

IN THE NAME OF THE RUSSIAN FEDERATION
Constitutional Court of the Russian Federation

Judgment
of 6 December 2011 No. 27-II

**In the case concerning the review of constitutionality of the provisions of
Paragraph 4 of Article 107 of the Criminal Procedure Code of the Russian
Federation in connection with the complaint of the citizen of Estonian
Republic A.T.Fedin**

The Constitutional Court of the Russian Federation composed of the President V.D.Zor'kin, Judges K.V.Aranovsky, A.I.Boitsov, N.S.Bondar', G.A.Gadzhiev, Yu.M.Danilov, L.M.Zharkova, G.A.Zhilin, S.M.Kazantsev, M.I.Kleandrov, S.D.Knyazev, A.N.Kokotov, L.O.Krasavchikova, S.P.Mavrin, N.V.Mel'nikov, Yu.D.Rudkin, O.S.Khokhryakova, V.G.Yaroslavtsev,

pursuant to Article 125 (Section 4) of the Constitution of the Russian Federation, Paragraph 3 of Section 1, Sections 3 and 4 of Article 3, Section 1 of Article 21, Articles 36, 47.1, 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in a session without holding hearing examined constitutionality of Article 107 of the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case was the complaint of the citizen of Estonian Republic A.T.Fedin. The ground for the consideration of the case was the discovered uncertainty of whether the legal provisions contested by the applicant are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu.D.Rudkin, having considered written submissions and other materials, including statements by the Plenipotentiary Representative of the Council of Federation to the Constitutional Court of the Russian Federation A.I.Alexandrov and the Plenipotentiary Representative of the President of the Russian Federation to the Constitutional

Court of the Russian Federation M.V.Krotov, the Constitutional Court of the Russian Federation

e s t a b l i s h e d:

1. In accordance with Article 107 of the Criminal Procedure Code of the Russian Federation the measure of suppression in the form of home arrest consists in restrictions connected with freedom of movement of a suspect, an accused, as well as prohibition to have contacts with certain persons, to receive and send correspondence and to negotiate with the use of any means of connection (Section 1); this measure is chosen on court decision in the presence of the grounds and in the procedure which are established by Article 108 “Taking in Custody” of the present Code, with regard to the age of a suspect, accused, his/her state of health, marital status and other circumstances (Section 2); in the resolution or ruling on choosing of home arrest as a measure of suppression concrete restrictions must be indicated, which a suspect, an accused is exposed to as well as a body or an official are indicated, on whom exercise of supervision over observance of the established restrictions is placed (Section 3). Article 109 of the Criminal Procedure Code of the Russian Federation regulates terms of keeping in custody and the procedure of their extension.

1.1. The constitutionality of the adduced legal provisions is contested by the citizen of Estonian Republic A.T.Fedin. As follows from materials submitted by him, by resolution of a judge of Smol’ninsky District Court of the City of Saint-Petersburg of 16 July 2010 in respect of A.T.Fedin, accused of commission of crimes envisaged by Sections 2 and 3 of Article 210 (participation in criminal confederacy committed with the use of one’s official status) and by Section 4 of Article 159 (swindling committed in the structure of an organized group, in a particularly large amount) of the Criminal Code of the Russian Federation, the measure of suppression in the form of taking in custody was, in connection with expiry of the time-limit of confinement (18 months) was replaced by the measure of suppression in the form of home arrest, and a single-room apartment in the City

of Sanct-Petersburg, belonging to his mother, was prescribed as the place of home arrest.

Supervisory complaints on this resolution lodged by A.T.Fedin's defender were rejected. By resolution of the investigator of 22 December 2010 petition of the applicant's defender on abrogation of the measure of suppression in the form of home arrest was also rejected, and Smol'ninsky District Court of the City of Sanct-Petersburg by a resolution of 11 February 2011 refused to admit for consideration of a complaint against this decision of the investigator, lodged in the procedure of Article 125 of the Criminal Procedure Code of the Russian Federation.

