

By the Judgement of 24 March 2023 No.10-II, the Constitutional Court assessed constitutionality of Article 1370, part 4 of the Civil Code of the Russian Federation and item 3 of the Rules for Payment of Remuneration for Service Inventions, Service Utility Models, and Service Industrial Designs (adopted by Decree No. 512 of the Government of the Russian Federation on June 4, 2014)

These provisions were the subject of consideration to the extent that on their basis in the case of the employer obtaining a patent for an service invention, service utility model or service industrial design in the absence of an agreement between the employee and the employer on the amount of remuneration, conditions and procedure for its payment the issue of the grounds for payment of remuneration calculated in accordance with item 3 of these Rules, as well as the determination of the amount of remuneration to be paid to one of the co-authors of the respective object, is decided.

The challenged provisions in their interrelation were found not to contradict the Constitution of the Russian Federation to the extent that their constitutional and legal meaning in the system of the current legal regulation implies that in the absence of the said contract concluded between the employer and the author independently or with the assistance of the court, the remuneration calculated on the basis of item 3 of these Rules shall be paid to the author of the service invention, utility model, industrial design, regardless of its introduction into the production or other activities of the employer or other actual use by the employer.

At the same time, the court may reduce the amount of the said remuneration if the employer does not use (insufficiently uses) the service invention, service utility model or service design or, contrary to his justified and reasonable expectations, does not benefit from its use due to factors beyond his control and which he could not and should not have foreseen, or for other good reasons.

Item 3 of these Rules was found to be inconsistent with the Constitution of the Russian Federation to the extent that it does not allow, in the absence of a contract between the employee and the employer on the amount of remuneration, conditions and procedure for its payment, to determine the amount of remuneration to the person who created the intellectual activity in collaboration, taking into account the personal contribution of such person to the result obtained, when the calculation of remuneration based on the amount of his average wage may lead to a clear violation of the principles of justice and proportionality.

Until the appropriate changes are made in the legal regulation in determining the amount of remuneration to be paid to the co-author of the service object of patent law, the court may, taking into account all the circumstances of a particular case,

including the co-author's personal contribution to the result obtained, award him remuneration in an amount other than that provided by the Rules for remuneration for service inventions, service utility models, service industrial designs.