



Case GKPI 11-2093

Country: Russia

Region: Europe

Year: 2012

Court: Supreme Court

Health Topics: Disabilities, Disasters and emergencies, Occupational health

Human Rights: Right to social security

Facts

The appellant contracted a disease while on a business trip to the Chernobyl region to participate in work to contain the consequences of the nuclear disaster. He sought to receive employment compensation based on the disease he acquired and his resulting disability, without submitting an official report on an accident at work or an occupational disease, which lower courts had held were necessary for a medical examination to determine his degree of disability.

The appellant requested that the Court invalidate the provision in paragraph 7 of the "Rules for establishing the degree of occupational disability resulting from accidents at work and occupational diseases" (â€œRulesâ€œ), which required an official report of the accident at work or occupational disease to be submitted before a medico-social examination. The examination determined the level of disability that could be carried out. The appellant relied on paragraph 5 of Part 3 of Article 8 of the Federal Act No. 181-FZ of November 24, 1995, "On Social Protection of the Disabled," which did not contain any official report requirement for such examinations.

The appellant also argued that under the third part of Article 3 of the Act, "On Social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Disaster," he was entitled to compensation for the disease he contracted as a result of his business trip to the region to participate in liquidation work.

The appellant argued that his right to establish his degree of occupational disability was violated.

Decision and Reasoning

The Court denied the Appellant's request to invalidate the official report requirement of the Rules.

The Court held that paragraph 7 of the Rules restates the norm of paragraph 1 of Article 13 of the Federal Act No. 125-FZ of July 24, 1998, "On Compulsory Social Insurance against Accidents at Work and Occupational Diseases." Thus, official reports were required for medical examinations to determine the degree of occupational disability in order to receive employment compensation for an accident at work or occupational disease.

The Court held that although the Federal Act No. 181-FZ of November 24, 2000, â€œOn Social Protection of the Disabledâ€œ did not contain requirements for submitting an official report, the Act left the procedure for determining the degree of occupational disability open for regulation. Thus, the official report requirement in the Rules did not contradict the Act.

The Court held that the Act "On social Protection of Citizens Exposed to Radiation as a Result of the Chernobyl Disaster" only related to State compensation to citizens harmed by the specified State nuclear activities and did not extend to employment compensation. It thus did not extend to the Appellant's claim.

Decision Excerpts

â€œParagraph 5 of the third paragraph of Article 8 of the Federal Act "On Social Protection of the Disabled", imposes on medical/social expertise establishments [the responsibility] to determine the degree of occupational disability without restricting the persons subject to such examination, and thus does not preclude the carrying out of such examination in respect of persons who have received harm to health as a result of accidents at work or occupational diseases. This item does not contain requirements for submitting a

report on an accident at work or a report on occupational disease, but . . . the paragraph does not regulate the procedure for determining the degree of occupational disability.â€• Paras. 15-16.

