

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment

of 6 February 2009 No. 3-II

in the case concerning the review of the constitutionality of Section 1, Article 5 of the Federal Law “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance” in connection with a request of the Avtozavodsky District Court of Tolyatti, Samara Region.

Saint Petersburg, 6 February 2009

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

in the attendance of S. B. Klyuyev, judge of the Avtozavodsky District Court of Tolyatti, Samara Region; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A. N. Kharitonov; 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 Section 1, Article 5 of the Federal Law “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance”.

The reason for the consideration of the case is a request of the Avtozavodsky District Court of Tolyatti, Samara Region. The ground for the consideration of the case is the discovered uncertainty of whether the provision challenged by the applicant is in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu. D. Rudkin, submissions by the parties’ representatives, statements by M. Yu. Barshchevsky, Plenipotentiary Representative of the Government of the Russian Federation to the Constitutional Court of the Russian Federation, and the following representatives invited to the hearing: T. V. Yuryeva, representative of the

Ministry of Healthcare and Social Development of the Russian Federation, Deputy President of the Supreme Court of the Russian Federation V. N. Solovyov, representative of the Supreme Court of the Russian Federation, T. A. Vasilyeva, representative of the Prosecutor General of the Russian Federation, G. A. Orlova, representative of 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. Pursuant to Section 1, Article 5 of Federal Law No. 255-Φ3 “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance” of 29 December 2006, the temporary loss of labour capacity benefit shall be paid to the citizens covered by mandatory social insurance in cases of loss of the labour capacity due to an illness or injury; the need to provide care to a sick family member, quarantine of the insured individual, or a child under seven years old, or another family member duly recognized as legally incapacitated; undergoing fitting with medically prescribed prosthesis in a specialized in-patient facility; aftercare in sanatoria and health resorts directly after in-patient treatment.

With reference to the abovementioned legal provisions, the Justice of the Peace of Judicial District No. 1 of the Avtozavodsky District of Tolyatti, Samara Region, dismissed M. A. Yermolov’s lawsuit concerning recovery of the temporary loss of labour capacity benefit against the “AVTOVAZ” OJSC that had not made payments against the temporary loss of labour capacity certificate issued to the applicant for providing care to his healthy child (one-year-old son) as his spouse, Ye. G. Yermolova, was ill and was undergoing in-patient treatment. The Justice of the Peace reasoned the dismissal by the fact that the law established an exhaustive list of grounds for providing insured individuals with temporary loss of labor capacity benefits, and a father providing care to a healthy child due to the illness of a mother who is on a child care leave was not among these grounds.

The Avtozavodsky District Court of Tolyatti, Samara Region, which considers M. A. Yermolov’s appeal against the decision of the Justice of the Peace, requests to recognize Section 1, Article 5 of the Federal Law “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance” as non-conforming to the Constitution of the Russian Federation. In the applicant’s opinion, it does not envisage, unlike the regulation previously in force, payment of the temporary loss of labour capacity benefit to the father (or another family member) of a child under one and a half years old in case of the mother’s illness when she is on a child care leave, and thus

deprives the child's father of the right equal to the right of the mother to bring up and provide care to children (Articles 38 and 39, Constitution of the Russian Federation) and, in violation of Article 55 (Section 2) of the Constitution of the Russian Federation, denies the father's right to social security for upbringing children, which was established in the normative acts of the USSR, i.e. before the mentioned Federal Law was adopted.

Thus, Section 1, Article 5 of the Federal Law "On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance" is the subject matter of consideration by the Constitutional Court of the Russian Federation in the present case since it does not envisage an opportunity to award and pay the temporary loss of labour capacity benefit to the father (or another family member) of a child under one and a half years old in case of the mother's illness when she is on a child care leave.

