

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

Judgment
of 24 May 2007 No. 7-II

in the case concerning the review of the constitutionality of Section 12 (4), Article 230 of the Labour Code of the Russian Federation, upon a request of the Ukhta Town Court of the Komi Republic.

Moscow, 24 May 2007

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

in the attendance of Judge V. A. Panteleeva of the Ukhta Town Court of the Komi Republic; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation Ye. B. Mizulina; 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, 101, 102 and 104 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 12 (4), Article 230 of the Labour Code of the Russian Federation.

The reason for the consideration of the case is the request of the Ukhta Town Court of the Komi Republic. The ground for the consideration of the case is the discovered uncertainty of whether the provisions of Section 12 (4), Article 230 of the Labour Code of the Russian Federation (as amended by Federal Law No. 197-Φ3 of 30 December 2001) challenged by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur S. P. Mavrin, statements by the parties’ representatives, the expert opinion of N. S. Kovalevskaya, PhD in Law, interventions by V. K. Sviridov for the Ministry of Healthcare and Social Development of the Russian Federation, I. I. Shklovets for the Federal Service for Labour and Employment, S. V. Petrova for the Social

Insurance 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. The lawsuit of L. A. Sergeyeva and A. V. Sergeyev against the Komineftegeofizika OJSC and a state institution (regional branch of the Social Insurance Fund of the Russian Federation in the Komi Republic) seeking payment of insurance amounts due to loss of the provider and compensation for psychological distress, and the lawsuit of O. A. Seredina against the same state institution seeking payment of insurance amounts due to loss of the provider are pending before the Ukhta Town Court of the Komi Republic.

The Ukhta Town Court of the Komi Republic reached the conclusion that the provision of Section 12 (4), Article 230 of the Labour Code of the Russian Federation, to be applied in these cases does not conform to the Constitution of the Russian Federation. Pursuant to this provision if an accident takes place during the commission of an offence by an injured person, if in the opinion of the law-enforcement authorities this offence has elements of a crime, then the accident shall be investigated and classified as an accident not related to work and that the report of unspecified form shall be drafted. The Ukhta Town Court of the Komi Republic stayed the proceedings and requested the Constitutional Court of the Russian Federation to review the constitutionality of the provision.

1.1. As follows from the request and the attached materials, V. A. Sergeyev, a driver of the Komineftegeofizika OJSC, A. V. Seredin, a driver of the Tsentralniye Elektricheskiye Seti, which is a branch of the Komienergo JSPC, and their passengers died in traffic accidents on 24 May 2003 and 19 December 2003, respectively. They were returning from business trips and the cars were owned by the employers. The criminal case against V. A. Sergeyev instituted upon the elements of the crime defined by Section 2, Article 264 of the Criminal Code of the Russian Federation (violation of the Traffic Regulations of the Russian Federation by a person driving a car if it caused, by negligence, the death of a person) was terminated under Subsection 4, Section 1, Article 24 of the Criminal Procedure Code of the Russian Federation due to the death of the suspect. The preliminary investigation authorities denied to institute criminal proceeding against A. V. Seredin on the same grounds.

The regional branch of the Social Insurance Fund of the Russian Federation in the Komi Republic denied payment of the insurance benefits provided by the Federal Law “On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases” to the families of the deceased drivers. The reason for the denial to make payments was that the accidents investigation commission classified the death of both drivers as accidental deaths not related to

work (Section 12 (4), Article 230 of the Labour Code of the Russian Federation), i.e. not covered by insurance.

According to the request of the Ukhta Town Court of the Komi Republic the provision of Section 12 (4), Article 230 of the Labour Code of the Russian Federation, contradicts the Constitution of the Russian Federation and its Articles 19 (Sections 1 and 2) and 55 (Sections 2 and 3). This provision excludes from the category of insured accidents the ones which take place during the commission of an offence by the insured person if this offence has elements of a crime. Therefore it violates the constitutional principle of equality of everyone before the law and court and unreasonably restricts the rights and freedoms of man and citizen. In the applicant's opinion, a reference to the law-enforcement authorities' opinion as a legal ground to conclude that the injured person's actions bear elements of a crime directly contradicts Article 49 (Section 1) of the Constitution of the Russian Federation. This Article provides that everyone accused of committing a crime shall be considered innocent until his guilt is proven according to the rules established by federal law and a court decision which has come into legal force.

