning of Articles 17, 18, 19, and 55 of the Constitution of the Russian Federation, the constitutional principle of equality covers not only the rights and freedoms directly recognized by the Constitution of the Russian Federation, but also other rights related to them that are acquired under federal law.

Pursuant to Article 11 of the Law of the Russian Federation “On Privatization of the Housing Stock in the Russian Federation” of 4 July 1991, every citizen shall be entitled once to acquire, free of charge, through privatization, living premises in houses within the state and municipal housing stock. As follows from the preamble of the mentioned Law the granting of this right presumes equal legal conditions for the citizens’ choice of the way to satisfy their needs for a home, *inter alia* relying on the freedom to choose a place of residence, and provides people with an opportunity to effectively use their resources to improve their living conditions, freely possess, use and dispose of their dwelling, and bring it to the real estate market.

The right to privatize living premises is thus established by the legislator in order to achieve constitutionally significant aims, since it is related to the exercise of citizens’ right to home, freedom of movement, and the right to have property (Articles 27, 35, and 40 of the Constitution of the Russian Federation). On the contrary, the challenged provisions, which prohibit privatization of living premises owned by state and municipal educational institutions and higher educational institutions, which are located in rural areas, do not contribute to the achievement of these aims.

As is stated in the Judgment of the Constitutional Court of the Russian Federation of 3 November 1998 in the case concerning the review of the constitutionality of certain provisions of Article 4 of the Law of the Russian Federation “On Privatization of the Housing Stock in the

Russian Federation”, the state, which establishes the right to privatization in its legislation, shall provide the citizens with an opportunity to exercise it while guaranteeing that the principles and legal norms envisaged by the Constitution of the Russian Federation will be observed when the property title is transferred.

Prohibiting privatization of living premises located in rural areas and belonging to state and municipal educational institutions and higher educational institutions in fact signifies a departure from the principle of equality declared by Article 19 of the Constitution of the Russian Federation and discrimination of a certain category of citizens based on their place of residence and occupation. Such prohibition may not preclude them from exercising their freedom of movement, choice of place of stay and residence (Section 1, Article 27 of the Constitution of the Russian Federation), the right to acquire housing from the state and municipal housing stock through privatization equally with other citizens, and hence possess, use and dispose of it both personally or jointly with other people (Section 2, Article 35 of the Constitution of the Russian Federation), and may not hinder an opportunity to demand that the bodies of state power and local self-government shall create equal legal conditions for exercising the right to home (Section 2, Article 40 of the Constitution of the Russian Federation).

3. 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, morality, health, rights and lawful interests of others, and for ensuring defense of the country and security of the state, i.e. the limitations introduced by the legislator shall ensure achievement of these goals and shall not be excessive.

By introducing prohibition on privatization of living premises located in rural areas and belonging to state and municipal educational institutions and higher educational institutions the legislator reasoned that this was necessary in order to preserve the system of state education and secure state guarantees for exercising the constitutional right to education and thus to ensure – given the deficit of financial resources allocated for social needs, including those for the construction of housing – a possibility of engaging the citizens working in the field of education to work in rural areas.

This prohibition, however, does not contribute to the achievement of the aims set by the legislator: living premises which were occupied before the challenged provisions came into force are not vacated by the citizens working in the field of education who no longer have labour relations with an educational institution and are not provided with other living premises; their legal regime cannot be changed by assigning them another status (e.g. the status of office premises). Hence, the legal means chosen by the legislator relying on the mentioned aims, limit,

on the basis of place of residence and occupation, the right to privatization of those working in the field of education and residing in rural areas. These means cannot contribute to the implementation of the state's obligation to ensure the right to education and establish conditions for it to be exercised and are therefore excessive and, consequently, impermissible.

4. Pursuant to Article 55 (Section 2) of the Constitution of the Russian Federation, no laws shall be adopted denying or derogating the rights and freedoms of man and citizen.

