

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 25 December 2007 No. 14-II

in the case concerning the review of the constitutionality of Subsection 3, Article 2, Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation” in connection with complaints of K. A. Katanyan, L. V. Revenko, and D. V. Slobodyanyuk.

Moscow, 25 December 2007

The Constitutional Court of the Russian Federation composed of Presiding Judge Yu. D. Rudkin and Judges N. S. Bondar, G. A. Gadzhiev, L. O. Krasavchikova, S. P. Mavrin, A. Ya. Sliva, V. G. Strekozov, B. S. Ebzeev, V. G. Yaroslavtsev,

in the attendance of K. A. Katanyan, L. V. Revenko and D. V. Slobodyanyuk, representative of the State Duma D. D. Tsabriya, PhD in Law, Representative of the Council of the Federation Ye. V. Vinogradova, PhD in Law, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. V. Krotov,

pursuant to Section 4, Article 125 of the Constitution of the Russian Federation, Subsection 3, Section 1, Sections 3 and 4, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 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 Subsection 3, Article 2, Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation”.

The reason for the consideration of the case is complaints of K. A. Katanyan, L. V. Revenko and D. V. Slobodyanyuk. 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 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 S. P. Mavrin, statements by the parties’ representatives, the expert opinion of M. L. Zakharov, PhD in Law, statements by the following representatives invited to the hearing: A. G. Kalugin, representative of the Prosecutor General of the Russian Federation, Yu. V. Voronin, representative of the Ministry of Healthcare and Social Development, L. I. Chizhik, representative of the Pension Fund 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. In its decisions of 30 May 2006, 7 June 2006 and 13 October 2006, the Presnensky District Court of Moscow rejected claims by K. A. Katanyan, born in 1960, L. V. Revenko, born in 1959, and D. V. Slobodyanyuk, born in 1966, respectively, all working under labour contracts, who requested to recognize as unlawful decisions of the Moscow City and Moscow Regional Branch of the Pension Fund of the Russian Federation. The Pension Fund officials dismissed the applicants’ requests to return the insurance premiums recorded on their individual accounts and paid by their insurers (employers) in the period between 2002 and 2004 into the savings part of their labour pension. The dismissal was reasoned with the reference to the Federal Law “On Mandatory Pension Insurance in the Russian Federation”, which does not envisage such possibility and, since 1 January 2005, does not envisage for those insured, who were born in 1966 or earlier, any further increase of the savings part of their labour pension, even on a voluntary basis.

1.1. Federal Law No. 167-Φ3 of 15 December 2001, “On Mandatory Pension Insurance in the Russian Federation”, that came into force on 1 January 2002, established the basis for state regulation of mandatory pension insurance in the Russian Federation, it governs the relationships within the system of mandatory pension insurance and defines the legal status of subjects of mandatory pension insurance, the grounds for acquiring and procedures for exercising their rights and obligations, and the responsibility of subjects of mandatory pension insurance (Article 1).

In particular, Paragraph 3, Subsection 2, Article 14 of the said Federal Law vests the employers acting as insurers with the obligation to pay, to the budget of the Pension Fund of the Russian Federation, mandatory pension insurance premiums for each individual to whom they make payments and who act as the insured person. The premium is calculated as a percentage of all payments due to this individual under the relevant contracts. The insurance premiums tariff

for the insured men born in the period between 1953 and 1966 and women born in the period between 1957 and 1966 was set as 14 percent with 12 percent allocated to finance the insurance part of the labour pension and 2 percent to finance its savings part (Subsection 2 (1), Article 22).

Since 1 January 2005, Subsection 2 (1), Article 22 of the Federal Law “On Mandatory Pension Insurance in the Russian Federation” has been in force as amended by Subsection 3, Article 2 of Federal Law No. 70-Φ3 of 20 July 2004, “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation”. In particular it prescribes that insurance premiums paid by the insurers for the insured individuals of the said age categories shall be transferred in full to finance the insurance part of their labour pensions.

1.2. K. A. Katanyan, L. V. Revenko and D. V. Slobodyanyuk, who are the applicants in the present case, request to recognize that Subsection 3, Article 2, Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation” do not conform to Articles 7 (Section 1), 19 (Sections 1 and 2), 39 (Section 1), and 55 (Section 2) of the Constitution of the Russian Federation. They claim that due to these provisions they have lost the opportunity previously granted by the state to increase the amount of their future pension through individual personal savings in the system of mandatory pension insurance and hence the pension rights, which they had previously acquired, and, consequently, they found themselves in a situation unequal to individuals born in 1967 and later for whom such opportunity was preserved.

