

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 24 May 2001 No. 8-II

in the case concerning the review of the constitutionality of the provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”, in connection with complaints of A. S. Stakh and G. I. Khvalova.

Moscow, 24 May 2001

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

in the attendance of 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, Subsection 3, Section 2, Article 22, Articles 36, 96, 97, and 99 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing, examined the constitutionality of the provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”.

The reason for the consideration of the case is complaints of A. S. Stakh and G. I. Khvalova about violation of their constitutional rights by the provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”.

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.

Insofar as both requests concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian

Federation”, the Constitutional Court of the Russian Federation is permitted to consider these applications together.

Having heard the report of Judge-Rapporteur O. S. Khokhryakova, statements by the party which adopted the challenged statute, an intervention by M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court 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 Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” provides that citizens who have at least 15 years work experience or permanent residence in Far North regions and equated areas and have no housing in other regions of the Russian Federation are granted the right to housing subsidy financed out of federal budget funds (Section 1, Article 1). Further, up to 5 percent of the federal budget funds reserved for housing subsidies to citizens leaving Far North regions and equated areas should be used for providing housing subsidies to those citizens who left the specified regions not earlier than 1 January 1992 and need improving housing conditions in the new place of residence and who are eligible for such subsidy pursuant to this Federal Law (Article 2).

Regulatory acts which were applicable before the mentioned Federal Law entered into force granted the right for gratuitous subsidy financed out of federal budget funds for the construction or purchase of housing to individuals having at least 10 years work experience or permanent residence and listed as applicants for improvement of housing conditions (Subsection 4, Section 5 of the Regulation on Granting Gratuitous Subsidies for the Construction or Purchase of Housing to Citizens of the Russian Federation Requiring Improvement of the Housing Conditions adopted by Decision of the Council of Ministers – Government of the Russian Federation No. 1278 of 10 December 1993; Subsection 3, Section 3 of the Regulation on Granting Gratuitous Subsidies for the Construction or Purchase of Housing to Citizens of the Russian Federation Requiring Improvement of the Housing Conditions adopted by Decision of the Government of the Russian Federation No. 937 of 3 August 1996; Section 2, Article 5 of the Federal Law “On Distribution of Housing Subsidies Among Far North Regions and Equated Areas for the Year 1996” of 17 August 1996).

G. I. Khvalova worked in Far North regions for 12 years and 6 months and subsequently left in 1996 for the city of Perm for permanent residence. There she was listed as an applicant for improvement of the housing conditions. On the basis of the above provisions, in September of the same year G. I. Khvalova applied for a housing subsidy financed out of federal budget funds,

since she had sufficient work experience. However, as federal budget funds reserved for this purpose were not transferred to the Perm Region between 1996–1998, G. I. Khvalova was denied the subsidy. In December 1998, the Dzerzhinsky District Administration of the city of Perm informed G. I. Khvalova that she was not eligible for the subsidy, since pursuant to the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” in force her work experience was less than 15 years. The State Committee of the Russian Federation for North Affairs affirmed in its response to the complaint of G. I. Khvalova that the right to state subsidy for the construction or purchase of housing for citizens who (like in the applicant’s case) left Far North regions and equated areas was regulated by the mentioned statute and that statute prescribed minimum 15 years work experience for housing subsidy eligibility, as well as the requirement to leave for other regions of the country not earlier than 1 January 1992.

For the same reason in March 1999, the Ministry of Regional Policy of the Russian Federation struck off A. S. Stakh (having over 13 years work experience in Far North regions) from the list of citizens submitted by the Volgograd Region Administration who left Far North regions and equated areas for permanent residence in the Volgograd Region and who needed improvement of the housing conditions and had the right to the housing subsidy payable out of funds of the federal budget. A. S. Stakh was listed as an applicant for such subsidy by the Volgograd City Administration since April 1998.

In their complaints to the Constitutional Court of the Russian Federation, A. S. Stakh and G. I. Khvalova assert that provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” contradict Articles 7 (Section 1), 19 (Sections 1 and 2), 40 and 55 (Section 2) of the Constitution of the Russian Federation since they changed the conditions for granting housing subsidies to citizens who left Far North regions and equated areas before the entry of that statute into force and thus deprived them of their right to the housing subsidy.