Privatization of living premises located in rural areas and belonging to state and municipal educational institutions and higher educational institutions was prohibited by the legislator after the Law of the Russian Federation "On Privatization of the Housing Stock in the Russian Federation" entered into force. Pursuant to that Law, the citizens working in the field of education and residing in rural areas had the right equal to all other citizens to privatize the state and municipal housing they occupied; they could exercise this right and did exercise it on many occasions. Those who did not exercise this right were unreasonably deprived of it on the basis of the challenged provisions without being given another opportunity to choose a certain option equally to other citizens to satisfy their need for a home, which contradicts Article 55 (Section 2) of the Constitution of the Russian Federation.

Also, the Federal Law "On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization" initially introduced the mentioned moratorium for a period of three years. In 1999, the moratorium was prolonged without specifying the final date, which contradicts the legal sense of this institution (as is in particular defined in Article 202 of the Civil Code of the Russian Federation). Replacing the three-year moratorium with a prohibition without a final date for the citizens working in the field of education and residing in rural areas is such derogation of their right to privatize the living premises they occupy that it essentially means complete denial of this right. It contradicts the requirements of Article 55 (Section 2) of the Constitution of the Russian Federation.

5. According to the legal opinion formulated by the Constitutional Court of the Russian Federation in its Judgment of 3 November 1998 in the case concerning the review of the constitutionality of certain provisions of Article 4 of the Law of the Russian Federation "On Privatization of the Housing Stock in the Russian Federation", the limitation of the rights and freedoms of man and citizen by means of defining a certain scope of objects which are not subject to privatization is only permissible if the circumstances that actually underlie the legal regime for the housing, primarily its purpose (in particularly as it applies to service living premises or living premises in military settlements), makes it impossible to transfer the property title to living premises to individuals.

As to the living premises from the state and municipal housing stock located in rural areas and belonging to state and municipal educational institutions and higher educational institutions, they may not be put under a special legal regime exclusively on the basis of their location, be it in urban or rural settlements or other territories.

Following the constitutional principle of equal legal protection of citizens, any special legal regime with regard to living premises implies that the legislator shall define not only the special purpose of the living premises, but also other criteria for introducing such regime which make it permissible. In particular, it cannot be extended to living premises that are already occupied and the necessity of its introduction must be justified by specific features concerning the service duties of the employees for whom these living premises are intended. In the absence of legally established criteria, prohibition of privatization of living premises results in arbitrary limitation of the rights of the respective category of citizens. Such limitation does not serve as a necessary and proportionate means of protecting the constitutionally recognized public interests or the rights and lawful interests of others.

The resolution of issues related to the extension of a certain legal regime to specific living premises may not be left to the discretion of law-enforcement authorities, since this does not preclude contradictory practice and, hence, violation of citizens' equality before the law and the court. However, even if the legislator relying on the mentioned criteria includes specific living premises in the category subject to a special legal regime and, therefore, not subject to privatization, the opportunity for judicial review of extending such regime to specific living premises shall be provided. As is specified in the Decision of the Constitutional Court of the Russian Federation of 14 December 1999 concerning the request submitted by the Yuryev-Polsky District Court of the Vladimir Region, courts may not limit themselves to formal affirmation of the purpose of living premises, but shall review the facts justifying – in any specific case – the extension of the special legal regime to them relying on the actual and prospective use of the mentioned premises within their defined purpose, including the relevant production and social infrastructure, etc. Without inquiry into such circumstances, no real judicial protection of citizens' rights, which is guaranteed by Article 46 of the Constitution of the Russian Federation, can be ensured, including protection of their right to privatize living premises.

Concluding from the above and pursuant to Article 71, Sections 1 and 2, Articles 72, 74, 75, 79, 100, and 104 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 Article 1 of the Federal Law “On Preserving the Status of State and Municipal Educational Institutions and Moratorium on Their Privatization” and Subsection 7, Article 27 of the Federal Law “On Higher and Postgraduate Professional Education”, to the extent that they prohibit privatization of living premises owned by state and municipal educational institutions and higher educational institutions which are located in rural areas as non-conforming to the Constitution of the Russian Federation and its Articles 19 (Sections 1 and 2) and 55 (Sections 2 and 3).

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 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the cases of V. G. Prokhorova, Ye. Ye. Nasonova and N. P. Yarushina are to be reconsidered by courts according to the established procedure, taking into account that the provisions which are recognized by this Judgment as non-conforming to the Constitution of the Russian Federation are not applicable.

4. 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

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