

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 17 May 1995 No. 5-II

in the case concerning the review of the constitutionality of the provision of Article 12 of the Law of the USSR of 9 October 1989, "On the Procedure for Collective Labour Disputes (Conflicts) Resolution" (as in force on 20 May 1991) to the extent it prohibits strikes by civil aviation personnel, in connection with complaints of the Flight Personnel Union of the Russian Federation.

Moscow, 17 May 1995

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

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 12 of the Law of the USSR "On the Procedure for Collective Labour Disputes (Conflicts) Resolution" of 9 October 1989 (as in force on 20 May 1991), which prohibited stoppages of work for purposes of collective labour disputes (conflicts) resolution in the enterprises and organizations of civil aviation.

The reason for the consideration of the case is complaints of the Flight Personnel Union of the Russian Federation about a violation of the constitutional right to a strike by the provisions of the Law of the USSR "On the Procedure for Collective Labour Disputes (Conflicts) Resolution" as applied in its case.

The ground for the consideration of the case is the discovered uncertainty of whether the provision of Section 1, Article 12 of the mentioned Law on prohibiting stoppages of work for purposes of collective labour disputes (conflicts) resolution in the enterprises and organizations of civil aviation is in conformity with the Constitution of the Russian Federation.

Having heard the report of Judges-Rapporteurs O. S. Khokhryakova and V. I. Oleynik, statements by A. A. Malinovsky, President of the Flight Personnel Union of the Russian

Federation, and A. A. Shugaev, PhD in Law, for the applicant, interventions by Deputy A. G. Golov for the State Duma of the Russian Federation, expert opinions, interventions by representatives invited to participate in the hearing: N. Yu. Sergeyeva, Deputy President of the Supreme Court of the Russian Federation, G. N. Matyushov, Deputy Minister of Transport of the Russian Federation, V. V. Kalashnikov, Deputy Minister of Labour of the Russian Federation, V. V. Zamotin, Head of the Air Transport Department, Ministry of Transport 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. On 18 May 1994, members of the Flight Personnel Union of the Russian Federation staged a strike in air groups and at airline facilities in some Russian regions. This strike was recognized illegal by court judgments based on Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution”.

The Flight Personnel Union of the Russian Federation submitted a constitutional complaint to the Constitutional Court of the Russian Federation against the abovementioned Law. In its opinion, the prohibition of strikes is contrary to the Constitution of the Russian Federation.

2. On the basis of Subsection 2, Section II (“Concluding and Transitional Provisions”) of the Constitution of the Russian Federation, the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution” shall act within the Russian Federation and shall be applied by courts and other law-enforcement bodies. The issue of constitutionality of the Law is presented for consideration to the Constitutional Court of the Russian Federation.

The applicant requests the constitutionality of the whole statute to be reviewed. But the whole Law may not be a subject of review in the present case. As is clear from the submissions, the strike was staged in the enterprises and organizations of civil aviation; and the courts deciding on its legality applied Article 12 of the Law, which prohibited strikes for purposes of collective labour disputes (conflicts) resolution in the enterprises and organizations of civil aviation. It should be also considered that the Flight Personnel Union of the Russian Federation, as a public association, unites only certain categories of civil aviation employees and is aimed at representing and protecting only their rights.

Consequently, it has to be recognized that the subject matter for consideration in the present case is only the provision of the challenged Law (Section 1, Article 12) which prohibits stoppages of work for purposes of collective labour disputes (conflicts) resolution and only to the extent that it applies to the enterprises and organizations of civil aviation.

3. Article 37 (Section 4) of the Constitution of the Russian Federation recognizes the right to individual and collective labour disputes which can be resolved by means provided by federal law, including the right to strike. Thus, the strike is considered a dispute resolution method, and the legislator is entitled to determine when and under what conditions this method of dispute resolution is permissible and when it is not.

When regulating the right to strike it is necessary to reconcile protection of professional interests, a strike being a means of it, and respect of public interests which it might infringe upon and securing which is the legislator's obligation.