In the complaint to the Constitutional Court of the Russian Federation A.T.Fedin claims that by the moment of application to the Constitutional Court of the Russian Federation total time of restriction of his freedom – staying in custody and under home arrest – amounted to more than 24 months, during which he has been deprived of the possibility of employment and receipt of any legal income. In his opinion, Articles 107 and 109 of the Criminal Procedure Code of the Russian Federation contested by him, as allowing considerable exceeding of the time-limit of keeping in custody established by law, disproportionately restrict his right to freedom and personal inviolability and thus contradict Articles 22 (Section 1) and 55 (Section 3) of the Constitution of the Russian Federation.

1.2. In accordance with Articles 74, 96 and 97 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation upon complaint of a citizen against violation of his/her constitutional rights by a law reviews constitutionality of legal provisions which have been applied in a specific case of the applicant, consideration of which has been completed in court, passes the judgment solely on the subject stated in the complaint and only in relation to that part of the act, the constitutionality of which is called in question, assessing both the literal meaning of legal provisions under consideration and the meaning attributed to them by an official or other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of legal acts.

A.T.Fedin, as follows from the complaint, connects violation of his rights with the duration of home arrest. Meanwhile, Article 109 of the Criminal Procedure Code of the Russian Federation regulates the terms of keeping in custody and the procedure of their extension. Within the meaning of Paragraph 2 of Section 10 and Section 12 of this Article, both at initial and repeated choosing of taking in custody as measure of suppression the time of home arrest is reckoned into the term of confinement. By this the provisions of this Article, being a guarantee of securing constitutional right of citizens to freedom and personal inviolability in the course of application of the measure of suppression in the form of taking in custody, can not be regarded as violating in the particular case of the applicant his constitutional rights in the aspect indicated by him.

Accordingly, the proceedings on the present complaint in the part concerning the review of constitutionality of Article 109 of the Criminal Procedure Code of the Russian Federation are subject to discontinuance by virtue of Paragraph 2 of Section 1 of Article 43 and Article 68 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”.

Thus, subject-matter for consideration by the Constitutional Court of the Russian Federation are the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation, regulating application in respect of a suspect, an accused of a measure of suppression in the form of home arrest.

2. Within the meaning of the Constitution of the Russian Federation, its Articles 17 (Section 2), 21 (Section 1) and 22 (Section 1), the right to freedom and personal inviolability belonging to everyone from birth, pertaining to the number of basic human rights and recognized by the Universal Declaration of Human Rights (Article 1) embodies the most significant social good which, proceeding from recognition by the State of human dignity, predetermines inadmissibility of arbitrary interference in the sphere of a person’s autonomy and create conditions both for democratic organization of society and for all-round development of a human being. This is why the Constitution of the Russian Federation admits possibility of its restriction only to the extent to which it is necessary for the goals

determined by it, in the procedure established by law, with observance of general law principles and on the basis of constitutional criteria of necessity, reasonableness and proportionality so that the very essence of this right is not affected. As the Constitutional Court of the Russian Federation has pointed out in a number of its judgments, public interests, enumerated in Article 55 (Section 3) of the Constitution of the Russian Federation, may justify legal restrictions of rights and freedoms only if such restrictions are adequate, proportionate, balanced and necessary for the protection of constitutionally significant values (Judgments of 27 April 2001 No. 7-II, of 30 October 2003 No. 15-II, of 22 March 2005 No. 4-II, of 14 July 2005 No. 9-II and of 16 June 2009 No. 9-II).

The European Court of Human Rights also considers that legal protection of a person from arbitrary interference from the side of the State in his right to freedom guaranteed by the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 5) contemplates proportionality of restriction of this right meaning provision of balance between public interests, which may require preliminary taking of a person in custody, and importance of the right to freedom of person, - with consideration of the presumption of innocence; when establishing such a balance, an important factor is the duration of keeping in custody which must not exceed reasonable limits (Judgment of 26 June 1991 on the case “Letellier vs France”, of 6 April 2000 on the case “Labita vs Italy” and of 29 January 2008 on the case “Saadi vs United Kingdom”); practice which turns out in connection with legislative lacuna and in accordance with which a person is taken in custody on indefinite term, contradicts one of the fundamental principles of the law-governed State – the principle of legal security (Judgment of 28 March 2000 on the case “Baranowski vs Poland”).