Pursuant to Articles 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the Constitutional Court of the Russian Federation on the basis of people’s complaints about violation of their rights and freedoms reviews the constitutionality of a law or its certain provisions, which are the subject matter of the application, only to the extent that they were applied in the applicant’s case and affect his rights and freedoms. Therefore, the subject matter of review in the present case shall be provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” in part concerning the work experience requirement (period of permanent residence) in Far North regions or equated areas qualifying for the right to the housing subsidy out of funds of the federal budget (as applicable to citizens who

left the mentioned regions not earlier than 1 January 1992 and are listed in the new place of residence as applicants for improvement of the housing conditions).

2. The Federal Law under review, as follows from its title and preamble, regulates the requirements and procedure and the amount of the housing subsidies granted out of funds of the federal budget to citizens of the Russian Federation leaving Far North regions and equated areas. At the same time, Article 2 provides that up to 5 percent of all funds of the federal budget reserved for that purpose shall be used for granting housing subsidies to citizens who left the specified regions. In determining the amount of funds to be spent for housing subsidies of citizens of the indicated group, Article 2 sets forth certain requirements: subsidies shall be granted to those who left Far North regions and equated areas not earlier than 1 January 1992, those who require improvement of the housing conditions in the new place of residence, and those who are entitled to the housing subsidy under the mentioned Law.

Pursuant to Article 1 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”, this right is granted to citizens who have at least 15 years of work experience or permanent residence in Far North regions or equated areas and have no housing in other regions of Russia. Thus, within the meaning of Article 2, the minimum work experience (permanent residence) set forth by Section 1 of Article 1 as one of the requirements for granting the housing subsidy applies to all citizens who left Far North regions or equated areas not earlier than 1 January 1992, including those who were listed as applicants for improvement of the housing conditions at the moment of entry of the mentioned statute into force.

This approach is also reaffirmed in Article 6, which contains a scale of work experience (period of permanent residence) in the specified regions for purposes of determining the amount of the housing subsidy to be granted to citizens; and in Subsection “e”, Section 7 of the Regulation on Granting Gratuitous Subsidies for the Construction or Purchase of Housing to Citizens of the Russian Federation Requiring Improvement of the Housing Conditions adopted by Decision of the Government of the Russian Federation No. 937 of 3 August 1996 (as amended by Regulation of the Government of the Russian Federation No. 1431 of 4 December 1998), which provides that the amount of housing subsidy for citizens who have left Far North Regions and equated areas shall be determined by the mentioned Law.

Considering applicability *rationae personae* of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”, the issue of distribution of federal budget funds reserved for housing subsidies for citizens leaving Far North regions and equated areas among the subjects of the Russian Federation is resolved as provided by Article 26 of the Federal Law “On the Federal Budget for 1998” (Articles 3 and 11). In the following years, the

funds of the federal budget reserved for this purpose were also distributed with regard to provisions of the Law under consideration, which set forth requirements and a procedure for granting the housing subsidies (e.g. Article 77 of the Federal Law “On the Federal Budget for 2000”, Article 67 of the Federal Law “On the Federal Budget for 2001”).

The established law-enforcement practice as well proves that the executive authorities responsible for granting the housing subsidies assume the mandatory character of minimum 15 years work experience (permanent residence) for all citizens applying for the housing subsidy, including those who left Far North and equated areas before the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” entered into force. As follows from the submissions, the ground for rejection of the applicants’ claims was precisely this understanding of the challenged provisions by the executive authorities of the subjects of the Russian Federation where the applicants reside and of the Ministry of Regional Development of the Russian Federation, the State Committee of the Russian Federation for North Affairs and the Ministry of Economy of the Russian Federation.

Thus, citizens having work experience (permanent residence) in Far North regions and equated areas between 10 and 15 years, who left these regions for other regions of Russia not earlier than 1 January 1992 and were listed in the new place of residence as applicants for improvement of the housing conditions, have lost their right to such housing subsidies due to provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”.

