

THE SELECTED DECISIONS
On Behalf of the Russian Federation
R U L I N G
OF THE CONSTITUTIONAL COURT
OF THE RUSSIAN FEDERATION

on the case concerning the verification of constitutionality of Article 12 of the Law of the USSR of 9 October, 1989 "On the Order of Settlement of Collective Labour Disputes (Conflicts)" (in the wording of 20 May, 1991) in the part banning the strikes of the workers of civil aircraft in connection with the petition of the Trade Union of Flying Personnel of the Russian Federation

City of Moscow

May 17, 1995

The Constitutional Court of the Russian Federation composed of the Chairman E.M.Ametistov, Judges N.T.Vedernikov, Y.M.Danilov, V.D.Zorkin, V.O.Lutchin, V.I.Oleinik, V.G.Strekozov, V.A.Tumanov, O.S.Khokhryakova, guided by Article 125 (part 4) of the Constitution of the Russian Federation, paragraph 3 of part one, parts two and three of Article 3, paragraph 3 of part two of Article 22, Articles 36, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

at the open session considered the case concerning the verification of constitutionality of part one of Article 12 of the Law of the USSR dated 9 October, 1989 "On the Order of Settlement of Collective Labour Disputes (Conflicts)" (in the wording of 20 May, 1991) that didn't permit walkout as means of settlement of collective labour dispute (conflict) at enterprises and organisations of civil aircraft.

The reason for consideration of the case was a petition of the Trade Union of Flying Personnel of the Russian Federation on the violation of the constitutional right to strike as a result of application by the court which considered the case of the rules of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)".

The ground for consideration of the case was the disclosed uncertainty in the question whether the regulation of part one of Article 12 of the stated Law which foresaw that walkout as means of settlement of collective labour dispute (conflict) was not permitted at enterprises and organisations of the civil aircraft was compatible with the Constitution of the Russian Federation.

Having heard the statements of the reporting Judges O.S.Khokhryakova and V.I.Oleinik, the pleading of the representatives of the party that passed a petition to the Constitutional Court of the Russian Federation - President of the Trade Union of Flying Personnel of the Russian Federation A.A.Malinovskiy and doctor in law A.A.Shugaev; the State Duma representative - deputy A.G.Golov, expert findings, as well as the pleadings of the invited to the session Deputy Chairman of the Supreme Court of the Russian Federation N.Y.Sergeeva, Deputy Minister of Transport of the Russian Federation G.N.Matyushov, Deputy Minister of Labour of the Russian Federation V.V.Kalashnikov, Chief of the Department of Air Transport of the Ministry of Transport of the Russian Federation V.V.Zamotin, after the examination of the presented and additionally received materials, the Constitutional Court of the Russian Federation
a s c e r t a i n e d :

1. On 18 May, 1994, on the initiative of the Trade Union of Flying Personnel of the Russian Federation in the aircraft detachments and aircraft enterprises there was conducted a strike of flying personnel - members of this trade union. On the grounds of Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)" by the decisions of courts this strike was recognised illegal.

Trade Union of Flying Personnel of the Russian Federation passed a petition to the Constitutional Court of the Russian Federation in order to verify constitutionality of the stated Law because, to its mind, banning the strikes contradicts the Constitution of the Russian Federation.

2. Submitted to the Constitutional Court of the Russian Federation for consideration is a

question concerning constitutionality of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)" which in accordance with paragraph 2 section two ("Concluding and Interim provisions") of the Constitution of the Russian Federation acts on the territory of the Russian Federation and is applied by the courts and other law-enforcing bodies. The petitioner asks to verify the Law as a whole. But the whole Law can not be the subject for consideration in this case. In accordance with presented materials the strike was conducted at the enterprises of civil aircraft and, deciding on its illegality, the courts applied the regulation of Article 12 of the Law which prohibited to use strike as means of settlement of collective labour dispute (conflict) at the enterprises and organisations of the civil aircraft. It should also be noted that the Trade Union of Flying Personnel of the Russian Federation as a non-governmental organisation unites only certain categories of the staff of civil aircraft and is called to represent and protect their rights alone.

Taking into account the mentioned circumstances, only that rule of the applied law (part one of Article 12) should be recognised as subject of consideration of this case there which foresees banning walkout as means of settlement of collective labour dispute (conflict) and only in the part that says about enterprises and organisations of civil aircraft.

3. Article 37 (part 4) of the Constitution of the Russian Federation recognises the right to individual and collective labour dispute with the use of methods of settlement established by federal law, including the right to strike. Thus, the strike is considered as a method of dispute settlement and the legislator can determine when and on what conditions such method of dispute settlement can be used and when it is inadmissible.