Since under Article 74 (2) of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation shall render decisions only on the subject matter specified in the application and only on the part of the normative act the constitutionality of which is challenged, the subject matter to be reviewed by the Constitutional Court of the Russian Federation in the present case is Subsection 3, Article 2, Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation”, to the extent that it prescribes full transfer of insurance premiums for the insured men born in the period between 1953 and 1966 and women born in the period between 1957 and 1966 to finance the insurance part of their labour pensions and thus eliminates, within the system of mandatory pension insurance, financing of the savings part of labour pensions through insurance premiums.

2. The Constitution of the Russian Federation proclaims the Russian Federation as a rule of law and social state, in which an individual, his rights and freedoms are the supreme value, human dignity shall be protected by the state and conditions shall be created for a decent life and free development of an individual, and everyone shall be guaranteed social security at an old age, in case of illness, disability, loss of the provider, for the upbringing of children and in other cases prescribed by law (Article 1, Section 1; Article 2; Article 7, Section 1; Article 21, Section 1; Article 39, Section 1).

One of the goals of the Russian Federation as a social state is to support senior citizens. The guarantees for their social protection, as follows from Article 7 (Section 2) of the Constitution of the Russian Federation, are represented by various types of pensions including the old age labour pension, which is awarded upon reaching a certain age and presence of a necessary insurance record, including that acquired as a result of working under a labour contract. The basis of the organizational and legal form of exercise of the right to a labour pension at an old age is the pension insurance system which is intended to provide citizens with decent social and economic conditions for life after they resign from their job and retire.

In terms of whether public or private factors shall prevail in the mechanism of exercising the citizens' rights to social security at an old age, the Constitution of the Russian Federation (Sections 1 and 3, Article 39) envisages two types of pension insurance – mandatory and voluntary. Mandatory pension insurance is a guarantee of exercise of this constitutional right and it is aimed at reaching the aims of the social state in this area, thus being of public nature. Voluntary pension insurance provides citizens with additional opportunities for their personal participation in the accumulation of funds for their individual pension benefits. This type of pension insurance does not have public nature and is mainly implemented through non-governmental systems of pension insurance. Therefore, the Constitution of the Russian Federation imposes on the state an obligation to guarantee social security at an old age relying on the mandatory nature of pension insurance; as to the social security relying on voluntary and individual character, the state shall be obliged to promote the creation of additional forms of social security.

By envisaging in principle an opportunity to establish mandatory and voluntary types of pension insurance within the framework of social security at an old age, the Constitution of the Russian Federation obliges the federal legislator to develop legal mechanisms which will serve as a basis for creating either a separate or mixed system of pension insurance. When resolving this issue the federal legislator is provided by Articles 7, 39, 71 (Subsection “c”), 72 (Subsection “g”, Section 1), and 76 (Sections 1 and 2) of the Constitution of the Russian Federation with sufficiently broad discretion. Using this discretion and proceeding from the

reasonably understood necessity to implement the relevant measures within the available financial capabilities of the state and estimated indicators of social and economic development it shall be entitled – in providing a mechanism of pension insurance with specific contents – to apply a differentiated approach and in particular establish specific features of both types of pension insurance for different age categories of citizens.

At the same time, legal regulation exercised by the federal legislator as was stated by the Constitutional Court of the Russian Federation in its Judgment No. 9-II of 10 July 2007 shall be based on the constitutionally significant principles of pension security. Regardless of the option chosen as a solution these principles imply that the state shall aim at the pension insurance relying on mandatory pension insurance guaranteeing decent conditions of life for retired citizens.

3. In the course of the pension reform, providing for the right of the citizens of the Russian Federation to labour pensions the federal legislator opted for the system of mandatory pension insurance, in which the major source of funding is mandatory payments in the form of insurance premiums paid to the budget of the Pension Fund of the Russian Federation by the insurers, recorded on the individual accounts of those insured, and divided under the established standards into shares intended to form the insurance and savings parts of the labour pension for the purposes of common (based on solidarity) and individual pension security.

The individuals who were insured under the mandatory pension insurance scheme were initially divided by the Federal Law “On Mandatory Pension Insurance in the Russian Federation” into three age categories, each characterized by specific features concerning the accumulation of pension savings through insurance premiums. Age differentiation is immanent in the sphere of pension security and is based among other factors on the acknowledgement of the long process of the development of the citizens’ subjective pension rights and initially unequal opportunities that various age categories have in this sphere.