2. The Constitution of the Russian Federation prescribes that the Russian Federation shall ensure state support to the family, motherhood, fatherhood and childhood, establishes state allowances and other social security guarantees (Article 7, Section 2), and declares that motherhood, childhood and the family are under the protection of the state and that care for children, their upbringing shall be an equal right and obligation of the parents (Article 38, Sections 1 and 2).

The children's right to special care and assistance is proclaimed by the Universal Declaration of Human Rights and, along with the principle of priority of children's interest and well-being in all spheres of the state's life, is secured by the Convention on the Rights of the Child (adopted by the UN General Assembly on 20 November 1989), which established that the parents shall have the primary responsibility for upbringing and development of the child, whose best interests shall be their basic concern, and that the States Parties to the Convention, in order to implement the child's rights, shall render appropriate assistance to parents and legal guardians in performance of child-rearing responsibilities, in particular through the system of social security and social insurance, and create appropriate financial conditions for their development (Articles 18, 26, and 27).

Providing guidelines to the national social security legislation for creating appropriate legal mechanisms, the International Labour Organization considers it necessary to take into consideration the needs of the working citizens, whose family members need their care, so that these citizens could exercise their right to labour without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities (Subsection 2, Article 1, Subsection 1, Article 3, and Articles 4 and 9, ILO Convention No. 156,

“Convention Concerning Equal Opportunities and Equal Treatment for Men and Women Workers: Workers with Family Responsibilities, 1981”).

3. The Constitution of the Russian Federation guarantees social security at an old age, in case of an illness, disability, loss of a provider, for upbringing of children and in other cases established by law (Article 39, Section 1).

The federal legislator, in exercising its power provided by Articles 71 (Subsection “c”), 72 (Subsections “b”, “g”, Section 1), and 76 (Sections 1 and 2) of the Constitution of the Russian Federation, defined cases (social insurance risks) that relate to the exercise by citizens of their constitutional right to social security within the system of mandatory social insurance and established, within the special legal regulation of the relevant relations, the principles, rules and particularities of various types of benefits within the mandatory social insurance scheme.

3.1. Insurance benefit in the form of a temporary loss of labour capacity benefit shall be provided under Federal Law No. 165-Φ3, “On the Foundations of Obligatory Social Insurance” of 16 July 1999 when such social risk as temporary loss of labour capacity occurs (Subsection 1 (2), Article 7, Subsection 2 (5), Article 8). The conditions, amount and procedures for providing this benefit are determined by the Federal Law “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance”.

Section 1, Article 5 of the Federal Law, which contains an exhaustive list of cases for providing insured individuals with a temporary loss of labour capacity benefit, links the possibility of payment either with the illness of the insured individual himself or his family members, the application of special limitation measures (quarantine) or rehabilitative measures to the insured individual (prosthetics and treatment at sanatoria and health resorts) that necessitate him being relieved of labour duties. Its provisions that define, in conjunction with the relevant provisions of the Labour Code of the Russian Federation and the Federal Laws “On the Foundations of Mandatory Social Insurance” and “On State Benefits for Citizens Who Have Children”, the contents of temporary loss of labour capacity as a social insurance risk. These provisions are not intended to provide benefits related to mandatory social insurance in case of other social insurance risks.

Taking care of an infant is a separate insurance case, which constitutes an occurrence of such social insurance risk as motherhood and covers pregnancy and childbirth. Under the Federal Law “On the Foundations of Mandatory Social Insurance” (Subsection 1 (4), Article 7 and Subsection 2 (7, 8, 10, and 11), Article 8), the following types of benefits within mandatory social insurance are provided in these circumstances: a pregnancy and childbirth benefit, a lump-sum benefit to women who were registered at medical institutions at early stages of pregnancy, a

lump-sum childbirth benefit, and monthly child care benefits until the child is one and a half years old.

The procedures for providing these benefits are covered by the Federal Law “On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance” and the Federal Law “On State Benefits for Citizens Who Have Children”, in which Articles 13 and 14 establish that the right to monthly child care benefits until the child is one and a half years old shall be enjoyed by the child’s mother, father or another relative who actually takes care of the child and is on a child care leave. These individuals are entitled to this leave pursuant to Article 256 of the Labour Code of the Russian Federation.