1.2. Article 230 of the Labour Code of the Russian Federation was amended by the Federal Law "On Amendments to the Labour Code of the Russian Federation and Annulment of Certain USSR Regulatory Acts in Force in the Territory of the Russian Federation and Certain Legislative Acts (Provisions of Legislative Acts) of the Russian Federation" of 30 June 2006. Certain provisions of Section 12 of this Article were partly reproduced by new Article 229² of the Labour Code of the Russian Federation (Section 6).

However, regardless of the fact that by the time the proceedings in the Constitutional Court of the Russian Federation commenced the previous version of Section 12, Article 230 of the Labour Code of the Russian Federation (as in force before adoption of the mentioned Federal Law) had become inoperative, these provisions are subject to constitutional review pursuant to Section 2, Article 43 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation".

Thus, the subject matter of consideration by the Constitutional Court of the Russian Federation in the present case is the provision of Section 12 (4), Article 230 of the Labour Code of the Russian Federation (as amended by Federal Law No. 197-Φ3 of 30 December 2001) to the extent that they do not grant the surviving family members the right to insurance benefits in case of an accidental death of the insured employee-driver of a vehicle if the accident takes place during the commission of an offence by the deceased person in the performance of his employment duties and if the offence in the opinion of the law-enforcement authorities has elements of a crime, and therefore the accident is recognized as not related to work.

2. Pursuant to the Constitution of the Russian Federation, an individual, his rights and freedoms, shall be the supreme value. Recognition, observance and protection of the rights and freedoms of man and citizen shall be a duty of the Russian Federation. The Russian Federation is a social state, the policy of which is aimed at creating conditions ensuring a decent life and free development of the person, protection of the labour and health of people, ensuring state support of the family, and creating guarantees of social security for certain groups of citizens (Article 2; Sections 1 and 2, Article 7).

Article 39 (Section 1) of the Constitution of the Russian Federation guarantees social security in case of loss of the provider as one of the main social policy goals of the state. The constitutional provisions mentioned above in their unity with Article 39 (Section 1) of the Constitution of the Russian Federation form the basis for a system of social protection of people, social security in cases provided by law, including social security of the family which lost the provider if he was covered as an employee by mandatory social insurance of labour-related accidents and professional diseases.

2.1. Pursuant to Federal Law of 16 July 1999, “On the Foundations of Mandatory Social Insurance”, of 30 June 2006 as amended by Federal Law No. 10-Φ3 of 5 March 2004, mandatory social insurance as an integral part of the state social protection system is a unified system of the state’s legal, economic and organizational measures. They are aimed to compensate or minimize the consequences of changes in the financial situation and (or) social status caused by social insurance risks specified by the legislation of the Russian Federation for employed persons and other categories of citizens (Sections 2 and 3, Article 1).

It is the competence of the legislator to define social insurance risks related to the exercise of the right to social security under the Constitution of the Russian Federation. Within the framework of special legal regulation of these relations the legislator establishes principles, rules and specifics of different types of social security, including social insurance benefits for the employee in case of labour-related accidents and professional diseases, and for his family in case of his death (Sections 1 and 2, Article 39; Subsection “g”, Section 1, Article 72 of the Constitution of the Russian Federation).

At the present time the legal regulation of the mandatory social insurance relations against labour-related accidents and professional diseases is based on the provisions of the Federal Law “On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases” of 24 July 1998 and the Labour Code of the Russian Federation (Chapter 36, “Ensuring employees’ rights to occupational health and safety”). These provisions are aimed at both social protection in a broad sense and social security of those insured and other persons mentioned by law when an insured event takes place. Therefore, under Articles 7 (Section 2)

and 37 (Section 3) of the Constitution of the Russian Federation, these provisions shall not only support the creation of safe working conditions and compensation for injury to the employees' health, but also ensure social security of family members in case of loss of the provider due to labour-related accidents and professional diseases.

2.2. Within the framework of special legal regulation of the relations on mandatory social insurance against labour-related accidents and professional diseases the federal legislator determines a list of persons who have the right to insurance benefits, types of insurance benefits, and grounds for payment of insurance benefits and denial of such payment, including in case of death of the provider for family members or other persons mentioned by law (Articles 7 and 14, Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases"). In this respect, the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases" stipulates that the general ground of the insurer's obligation to provide insurance benefits under this type of insurance is an insured event. An insured event here is a properly confirmed fact of injury of the insured person's health due to a labour-related accident and professional disease (Article 3 (9) and Section 1, Article 7). An accident itself is an event which takes place in the course of performance of the employment duties and results in injury or other damage to the insured person's health requiring transfer to other position, temporary or permanent loss of labour capacity or death (Article 3 (10)).

