

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 16 December 1997 No. 20-II

in the case concerning the review of the provisions of Section 1(6), Article 28 of the Law of the Russian Federation of 19 April 1991 “On Employment of the Population in the Russian Federation” as in force on 20 April 1996.

Moscow, 16 December 1997

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

in the attendance of A. I. Kovalenko, PhD in Law, as a representative of the Khabarovsk Territorial Duma as the party which submitted its request to the Constitutional Court of the Russian Federation; representatives of the Federal Assembly of the Russian Federation as the party which adopted the challenged act: S. V. Kalashnikov, Chairman of the Committee on Labour and Social Policy, for the State Duma, N. Y. Lygin, PhD in Law, and I. N. Shumsky, PhD in Law, for the Council of the Federation,

pursuant to Section 2 “a”, Article 125 of the Constitution of the Russian Federation, Subsection 1 “a”, Section 1, Article 3; Subsection 1 “a”, Section 2, Article 22; Articles 36, 74, 84, 85 and 86 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(6), Article 28 of the Law of the Russian Federation “On Employment of the Population in the Russian Federation” of 19 April 1991 as in force on 20 April 1996.

The reason for consideration of the case is a request of the Khabarovsk Territorial Duma for review of the constitutionality of the provisions of Section 1(6), Article 28 of the Law of the Russian Federation “On Employment of the Population in the Russian Federation” in part it prescribes temporary loss of labour capacity payments to unemployed persons for not more than 30 days over a period of 12 months of unemployment or over the whole period of training under a referral by the employment service.

The ground for the consideration of the case is the discovered uncertainty of whether the provision challenged by the applicants is in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur O. S. Khokhryakova, statements by the parties, the expert opinion of M. L. Zakharov, an intervention by the expert M. I. Kuchma, interventions by representatives of the Ministry of Labour and Social Development of the Russian Federation and the Social Insurance Fund of the Russian Federation invited to participate in the hearing; 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. Pursuant to Section 1(6), Article 28 of the Law of the Russian Federation “On Employment of the Population in the Russian Federation”, temporary loss of labour capacity payments are due to unemployed citizens who lost their work within a 12 months period prior to the official recognition as unemployed. Such payments in the amount of the due unemployment benefit (scholarship) are covered by the funds of the State Population Employment Fund of the Russian Federation, however, these payments for the temporary loss of labour capacity period are limited to 30 days over a period of 12 months of unemployment or over the whole period of training under a referral by the employment service.

In the opinion of the Khabarovsk Territorial Duma this rule contradicts Article 39 (Section 1) of the Constitution of the Russian Federation to the extent that it limits temporary loss of labour capacity payments to the unemployed person to not more than 30 days over a period of 12 months of unemployment or over the whole period of training under a referral by the employment service regardless of the duration of the sickness.

2. Social security at the expense of the state is guaranteed to everyone by the Constitution of the Russian Federation on the ground of age, illness, disability, loss of a provider, child-raising and in other cases provided by law (Article 39, Section 1).

According to this constitutional rule, the list of circumstances (social risks) connected with everyone’s right to social security is not exhaustive. However, by stipulating determination of these circumstances in a statute it reaffirms the constitutional significance of social security both in cases provided by it and in other cases determined by law. Such circumstances are usually characterized by an impossibility to have earnings (labour income) or by loss of such possibility or insufficiency of labour income for the subsistence of a person and members of his family who cannot be employed.

The aims of the policy of the Russian Federation as a social state declared by the Constitution (Section 1, Article 7) predetermine the state's obligation to take care of its citizens' welfare, the social security system. And if a person cannot work due to an old age, health condition or other reasons beyond his control and does not receive income to ensure his and his family's minimal subsistence, he may expect to receive appropriate assistance and material support from the state and society. Consequently, under the Constitution of the Russian Federation the social state shall not only protect the labour and health of people, establish a guaranteed minimum wage, but also ensure state support to the family, motherhood, fatherhood and childhood, disabled persons and senior citizens, develop a system of social services, provide state pensions, allowances and other social security guarantees (Section 2, Article 7). Consequently the development of the social security system as a part of social protection of the people is a necessary condition for the aims of a social state to be achieved.

Social security is ensured by pecuniary payments (pensions, social benefits, etc.), in-kind benefits and social services at the expense of mandatory social insurance funds, budget allocations, and other resources. Even though social security covers different types of assistance and support, it is the material support and maintenance providing a person with means for existence that form the substance of social security. The Constitution of the Russian Federation reaffirms this conclusion in its Article 39 (Section 2) by stating that pensions and social benefits shall be prescribed by law.

3. According to the Constitution of the Russian Federation, everyone shall have the right to protection against unemployment (Section 3, Article 37). Such protection is ensured along with other means of material support of citizens who do not have jobs and income, labour income and officially recognized as unemployed.