Thus, the right to be relieved of labour duties due to the need to take care of a child under one and a half years old as well as the right to social security during this period, which the said individuals enjoyed under the previous social insurance regulation, have been preserved. As to the limitation of instances where the temporary loss of labour capacity benefit is payable due to the purpose-oriented nature of this type of insurance benefits within the system of mandatory social insurance, it cannot be viewed as restricting the constitutional right to take care of children and receive social security for the upbringing of children. These rights are exercised within another type of social security aimed at compensating for the loss of earnings caused by giving birth to and upbringing of a child and by taking due care of him.

This regulation is implemented by the federal legislator within its discretionary powers and correlates with the constitutionally significant aims of mandatory social insurance aimed at compensating for or minimizing the consequences of the change in the financial position of the working citizens due to the occurrence of social insurance risks envisaged by the legislation of the Russian Federation, each of which correlates with a certain type of insurance benefits (Section 3, Article 1, Subsection 1, Article 8, Federal Law “On the Foundations of Mandatory Social Insurance”).

3.2. The change in the legal regulation with regard to providing temporary loss of labour capacity and child care benefits presumes the existence of a legal mechanism that allows the child’s father, in case of the mother’s illness when she is on a child care leave, to freely use the opportunity envisaged by Article 256 of the Labour Code of the Russian Federation to use a child care leave for this period of time and thus exercise the rights guaranteed by Articles 38 (Section 2) and 39 (Section 1) of the Constitution of the Russian Federation to take care of a child and to receive social security for the upbringing of children. At the same time, insofar as child care leaves may not be provided simultaneously to several family members, the transfer of

the right to use a child care leave and, therefore, the assignment and payment of the child care benefit shall occur through procedures that are as convenient as possible for the child's parents.

Pursuant to Subsections 50 and 51 of the Regulation on Assigning and Paying Benefits to Citizens Who Have Children (approved by Decree of the Government of the Russian Federation No. 865 of 30 December 2006), the ground for assigning and paying monthly child care benefits shall be the employer's decision to provide a child care leave. Taking this decision requires, among other documents, a certificate from the place of work (study, service) of the child's mother (father, both parents) that she (he, they) does not use the said leave and does not receive the benefit.

The current practice of applying these instructions is that the sick mother, who is on a child care leave, needs to request her employer to cancel her leave; a relevant decision shall be issued on the basis of this request and a certificate shall be issued to the child's mother to confirm this fact. All this entitles the child's father to request a child care leave combined with the payment of the child care benefit from his employer.

Such procedure, which itself requires organizational efforts and investment of time, cannot be completed in certain cases (e.g. if the mother is seriously ill or is in an in-patient facility), and hence cannot fully guarantee that the interests of the family and the child will be protected. This in its turn precludes the possibility to fully exercise the constitutional rights to take care of and bring up children and to receive social security for the upbringing of children. Further improvement of the legislation is necessary to simplify, to the maximum extent, the procedures – in case of the mother's illness when she is on a child care leave – for providing a child care leave to the child's father (other relative) for this period and assigning mandatory social insurance benefit due to him under law.

Concluding from the above and pursuant to Article 71, Sections 1 and 2, Articles 72, 74, 75, 79, 80, 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 5 of the Federal Law "On Providing a Temporary Loss of Labour Capacity Benefit and a Pregnancy and Childbirth Benefit to Citizens Covered by Mandatory Social Insurance" as conforming to the Constitution of the Russian Federation since these provisions, within the system of current legal regulation, do not deprive the child's father of the right equal to the right of the mother to the upbringing of children or the right to social security for the upbringing of children, which is exercised *inter alia* through provision of mandatory social insurance benefits.

2. This Judgment shall be final and shall not be subject to appeal, it shall come into force immediately upon its 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, *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. 3-II