The possibility to restrict the right to strike for certain categories of employees, including civil aviation personnel, taking into account the nature of their activity and potential consequences of stoppage of work directly follows from the provisions of Article 17 (Section 3) of the Constitution of the Russian Federation stipulating that the exercise of the rights and freedoms of man and citizen shall not violate the rights and freedoms of others, and provisions of Article 55 (Section 3) of the Constitution of the Russian Federation stipulating that the rights and freedoms of man and citizen may be restricted by federal law only to the extent necessary to protect the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defense of the country and the security of the state. Thus, the Constitution of the Russian Federation sets limits for possible restrictions for the legislator.

The restriction of the right to strike is also in conformity with the generally recognized principles and norms of international law. For instance, the provisions of the International Covenant on Economic, Social and Cultural Rights permit prohibition of the exercise of the right to strike by members of armed forces or police or the administration of the state (Section 2, Article 8). The others shall be subject only to limitations which are necessary in democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others (Section 1 "c", Article 8). At the same time pursuant to international legal acts on human rights, regulation of the right to strike belongs to the domain of domestic legislation. But this legislation shall not trespass the limits prescribed by these acts.

4. Section 1, Article 12 of the mentioned Law, stipulates that in the enterprises and organizations of civil aviation stoppage of work as a means of resolving collective labour disputes (conflicts) is not permitted. Such wording implies that the prohibition of strikes covers all enterprises and organizations of civil aviation without any exception and all the personnel employed. It does not provide for any differentiation between companies, divisions, services, categories of employees of civil aviation depending on the nature or significance of their work.

As a result the right to strike of a far greater scope of employees is restricted than is necessary to achieve the aims mentioned in Article 17 (Section 3) and Article 55 (Section 3) of the Constitution of the Russian Federation.

In such circumstances, the decision on the legality or illegality of strikes shall be reached on the basis of applying Section 1, Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution”, together with Article 55 (Sections 2 and 3) of the Constitution of the Russian Federation. This approach follows from Subsection 2, Section II (“Concluding and Transitional Provisions”) of the Constitution of the Russian Federation, which provides that the statutes and other legal acts which were in force in the territory of the Russian Federation before this Constitution came into force shall be applicable to the extent that they do not contradict the Constitution of the Russian Federation.

Concluding from the above and pursuant to Section 1, Articles 71, Articles 72, 74, 75, Section 2, Article 86 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 prohibition of strikes in the enterprises and organizations of civil aviation, provided by Section 1, Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution” as conforming to the Constitution of the Russian Federation to the extent that the right of certain categories of employees may be limited for purposes of protecting the fundamentals of the constitutional order, morals, health, the rights and lawful interests of others, and to ensure defense of the country and the security of the state pursuant to Article 55 (Section 3) of the Constitution of the Russian Federation.

2. To recognize the prohibition of strikes in the enterprises and organizations of civil aviation on the sole basis of their classification as certain kind of industry provided by Section 1, Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution” as non-conforming to the Constitution of the Russian Federation and its Articles 37 (Section 4) and 55 (Sections 2 and 3).

3. Pursuant to Section 4, Article 37 of the Constitution of the Russian Federation, and on the basis of Article 55 (Sections 2 and 3) of the Constitution of the Russian Federation and generally recognized principles and norms of international law, the Federal Assembly of the Russian Federation must determine conditions and grounds for restrictions on the right to strike and related necessary compensation mechanisms and collective labour disputes (conflicts) resolution procedures.

4. Until the federal law provided by Article 37 (Section 4) of the Constitution of the Russian Federation is adopted, in judicial and mediation proceedings on issues related to strikes it is necessary to apply Section 1, Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution” together with Articles 17 (Section 3) and 55 (Sections 2 and 3) of the Constitution of the Russian Federation.

5. Pursuant to Section 3, Article 79, and Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the court decision delivered in the case of the Flight Personnel Union of the Russian Federation (Judgment of the Moscow City Court of 19 May 1994) is to be reconsidered according to the established procedure if it was decided on the basis of the provision of Article 12 of the Law of the USSR “On the Procedure for Collective Labour Disputes (Conflicts) Resolution” to the extent that it is recognized as unconstitutional by Section 2 of the holding of this Judgment.

6. 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.

7. 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*, other official publication of state power bodies of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

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