3. Pursuant to Article 40 of the Constitution of the Russian Federation, everyone shall have the right to housing (Section 1); bodies of state power and local self-government shall encourage housing construction and create conditions for the exercise of the right to housing (Section 2); low-income and other persons mentioned in the statute and being in need of housing shall receive it at no cost or for reasonable payment from the state, municipal and other housing stocks according to the norms prescribed by law (Section 3). The obligation of the state to promote the exercise of the right to housing follows from the considerations above. Providing state assistance by granting gratuitous housing subsidies out of federal budget funds to citizens having no housing or in need of improvement of their housing conditions complies with the aims of the Russian Federation as a social state whose policy is aimed at creating conditions ensuring a decent life and free development of the person as declared by Article 7 (Section 1) of the Constitution of the Russian Federation.

Within the meaning of the mentioned provisions of the Constitution of the Russian Federation taken together with its Article 37 (Sections 1 and 3), which guarantees the freedom of labour, the right to free use of labor capabilities, to choose a type of activity and profession, and

provides for everyone's right to remuneration for labour without any discrimination, the legislator is entitled to set forth for individuals working or residing in Far North regions or equated areas appropriate state guarantees and compensations, *inter alia* guarantees of housing to those citizens who after working for a long period of time in the specified regions leave for other regions of Russia where they have no housing or need improvement of their housing conditions.

Providing enhanced guarantees and compensations for citizens due to their work and residence in Far North regions and equated areas (as aimed to secure fair remuneration for labour in extreme natural climatic conditions) does not contradict the principle of equality as set forth by Article 19 of the Constitution of the Russian Federation.

By securing the right to gratuitous housing subsidies for citizens having long work experience in Far North regions and equated areas, the state assists satisfaction of their need for housing and secures a possibility to have housing as property, to use and dispose of the housing alone or jointly with other individuals, in particular on the basis of the freedom to choose a place of residence. Financial aid from the state allows citizens who work or reside in the mentioned regions to solve the problem of acquiring housing in regions with friendly working and living conditions.

Thus, the right of citizens to housing subsidies out of funds of the federal budget in cases of relocation from Far North regions or equated areas to other regions of Russia is set forth by the legislator pursuing constitutionally significant aims, since it is related to the exercise of the right to housing, the right to remuneration for labour, the freedom of movement, the right to choose freely a place of residence, and proprietary rights (Section 3, Article 37; Article 40; Section 1, Article 27; Sections 1 and 2, Article 35, Constitution of the Russian Federation). Hence, it is subject to state protection, *inter alia* judicial protection.

4. As follows from Articles 71 (Sections "c", "f" and "h"), 37 (Section 3), 40 and 55 (Section 3) of the Constitution of the Russian Federation, when providing for the right of citizens to payments like a housing subsidy and determining the terms and conditions serving as a basis to such right, the federal legislator pursuing the constitutionally recognized and protected aims and values is entitled to introduce amendments to the existing rules of granting housing subsidies. In particular, given the insufficiency of the budget funds reserved for relocation of citizens from Far North regions and equated areas and arrangement of housing construction for them in regions of the Russian Federation with a friendly environmental and socio-economic conditions, and the necessity for priority resolution of issues of social protection of particularly needy citizens who have worked in Far North regions and equated areas for a long period of time, the minimum duration of the work experience (permanent residence) in the specified

regions may be increased for the purposes of obtaining the right to housing subsidy financed out of the state budget funds.

At the same time, the introduction of such amendments to the terms and conditions of granting housing subsidies should be in line with the provisions of the Constitution of the Russian Federation which set forth that the Russian Federation is a democratic, federal, rule of law state (Section 1, Article 1) where an individual, his rights and freedoms shall be the supreme value, and recognition, observance and protection of the rights and freedoms of man and citizen shall be a duty of the state (Article 2); every citizen of the Russian Federation shall enjoy, within its territory, all rights and freedoms and shall bear equal responsibilities provided in the Constitution of the Russian Federation (Section 2, Article 6); the rights and freedoms of man and citizen are directly applicable and determine the meaning, contents and enforcement of laws, actions of the legislative and executive branches, local self-government, and are ensured by administration of justice (Article 18); in the Russian Federation no laws shall be adopted denying or derogating the rights and freedoms of man and citizen (Section 2, Article 55), whereas any restriction of the rights and freedoms of man and citizen by a federal law is permissible 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 defence of the country and security of the state (Section 3, Article 55).