â€œDŸÑfD½D°Ñ, 5 Ñ†D°Ñ•Ñ, D, Ñ,Ñ€DµÑ,ÑCEDµD¹ Ñ•Ñ,Ð°Ñ,ÑCED, 8 ÐµDµD´DµÑ€D°D»ÑCED½D¾D¾D¾ D·D°D D·D°Ñ%D, Ñ, Dµ D, D½D²D°D»D, D´D¾D² D² D D¾Ñ•Ñ•D, D¹Ñ•D°D¾D¹ ÐµDµD´DµÑ€D°Ñ†D, D, Å» D²D¾D·D»D°D¾ D½D° ÑfÑ†Ñ€DµD¶D´DµD½D, Ñ• D¼DµD´D, D°D¾Ñ•D¾Ñ†D, D°D»ÑCED½D¾D¹ Ñ•D°Ñ•D; DµÑ€Ñ, D, D·Ñ< D¾D; Ñ€DµD´DµD»DµD½D, Dµ Ñ•Ñ, DµD; DµD½D, ÑfÑ,Ñ€D°Ñ,Ñ< D; Ñ€D¾Ñ,, DµÑ•Ñ•D, D¾D½D°D»ÑCED½D¾D D±DµD· D¾D¾Ñ€D°D½D, Ñ†DµD½D, Ñ• D°Ñ€ÑfD¾D° D»D, Ñ†, D; D¾D´D»DµD¶D°Ñ%D, Ñ... Ñ, D°D°D¾D¼Ñf D¾Ñ•D²D, D´DµÑ, DµD»ÑCEN•Ñ, D²D¾D²D°D½D, ÑZ, Ñ†Ñ, D¾ D½Dµ D, Ñ•D°D»ÑZÑ†D°DµÑ, D; Ñ€D¾D, D·D²D¾D Ñ•D°Ñ•D; DµÑ€Ñ, D, D·Ñ< D, D² D¾Ñ, D½D¾Ñ´DµD½D, D, D»D, Ñ†, D; D¾D»ÑfÑ†D D²Ñ´D, Ñ... D; D¾D²Ñ€DµD¶D D·D´D¾Ñ€D¾D²ÑCEN• D² Ñ€DµD·ÑfD»ÑCEN, Ð°Ñ, Dµ D½DµÑ•Ñ†D°Ñ•Ñ, D½Ñ<Ñ... Ñ•D»ÑfÑ†D°DµD² D½D° D; Ñ• D; Ñ€D¾Ñ,, DµÑ•Ñ•D, D¾D½D°D»ÑCED½Ñ<Ñ... D·D°D±D¾D»DµD²D°D½D, D¹. D£D°D·D·D°D½D½Ñ·D¹ D; ÑfD½D Ñ•D¾D´DµÑ€D¶D, Ñ, Ñ,Ñ€DµD±D¾D²D°D½D, D¹ D¾ D; Ñ€DµD´Ñ•Ñ, D°D²D»DµD½D, D, D°D°Ñ, D° D¾ D½DµÑ•Ñ†Ñ•D»ÑfÑ†D°Dµ D½D° D; Ñ€D¾D, D·D²D¾D´Ñ•Ñ, D²Dµ D, D»D, D°D°Ñ, D° D¾ D; Ñ€D¾Ñ,, DµÑ•Ñ•D, D¾D½D°D»Ñ D·D°D±D¾D»DµD²D°D½D, D, D¾D´D½D°D¾D¾ . . . D; D¾Ñ€Ñ•D´D¾D° D¾D; Ñ€DµD´DµD»DµD½D, Ñ• Ñ•Ñ, DµD; DµD½D, ÑfÑ,Ñ€D°Ñ,Ñ< D; Ñ€D¾Ñ,, DµÑ•Ñ•D, D¾D½D°D»ÑCED½D¾D¹ Ñ,Ñ€ÑfD´D¾Ñ•D; D¾Ñ•D¾D± ÑfÑ€DµD¾ÑfD»D, Ñ€D¾D²D°D½.â€•

â€œThe presence of an employment relationship between the employee and the employer itself is not sufficient for the qualification of the fact of harm to health as an insured event, [as an insured event] must be confirmed by a report in accordance with the law.â€• Para. 24.

â€œD·D°D»D, Ñ†D, Dµ Ñ,Ñ€ÑfD´D¾D²Ñ<Ñ... D¾Ñ, D½D¾Ñ´DµD½D, D¹ D¼DµD¶D´Ñf Ñ€D°D±D¾Ñ, D½D, D°D¾Ñ€ Ñ€D°D±D¾Ñ, D¾D´D°Ñ, DµD»DµD¼ Ñ•D°D¼D¾ D; D¾ Ñ•DµD±Dµ D½Dµ D, D¼DµDµÑ, D¾D; Ñ€DµD´DµD»Ñ•Ñ D·D½D°Ñ†DµD½D, Ñ• D´D»Ñ• D°D²D°D»D, Ñ, D, D°D°Ñ†D, D, Ñ,, D°D°Ñ, D° D; D¾D²Ñ€DµD¶D´DµD½D, Ñ• D·D´D¾Ñ D°D°D° Ñ•Ñ,Ñ€D°Ñ... D¾D²D¾D¾D¾ Ñ•D»ÑfÑ†D°Ñ•, D°D¾Ñ, D¾Ñ€Ñ·D¹ D; D¾D´Ñ, D²DµÑ€D¶D´D°DµÑ, Ñ•Ñ• D¾ ÑfÑ•Ñ, D°D½D¾D²D»DµD½D½D¾D¼ D·D°D°D¾D½D¾D¼ D; D¾Ñ€Ñ•D´D°Dµ D°D°Ñ, D¾D¼.â€•