Regulating investigation, recording and classification of accidents the federal legislator provides for a possible denial of payment of insurance benefits to the insured person's family members, who have lost the provider due to his accidental death, if the accident takes place during the commission of an offence by the deceased person and if this offence in the opinion of the law-enforcement authorities has elements of a crime (Section 12 (4), Article 230 of the Labour Code of the Russian Federation).

Within the meaning attributed to this provision in the law-enforcement practice such opinion of the law-enforcement authorities in the majority of cases meant that the employee, whose actions for the law-enforcement authorities had elements of a crime, did not perform his employment duties at the moment of infliction of injury to his own health or life. Therefore accidents investigation commissions, state labour inspectors, regional branches of the Social Insurance Fund of the Russian Federation and judicial authorities recognized these accidents as unrelated to work. For this reason the surviving family members had no right to insurance benefits provided by Subsection 2, Article 7, Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases".

At the same time in cases which are the subject matter of the request of the court of general jurisdiction to the Constitutional Court of the Russian Federation, it has to be considered

that the injured drivers were driving vehicles at the instruction of their employers and thus were performing employment duties even if driving was part of actions which, in the opinion of the law-enforcement authorities had elements of a crime.

Thus as a general rule in case of accidental death of an employee who was a driver of a vehicle, followed the employer's instructions and thereby performed his employment duties, this accident may not be recognized as an accident unrelated to work, and since this employee was covered by mandatory social insurance against labour-related accidents his family members shall be provided with insurance benefits. The insurance benefits serve here the function of social security in case of loss of the provider (Section 1, Article 39 of the Constitution of the Russian Federation) if there are no obstacles provided by Subsection 2, Article 14 of the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases". Pursuant to this provision an injury caused by guilty actions of the insured person is not subject to compensation.

2.3. In legal regulation of the relations on mandatory social insurance against labour related accidents and professional diseases, the federal legislator is empowered to provide for certain negative consequences for those who seek insurance benefits due to willful injury to their health or life. Although Article 19 of the Constitution of the Russian Federation provides for equality of the rights and freedoms of man and citizen, it does not guarantee equality of rights of a person injured in a situation recognized by the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases" as an insured event and a person who sustained injuries in a situation not recognized as an insured event and caused by his guilty actions.

Therefore the federal legislator relying on the nature and aims of this type of insurance has the power to limit the right to insurance benefits of both the insured person and other persons listed in the law if the injury to the insured person's health or life was caused by his guilt. In itself it is not a violation of the constitutional principle of equality of citizens before the law or a disproportionate restriction of their rights and freedoms. However the legal norms which are grounds for law-enforcement decisions including judicial decisions, should be clear and precise to allow the participants of respective legal relations to reasonably predict the consequences of their actions and feel certain of their officially recognized status, acquired rights and their effective protection by the State (Judgment Constitutional Court of the Russian Federation Judgment of 29 January 2004 No. 2-II).

3. The provisions of Section 12, Article 230 of the Labour Code of the Russian Federation, are aimed to distinguish between the criminal behaviour of an employee and the performance of his employment duties, and consequently, to exclude criminally punishable

misconduct from his labour functions. This should not prevent from achieving socially significant goals of legal regulation of mandatory social insurance relations, and particularly from social security of the employee's family members who have lost their provider due to a work-related accident.

Thus, if the accident was not guiltily caused by the injured person who was performing his employment duties, as a general rule it should be recognized as a legal fact sufficient to grant insurance benefits in case of the employee's death to his family members who have lost the provider, and therefore to compensate them for the loss of subsistence. Under the legal opinion expressed by the Constitutional Court of the Russian Federation in its Decision No. 460-O of 1 December 2005, the principle of full and guaranteed indemnification prescribed by the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases" provides for a full acquisition and exercise of the right to all standard insurance benefits by the insured person's family members in case of his death.

3.1. Within the literal meaning of Section 12 (4), Article 230 of the Labour Code of the Russian Federation, the acquisition and exercise, by the insured person's family members, of the right to social security in case of loss of the provider is conditioned to the enforcement authorities' opinion about the criminality of his actions, and not on the fact of his employment duties performance or intent (if any) to cause injury to his life or health.