Within the meaning of the specified constitutional provisions, any amendment by the legislator to the existing terms and conditions for granting housing subsidies which has negative impact on the legal status of individuals who are in need of such subsidies and count on it should be introduced in a manner complying with the principle of securing citizens' confidence in law and State action. This principle implies maintenance of reasonable stability of legal regulation and impossibility of introducing arbitrary amendments to the existing system of norms in force, as well as granting citizens a possibility, where necessary, to get accustomed to the new amendments within a certain reasonable transition period, e.g. by means of providing temporary regulation, including situations with a choice of the place of residence or work.

In making their decision to move to other regions of Russia and planning their future, individuals who left Far North regions and equated areas before the Federal Law "On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas" entered into force relied on the terms and conditions for granting the housing subsidies, in part relating to the requirement of minimum 10 years work experience in the mentioned regions as set out in the regulatory acts of the Government of the Russian Federation and the Federal Law "On Distribution of Housing Subsidies in Far North Regions and Equated areas for the Year 1996" of 17 August 1996, which were in force at that time. They counted on *bona fide* performance of public obligations by the

state and believed that they would be able to exercise their right to the housing subsidy out of funds of the federal budget.

Having granted the right to a gratuitous subsidy for housing construction or purchase to citizens who have minimum 10 years work experience in Far North regions or equated areas and need improvement of their housing conditions in the new place of residence, and having assumed the obligation to support these citizens in their relocation, the state is obliged to secure equal legal opportunities for the exercise of this right due to the principle of equality as set out by the Article 19 of the Constitution of the Russian Federation. This principle extends not only on the rights and freedoms explicitly specified in the Constitution of the Russian Federation, but rather on all other related rights acquired *inter alia* on the statutory basis.

Provisions of Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” amend the terms and conditions of granting the housing subsidies, which affect citizens who have already met the previously established criteria and under this assumption committed certain legally significant actions. In essence, such amendment means the state’s refusal in the given relations to perform its obligations arising from the previous regulation and enforcement acts which previously regulated listing a citizen as an applicant for improvement of the housing conditions. This does not merely question confidence in the state actions and law, but rather leads to violation of the constitutional principle of equality. Certain citizens, who left Far North regions and equated areas after 1 January 1992 and have between 10 and 15 years work experience (residence) in such regions and who are listed in the new place of residence as applicants for improvement of the housing conditions could take advantage of their right to the housing subsidy and have received it. At the same time, certain other citizens, who for whatever reason did not receive their housing subsidy before the challenged statute entered into force, were unreasonably and unfairly deprived of their right to it.

Besides, the increase of the minimum work experience (residence) in Far North regions and equated areas for these citizens, which makes them eligible for the housing subsidy, does not comply with provisions of Article 55 (Section 3) of the Constitution of the Russian Federation, since such increase, even if reasoned by insufficiency of funds reserved to solve the problem of citizens’ relocation from the mentioned regions, may not serve as an adequate legal means of balancing the rights of these citizens and the legal interests of society and the state.

The extension of the provision on minimum 15 years work experience (residence) as a qualifying condition for obtaining the right to the housing subsidy to citizens who have already been granted this right with the minimum 10 years work experience, and hence giving retroactive effect to the statute, which impairs the position of citizens, and in fact abolishing the right to the

housing subsidy for these citizens acquired under the legislation previously in force and applied to particular relations, is not compatible with the provisions of Articles 1 (Section 1), 2, 18, 54 (Section 1), 55 (Section 2) and 57 of the Constitution of the Russian Federation.

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 Section 1, Article 1, and Article 2 of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas”, as non-conforming to the Constitution of the Russian Federation and its Articles 1 (Section 1), 19 (Sections 1 and 2), and 55 (Sections 2 and 3) to the extent that the requirement of minimum 15 years work experience (residence) in Far North regions and equated areas predetermining the right to the housing subsidy out of funds of the federal budget is extended to citizens who have obtained such right with the minimum of 10 years work experience according to the legislation previously in force.

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, it shall not be subject to any appeal, and shall come into force immediately upon pronouncement.

3. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the lawsuits of A. S. Stakh and G. I. Khvalova decided on the basis of the provisions of the Federal Law “On Housing Subsidies for Citizens Leaving Far North Regions and Equated Areas” of 25 July 1998, which are recognized as unconstitutional by this Judgment, are to be reconsidered by courts according to the established procedure.

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

No. 8-II