While regulating the right to strike the needed co-ordination should be foreseen between protection of professional interests, the means of which is strike, and observation of social interests to which it can cause damage and provision of which is the duty of the legislator. The possibility of restriction of the right to strike of some categories of workers including those engaged in civil aircraft, taking into account the character of their activity and possible consequences of their walkout directly proceeds from the regulations of Article 17 (part 3) of the Constitution of the Russian Federation providing that realisation of rights and freedoms of individual and citizen must not infringe upon the rights and freedoms of other persons. It also proceeds from Article 55 (part 3) of the Constitution of the Russian Federation in conformity with which the rights and freedoms of individual and citizen may be restricted by federal law only to the extent needed for the purposes of protecting the foundations of the constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state. Thus, the Constitution of the Russian Federation determines for the legislator the bounds of possible restrictions.

Nor does the restriction of the right to strike contradict the generally accepted principles and rules of international law. Thus, proceeding from the regulations of the International Covenant on Economic, Social and Cultural Rights, the prohibition of the right to strike is admissible with regard to persons who are the complement of the armed forces, police and administration of the state (part two of Article 8), and with regard to other persons the restrictions are possible if they are needed in the democratic society in the interests of state security or social order or for the protection of the rights and freedoms of others (paragraph "c" of part one of Article 8). In addition, the international legal acts on human rights ascribe the regulation of the right to strike to the sphere of internal legislation. But this legislation must not go beyond restrictions permitted by these acts.

4. Part one of Article 12 of the considered Law establishes that at the enterprises and organisations of civil aircraft walkout as means of settlement of collective labour dispute (conflict) is not permitted. Such wording means that restriction of strikes spreads over all enterprises and organisations related to the system of civil aircraft without exception as well as over all workers engaged in it. It does not determine any differentiation of enterprises, subdivisions, services, categories of workers of civil aircraft with the account of the character of their activity as well as the significance of the works carried out by them. As a result, the right to strike of a considerably more wide circle of workers is restricted than it is needed for achievement of the aims stated in Articles 17 (part 3) and 55 (part 3) of the Constitution of the Russian Federation.

In this situation, while resolving the question on legality or illegality of strikes part one of the Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)" should be applied, taking into account the regulations of Article 55 (parts 2 and 3) of the Constitution of the Russian Federation. It follows from the regulations of paragraph 2 of section two ("Concluding and Interim Provisions") of the Constitution of the Russian Federation which establishes that laws and other legal acts acting on the territory of the Russian Federation before the Constitution of the Russian Federation came into force, shall be applied

in the part which does not contradict it.

On the basis of all stated and guided by part one of the Article 71, Articles 72, 74, 75, part two of Article 86, Article 100 of the Federal constitutional law "On the Constitutional Court of the Russian Federation", the Constitutional Court of the Russian Federation

r u l e d :

1. The prohibition of strikes at enterprises and organisations of civil aircraft established by part one of Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts) conforms with the Constitution of the Russian Federation to the extent to which the right to strike of specific categories of workers may be restricted in accordance with Article 55 (part 3) of the Constitution of the Russian Federation aimed at protecting the foundations of the constitutional system, morals, health, rights and legitimate interests of other persons, and ensuring the defence of the nation and security of the state.
2. The prohibition of strikes at enterprises and organisations of civil aircraft only on the ground of their belonging to the specific branch, established by part one of Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)", does not conform with Articles 37 (part 4) and 55 (parts 2 and 3) of the Constitution of the Russian Federation.
3. In conformity with Article 37 (part 4) of the Constitution of the Russian Federation the Federal Assembly of the Russian Federation should determine the terms and grounds of the restriction of the right to strike and the compensation mechanisms and procedures of settlement of collective labour disputes (conflicts) related to it, guided by Article 55 (parts 2 and 3) of the Constitution of the Russian Federation and generally accepted principles and rules of international law.
4. Until adoption of the federal law foreseen by Article 37 (part 4) of the Constitution of the Russian Federation in the process of applying of conciliatory and judicial procedures while resolving questions related to strikes, part one of Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts)" should be applied with due regard to the requirements of Articles 17 (part 3) and 55 (parts 2 and 3) of the Constitution of the Russian Federation.
5. In conformity with part three of Article 79 and part two of Article 100 of the Federal constitutional law "On the Constitutional Court of the Russian Federation" the case on the claim lodged against the Trade Union of Flying Personnel of the Russian Federation (the decision of Moscow city court of 19 May, 1994) is subject to review if the ground of the decision was Article 12 of the Law of the USSR "On the Order of Settlement of Collective Labour Disputes (Conflicts) to the extent to which it was acknowledged not to be in accordance with the Constitution of the Russian Federation by paragraph 2 of the resume of the present Ruling.
6. In accordance with parts one and two of Article 79 of the Federal constitutional law "On the Constitutional Court of the Russian Federation" the present Ruling is final, may not be appealed, shall come into force immediately upon its announcement and shall be self-executing.
7. According to Article 78 of the Federal constitutional law "On the Constitutional Court of the Russian Federation" the present Ruling shall be published in "The Collection of legislation of the Russian Federation", "Russian Gazette" as well as in other official publications of state power of the Russian Federation and also in "The Bulletin of the Constitutional Court of the Russian Federation".

The Constitutional Court
of the Russian Federation

Unofficial translation by the Constitutional Court