However, in deciding on the granting of the insurance benefit this provision may not be applied independently of other provisions, *inter alia* providing a definition and a list of accidents subject to investigation and recording (Article 227 of the Labour Code of the Russian Federation), the definition of an insured event (Article 3 of the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases"), guarantees of indemnification for injury to the life or health of the insured person (Article 14 of the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases").

3.2. The accident described in Section 12 (4), Article 230 of the Labour Code of the Russian Federation, is recognized as not related to work independently of the injured person's intent (if any) to cause injury to his life or health. Therefore, even in the absence of such intent the employee's family members who lost the provider have no right to the insurance benefits due to his death as a result of the commission of an offence by the deceased person if such offence has elements of a crime in the law-enforcement authorities' opinion.

As to cases of death of an employee who was a driver of a vehicle, in their opinions on the nature of the injured person's actions expressed in respective acts the law-enforcement authorities *de facto* assess only the external characteristics of his behaviour (actions or inactions), since under Subsection 4, Section 1, Article 24 of the Criminal Procedure Code of the

Russian Federation, in such cases the ascertainment of guilt and intent in the actions (inactions) within a prescribed legal procedure is not possible. This conclusion is merely an assumption of criminality of the injured person's actions (inactions) based on the presence of objective characteristics of an offence. In any event these characteristics are not sufficient to decide if the actions (inactions) of the vehicle driver have all the elements of a crime as the only appropriate ground for a conclusion on criminal punishability of his actions (inactions) (Article 8 of the Criminal Code of the Russian Federation).

Thereby the law-enforcement authorities' opinion always contains irremediable doubts as to the guilt of the employee. Therefore it may not predetermine the decisions on whether the accident was or was not related to work or the decision to deny payment of insurance benefits to the insured person's family members who lost their provider. These doubts may be remedied only by a court. In the absence of a judicial act establishing that, all the elements of a crime or his intent to cause injury to his own life in the actions (inaction) of a vehicle driver who died accidentally, any doubts as to criminal punishability of his actions (inactions) or the presence of a respective intent not remedied by the law-enforcement authorities' opinion shall be interpreted in his favour (Article 49, Section 3 of the Constitution of the Russian Federation).

Thus the mere law-enforcement authorities' opinion on the elements of a crime in the actions (inactions) of the injured person does not presume an unequivocal recognition of an accident as one not related to work. And pursuant to Section 12, Article 230 of the Labour Code of the Russian Federation, taken together with its Article 227 and Articles 3 and 14 of the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases", the commission vested with the powers to investigate and classify the accident has to rely in its decision on a full and thorough fact-finding inquiry and consideration of all necessary materials.

3.3. Consequently Section 12 (4), Article 230 of the Labour Code of the Russian Federation, does not prevent recognition, as a work-related accident, of an accident which takes place during the commission of an offence by an insured driver of a vehicle performing his employment duties if such offence in the opinion of the law-enforcement authorities has elements of a crime. And consequently, it does not presume denial of insurance benefits payment to the insured person's family members who lost the provider, pursuant to the Federal Law "On Mandatory Social Insurance of Labour-Related Accidents and Professional Diseases", in the absence of a respective judicial decision considering all the circumstances. Thus, it may not be considered as infringing on the rights guaranteed by Articles 19 (Section 1) and 39 (Section 1) of the Constitution of the Russian Federation and contradictory to its Article 55 (Sections 2 and 3).

Concluding from the above and pursuant to Article 6, Section 1 and 2, Article 71, Articles 72, 74, 75, 79, 87 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 provision of Section 12 (4), Article 230 of the Labour Code of the Russian Federation (as amended by the Federal Law of 30 December 2001), as conforming to the Constitution of the Russian Federation to the extent that in the absence of a judicial decision considering all circumstances of the case it does not imply denial of insurance benefits payment to the family members of the insured employee who have lost the provider if this employee was a driver of a vehicle and his death was caused by an accident which took place during the commission of an offence by him in the performance of his employment duties and if the offence had elements of a crime in the opinion of the law-enforcement authorities.

The constitutional meaning of the abovementioned provision revealed in the present Judgment is generally binding and precludes any other interpretation of this provision in law-enforcement practice.

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

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.

Constitutional Court
of the Russian Federation

No. 7-II