

Russian Dads Pursue Right to Parental Leave

By [Yelena Gorelova](#)

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Watching a Red Square parade. More breadwinner fathers are pressing for paid time off to raise their kids. **Andrei Makhonin**

Father of three Alexei Ostayev is trying to prove that he was fired from his job in circumstances that should be protected under the country's labor laws.

Ostayev is the only breadwinner for his stay-at-home wife and their children. The children are young — their ages are 2, 7 and 12 — and one of them is disabled. Ostayev maintains that Logos-Media, a publisher of more than 30 magazines and newspapers, acted wrongly in axing him during a round of layoffs.

He has brought a complaint all the way to the Constitutional Court, which heard arguments in his case just this month, Russian media reported. The basis of his legal challenge: He believes that fathers, especially those with more than one child and with small children, should receive the same protections from firing that mothers do.

In particular, Ostayev wants Section 4, Article 261 of the Labor Code to be declared illegal. That's the section that spells out the categories of employees who cannot be fired at the employer's initiative.

His case is part of a bigger movement. Fathers of small children no longer want to put up with gender discrimination at work, and step by step they are winning the parental rights already won by mothers. They have claimed a victory: Two years ago, they got the right to take parental leave, and that has inspired them to fight further.

In 2009 Ostayev became the lead artist for publishing group 777, part of Logos-Media. Almost immediately after the family had its third child, he received notice that he was being fired as part of a company-wide staff reduction.

"They offered me a choice of five other jobs, from janitor to art director of the online department, and I agreed to two of them," Ostayev recounted. Two days later, however, he was told that the company was eliminating those positions as well.

He then submitted a request for parental leave. In February 2009, male employees in Russia had the following option: Following a legal challenge by another father, engineer Mikhail Yermolov at Russian auto maker AvtoVAZ, the Constitutional Court amended the labor laws.

After his dismissal, Ostayev made an unwitting find about his company's payroll. "I saw in job classifieds on the Internet that the company was searching for a new candidate for my job in other words, the job hadn't been eliminated," he said. "I called work, and they gave me an offer to interrupt the leave, which I did. But on the same day, I got a firing notice."

That was when Ostayev attempted to contest his firing, bringing a lawsuit against Logos-Media in the Savyolovsky District Court, which took the side of his employer.

Current labor laws in Russia protect only single fathers from firing. If the father is the sole breadwinner for a family with more than one child and with young children, his right to keep his job isn't protected in any way, Ostayev maintained.

He brought up counter-examples from European law such as Finland, where the right of a parent in a multichild family to keep his or her job belongs to the parent who draws the bigger salary.

Dmitry Litvinov, head of the legal department for Bauer Media in Russia, the company that founded Logos-

Media, said the Savyolovsky District Court "upheld that Ostayev was let go in accordance with the law, without a violation of any standards."

"And it upheld this in two instances — in the Savyolovsky court and in the Moscow City Court, as the plaintiff made an appeal," Litvinov said.

There is a legal standard that forbids laying off a father who is raising a child by himself, but that isn't Ostayev's situation, Litvinov added. The company lawyer declined to comment on layoffs of full-time employees at the company and the scale of the layoffs.

"When my wife gave birth [to our third child], they invited me to take a leave for one week at my expense, since they didn't give me a regular leave, which I had a right to," Ostayev said. Ostayev remained on parental leave for six months.

Though fathers have the right to take parental leave under the law, actually receiving that leave from an employer is difficult because of the mentality among Russian bosses, said Igor Serebryany, coordinator for community action at the Father's Committee. "When a man asks to be let out on maternal leave, he is looked at like he's a Martian," Serebryany said. "Then the pressure starts. I know of stories like these."

According to the law, men's and women's rights are equal and there is no gender discrimination, but such situations suggest otherwise, Serebryany said. He gave as an example the story of a single father in Bashkortostan, Alexander Afanasyev, who is raising two daughters. Afanasyev was trying to get materinsky kapital, or a federal government welfare payment for families with children.

"He went through all of the circles of hell to fight for his right to receive child welfare," according to Serebryany. "Only in the Supreme Court did he manage to prove that child support is equally applicable to both parents and that a father is able to receive it."

There are stories of fathers seeking an alimony penalty from the mother of their child but not succeeding in obtaining the money through the courts, Serebryany said. Society takes a negative view of men who demand payment from the child's mother.

Igor Fedotov, senior attorney at the National Legal Service, said Ostayev places a difficult choice before the Constitutional Court with his complaint. "On one hand, it is obvious that there is a defect in the Labor Code's support of gender discrimination against men who have more than one child," he said. "On the other hand, it is difficult to imagine the consequences of the possible legal revenge by the stronger sex in the event this norm, prohibited by Article 19 of the Constitution, comes to be."

For the Constitutional Court, however, the more important argument could be the danger of being guilty of gender prejudice — again.

"The European Court of Human Rights characterized as improper the position of the Constitutional Court in the case of Konstantin Markin, who brought a suit in the face of a refusal of military courts to allow him a three-year parental leave," Fedotov said. The ECHR determined this was discrimination on the basis of gender," he said.

Markin brought the suit to the ECHR after an unsuccessful suit in the Constitutional Court, Fedotov added.

According to a hearing document issued by the ECHR earlier this year, Markin was raising three children by himself post-divorce. His request for leave was turned down because a three-year leave was given only to female members of the military, the ECHR document said.

Alongside his case in the Constitutional Court, Ostayev is seeking protection from discrimination in the ECHR and has filed a complaint there. Ostayev has a realistic

chance of success, Fedotov said: Even if the Constitutional Court hasn't learned its lesson, there is the precedent of Markin's case.

Most likely, the Constitutional Court will issue a compromise decision in which local authorities are given the power to correct gender discrimination in labor laws.

Gazeta.ru has reported that the Constitutional Court judges will announce a decision in Ostayev's case next month.

Moscow Times writer Rachel Nielsen contributed to this report.

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