The individuals in the first category (men born in 1952 or earlier and women born in 1956 or earlier) were not listed among the participants in relations of accumulation of the savings part of their labour pension, and consequently the whole amount of the insurance premiums paid for them (14 percent of all due payments) was transferred for financing the insurance part of their labour pensions. Insurance premiums paid for individuals in the second (men born in the period between 1953 and 1966 and women born in the period between 1957 and 1966) and third (persons born in 1967 and later) categories were transferred to finance both the insurance and the savings parts of their labour pension: for the second category these shares were defined as 12 percent and 2 percent, respectively, while for the third category the relation between the

shares of insurance premiums depended on the year in which the rates of insurance premiums were applied (since 1 January 2008 these are 8 percent and 6 percent, respectively).

The use by the federal legislator of different standards for allocating insurance premiums to finance the insurance and savings parts of labour pensions at an old age for different age categories of insured individuals was predetermined by the fact that while introducing mandatory pension insurance it was obliged to create conditions for accumulation of pension savings by certain age categories of citizens and at the same time to provide stability in the exercise of pension rights by other age categories of citizens.

The differentiation of the citizens' pension rights in accumulation of their pension savings intended for the payment of the savings part of their labour pensions did not violate the constitutional principle of equality (Sections 1 and 2, Article 19 of the Constitution of the Russian Federation), since within the system of mandatory pension insurance it guaranteed equality of legal regulation for individuals in the same age category and envisaged differences in the legal regulation of persons divided into categories relying on such objective characteristic as age (Decision of the Constitutional Court of the Russian Federation No. 165-O of 12 April 2005).

Thus, the current system of pension insurance based on mandatory insurance of employees and implemented as prescribed by law, i.e. regardless of the will of the participants of the respective relations, envisages universal nature of employees' pension insurance and the need for the insurers (employers) to pay for their benefit insurance premiums to the Pension Fund of the Russian Federation; and at the same time it prescribes uniformity in legal regulation of social and insurance relations in accumulating the insurance part of labour pensions and their differentiation in accumulating the savings part of labour pensions through the use of various standards for allocating insurance premiums.

4. Legal regulation of social and insurance relations in accumulating individual pension savings, which relies on the simultaneous implementation of the principles of unity and differentiation, generates dissimilar economic and legal consequences for different age categories of insured individuals. This is predetermined by the fact that the share of insurance premiums prescribed by the law to be the basis for financing of the insurance part of labour pensions is essentially subject to accumulation and allocation in the interest of all the pension recipients, both current and future ones (the principle of social solidarity of the insured individuals), whereas the other part of insurance premiums is isolated and directed to finance the savings part of labour pensions intended for representatives of separate age categories of the insured individuals, so that pension savings are individualized in the interest of their owners.

The financial base of the pension security system designed in this way is formed under the condition of interaction of public and private elements underlying the mechanism of mandatory pension insurance, which obliges the federal legislator to provide coherent interaction of the insurance and savings components of the pension security system in accordance with the principles inherent to it as a system of mandatory insurance.

One of such principles is financial stability of the system, which should be ensured primarily by the equivalence of the amount of insurance coverage provided to insured individuals upon the occurrence of the insured event and the total amount of funds duly received by the Pension Fund of the Russian Federation. Owing to this principle the federal legislator determining the standards for allocating insurance premiums and defining the share of funds to be transferred to the savings part of labour pensions may not act arbitrarily and must take into account the total amount of insurance premiums transferred to the insurance part of labour pensions and intended for the payment of labour pensions both in the current and in the subsequent fiscal years. If these funds are insufficient, in order to ensure stability of the financial system of mandatory pension insurance it is forced either to recourse to direct funding from the federal budget (which was formed not only by the insured individuals) or revise the standards for allocating insurance premiums that are used as a basis for determining the amounts of funds transferred to the insurance and savings parts of labour pensions.

Hence, the federal legislator is entitled both to establish and revise the standards for allocating insurance premiums that determine the share of funds transferred to the insurance and savings parts of labour pensions. However, any changes it introduces to the legal regulation of mandatory pension insurance should not be aimed at solving the newly appearing financial problems of the state to the detriment of the constitutional guarantees of exercise of the citizens' rights to social security.

5. When introducing changes to the current legal mechanism of accumulating individual pension savings within the system of mandatory pension insurance the federal legislator may consider that the functioning of this system burdened by the savings component may cause a situation where the funds intended for the payment of the insurance part of labour pensions may be insufficient while the low efficiency of the financial institutions in the investment market and lack of readiness of the interested legal entities and individuals to participate in a proactive and responsible manner in the investment activity result in the absence of real growth in the pension capital.

The federal legislator may introduce relevant changes to the institute of pension savings either immediately or on a stage-by-stage basis, including the withdrawal of this essentially private institute out of the system of mandatory pension insurance. It is also entitled to revise the

standards for allocating insurance premiums so that insurance premiums are transferred in full exclusively to finance the insurance part of labour pensions and to apply them either to all or certain categories of insured individuals, thus giving preference either to the principle of uniformity or differentiation in legal regulation of the mandatory pension insurance relations.