Pursuant to the Law of the Russian Federation "On Employment of the Population in the Russian Federation", the state guarantees that unemployed citizens will receive social assistance; the primary form of such assistance is payment of unemployment benefits for a period specified by law, or payment of a scholarship for a period of professional training, advanced training, or job retraining under a referral by the employment service. The purpose of the unemployment benefit (scholarship) is to provide such persons with a temporary source of subsistence. Pursuant to the mentioned Law, temporary loss of labour capacity payments are also part of social assistance to the unemployed.

The payments listed above are effected from the funds of the State Population Employment Fund of the Russian Federation and constitute payments within the social security system.

4. The payment foreseen by the challenged provision is in fact temporary loss of labour capacity payment predetermined by and derived from the unemployed person's right to an unemployment benefit (scholarship). Its purpose is to reimburse the unemployed person for the amounts of an unemployment benefit (scholarship) guaranteed by the Law of the Russian Federation "On Employment of the Population in the Russian Federation" but temporarily lost due to loss of the labour capacity, to compensate this lost income.

Its essence is not affected by the fact that pursuant to the Law this payment is effected from the funds of the State Population Employment Fund of the Russian Federation, and not of the Social Insurance Fund of the Russian Federation normally covering temporary loss of labour capacity payments, since determination of the fund most suitable to make such payments is a prerogative of the legislator.

Therefore, regulation of the procedure and conditions of paying unemployed citizens the temporary loss of labour capacity benefit may not fail to consider the nature and the purpose of such payments, its relation to legislative and other normative acts in the area of social security, its principles and aims.

5. Social security determined by federal law, in case of unemployment is guaranteed by the Constitution of the Russian Federation equally with social security at an old age, in case of sickness, disability, loss of the provider, for the upbringing of children. The absence of payment of the unemployment benefit in case of temporary loss of the labour capacity by an unemployed person who has the right to such unemployment benefit must be compensated by other payments within the social security system providing him with a source of subsistence for this period.

While the Law of the Russian Federation "On Employment of the Population in the Russian Federation" limits temporary loss of labour capacity payments to an unemployed person to a period of up to 30 days, it does not provide for any material assistance measures for these persons which compensate to a certain degree the loss of income in the form of an unemployment benefit (scholarship) if the temporary loss of labour capacity exceeds the mentioned period. Under the Law, the employment service has a possibility to support the unemployed by material and other means only if they lose the right to the unemployment benefit due to the expiry of the payment period stipulated by the legislation of the Russian Federation on employment (Article 36). But the case under consideration does not concern the expiry of an unemployment benefit payment period. The citizen does not lose the right to it, and actually suspension of benefit payments takes place, which are resumed after the end of the temporary loss of the labour capacity.

The possibility for the local employment service to determine types and amounts of material assistance strengthening the social protection of unemployed citizens cannot ensure to

the necessary extent material assistance during the unpaid period of temporary loss of the labour capacity. This is predetermined by the fact that the possibility to establish more favourable rules for material and other assistance is dependent on the resources of the State Population Employment Fund of the Russian Federation available to the employment services.

While according to the rules of Section 2, Article 28, and Section 4, Article 35 of the Law the period of temporary loss of the labour capacity by an unemployed person does not count towards the cumulative period of the unemployment benefit payments, does not interrupt the continuity of employment and is included in the general labour experience period, they cannot be regarded as an adequate and sufficient compensation. The prolongation of the cumulative period of unemployment benefit payments after the recovery from illness is not an equal replacement of material assistance during more than 30 days sickness period either.

Other federal laws and normative acts do not adequately guarantee any minimum material assistance to unemployed citizens within the social security system either. The federal legislation on granting social assistance to low-income families (citizens) providing minimum subsistence to those who find themselves in difficult life circumstances due to sickness and unemployment, has not been adopted yet. Thus, in practice during the period of more than 30 days of sickness an unemployed citizen does not get virtually any material assistance from the state. Meanwhile the absence of subsistence in such a period may pose risks to the life and health of the unemployed person and may cause persistent loss of his labour capacity (disability).

Taking this into account, the limitation of temporary loss of labour capacity payments to unemployed citizens to no more than 30 days over a period of 12 months of unemployment or over the whole period of training under a referral by the employment service with no adequate legislative guarantees of providing them with another source of subsistence (minimum material assistance) within the social security system in case the temporary loss of labour capacity period is in excess of the indicated period, is an actual deprivation of the right to social security for the temporary loss of labour capacity period in excess of 30 calendar days. Thus it does not conform to the Constitution of the Russian Federation and its Article 39 (Section 1).

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 75, 86 and 87 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 provision of Section 1(6), Article 28 of the Law of the Russian Federation “On Employment of the Population in the Russian Federation” as in force on 20 April 1996 to the extent that it limits temporary loss of labour capacity payments to unemployed

citizens to no more than 30 calendar days over a period of 12 months of unemployment or over the whole period of training under a reference of the employment service, as non-conforming to the Constitution of the Russian Federation and its Article 39 (Section 1), as there are no adequate federal legislation guarantees of providing the unemployed with another source of subsistence (minimum material assistance) within the social security system in case the temporary loss of labour capacity period exceeds the indicated period.

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 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.

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