5.1. Having excluded, by Subsection 3, Article 2 of the Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of the Legislative Acts of the Russian Federation”, the opportunity for citizens born in 1966 and earlier to continue to accumulate the savings part of labour pensions within the system of mandatory pension insurance (but preserving the right to transfer the funds already recorded on their accounts for trust management to management companies or non-government pension funds), the federal legislator expanded the application of the principle of uniformity by reducing the number of age categories of the insured individuals covered by the system of individual savings insurance and thus equalized the legal status of citizens in this age category for the purposes of social and insurance relations with the age category of insured individuals who had not been initially among the participants of this system.

As a result of this new approach, funds which were previously intended to finance the savings part of labour pensions of citizens in the respective age category and were isolated from the funds intended to finance the insurance part of labour pensions and allocated on the basis of the principle of solidarity of generations, started being transferred only for financing the insurance part of labour pensions. This actually resulted in the financial reinforcement of the system of mandatory pension insurance and thus increased guarantees of pension security provided to the insured individuals in this age category, which is coherent with the core of the state’s constitutional obligation to guarantee social security at an old age, since the conditions for the financial stability of the whole system of pension benefits were created and the promotion of additional forms of social security based in particular on voluntary pension insurance was not inhibited. The latter possibility may be enjoyed both outside and within the system of mandatory pension insurance.

5.2. At the same time, the involvement of citizens of specific age categories in a complex and long-term process of accumulating and investing the funds of their pension savings implies that certain legitimate expectations arise as regards their growth and, hence, the increase in the future amount of their labour pensions.

As follows from the legal opinion articulated by the Constitutional Court of the Russian Federation in its Judgment No. 2-II of 29 January 2004, no laws shall be adopted in the Russian Federation that introduce arbitrary changes to the current legal regulation, since this would

violate the principle of maintaining the citizens “confidence in the law and states actions”, and in contradiction to Article 21 (Section 1) of the Constitution of the Russian Federation would derogate an individual’s dignity.

Therefore, the federal legislator was obliged, when amending the conditions of mandatory pension insurance previously established for the respective age category of citizens, to specify the aims of its decision and envisage such legal regulation which results in a complete loss of their ability to increase in a certain way the funds previously recorded in the special part of their individual accounts in order to continue to accumulate their pension savings within the system of mandatory pension insurance. Insofar as such legal regulation was not carried out in a timely manner, the federal legislator shall use its discretionary powers and eliminate the gap that appeared in the pension security legislation.

6. Thus, Subsection 3, Article 2 of the Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation” does not contradict the Constitution of the Russian Federation, its Articles 7 (Section 1), 19 (Sections 1 and 2), 39 (Section 1), and 55 (Section 2), since it does not prevent the insured men born in the period between 1953 and 1966 and women born in the period between 1957 and 1966 when the insurance event occurs to exercise their right to receive the savings part of their labour pension. This part shall be calculated considering the pension savings transferred to the insured person’s individual account in the period between 2002 and 2004. Equally the mentioned provisions do not eliminate the opportunity of entering voluntarily into legal relations of savings pension insurance, *inter alia* with institutions of the Pension Fund of the Russian Federation, relying on the terms and conditions and pursuant to the procedures prescribed by law.

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75, 79, 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 Subsection 3, Article 2, Federal Law “On Amendments to Chapter 24, Title 2 of the Tax Code of the Russian Federation, the Federal Law ‘On Mandatory Pension Insurance in the Russian Federation’ and Annulment of Certain Provisions of Legislative Acts of the Russian Federation”, which prescribes full transfer of insurance premiums paid by the insurers (employers) to the budget of the Pension Fund of the Russian Federation for the insured men born in the period between 1953 and 1966 and women born in the

period between 1957 and 1966 to finance the insurance part of their labour pensions as conforming to the Constitution of the Russian Federation, since these provisions do not prevent – within the system of legal regulation in force – the insured individuals from exercising their pension rights, including the rights either to transfer the amounts of pension savings recorded in a special part of their individual account into a non-governmental pension fund or to receive these amounts and income from their investment when assigned a labour old-age pension.

2. The federal legislator shall specify in detail the terms and conditions as well as the procedure for the participation of the insured men born in the period between 1953 and 1966 and women born in the period between 1957 and 1966 in the accumulation of their pension savings.

3. This Judgment shall be final and shall not be subject to appeal, it shall come into force immediately upon pronouncement, shall be directly applicable and shall not require confirmation by other authorities and state officials.

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. 14-II