Revealing constitutional law meaning of the notion “deprivation of freedom”, the Constitutional Court of the Russian Federation in the Judgment of 16 June 2009 No. 9-II established that this notion has autonomous significance, consisting in the idea that any measures introduced in branch legislation, if they in fact entail deprivation of freedom, must answer the criteria of lawfulness exactly in the

context of Article 22 of the Constitution of the Russian Federation and of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, constituting normative base of regulating of arrest, detention, taking in custody and keeping in custody in the sphere of persecution for commission of criminal and administrative offences as measures of admissible deprivation of freedom; arrest, detention, taking in custody and keeping in custody, notwithstanding their procedural differences, are in essence deprivation of freedom. No one may be put under a threat of possible encumbrance for indefinite or too long term, and the legislator must establish clear and reasonable time-limits of admissible restrictions of rights and freedoms (Judgments of 24 June 2009 No. 11-II and of 20 July 2011 No. 20-II, Ruling of 14 July 1998 No. 86-O).

The European Court of Human Rights adheres to analogous position. When interpreting Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Paragraph 4 of which guarantees to everyone who is deprived of freedom as a result of arrest or taking in custody the rights to urgent consideration by court of lawfulness of his/her taking in custody and to release if taking in custody was recognized unlawful by a court), it noted that deprivation of physical freedom can acquire various forms, not always adequate to classic imprisonment, and offered to assess them not on formal, but on essential signs, such as compulsory stay in a limited space, isolation of a human being from society, family, discontinuance of fulfillment of official duties, impossibility of free contact with indefinite circle of persons. In the opinion of the European Court of Human Rights, restriction of freedom and deprivation of freedom differ from each other only by the extent or intensity, but not by nature or essence (Paragraph 14 of the Judgment of 1 July 1961 on the case “Lawless vs Ireland” (No. 3), Paragraphs 92 and 102 of the Judgment of 6 November 1980 on the case “Guzzardi vs Italy”, Paragraphs 55 and 68 of the Judgment of 28 October 1994 on the case “Murray vs United Kingdom”, Paragraph 42 of the Judgment of 24 November 1994 on the case “Kemmaché vs France” (No. 3) and Paragraph 42 of the Judgment of 25 June 1996 on the case “Amuur vs France”).

Consequently, every restriction or deprivation of the right to freedom and personal inviolability in connection with the need of isolation of a person from society, applied as a measure of suppression in the course of judicial proceedings or in the form of a criminal or administrative penalty, must be secured by judicial control and other legal guarantees of its justice and proportionality, proceeding from its limits established by law.

The adduced requirements of the Constitution of the Russian Federation and international law acts and legal positions of the Constitutional Court of the Russian Federation based on them and extending themselves on legal regulation of such measure of suppression, directly linked with restriction of the right to freedom and personal inviolability, as home arrest, during which a person stays in isolation and can not freely realize his/her rights, contemplate obligation of the legislator to determine in a law the time of a person's stay under home arrest in accordance with principles of justice and equality in order to exclude possibility of arbitrary and disproportionate restriction of the right to freedom and personal inviolability.

3. The Criminal Procedure Code of the Russian Federation envisages in Chapter 13, among measures of procedural compulsion, measures of suppression – means of restriction of personal freedom of an accused, and in exclusive cases of a suspect, applied, as follows from its Article 97, with the aim to prevent attempts to escape from bodies of inquiry, preliminary investigation or a court, to continue criminal activity, to threaten a witness, other participants of criminal judicial proceedings, to exterminate evidences or other attempts to hinder criminal proceedings, as well as in order to secure execution of a sentence or possible extradition of a person in the procedure stipulated for by Article 466 of the present Code.

The most severe among measures of suppression, enumerated in Article 98 of the Criminal Procedure Code of the Russian Federation, are home arrest (Article 107 of the Criminal Procedure Code of the Russian Federation) and taking in custody (Article 108 of the Criminal Procedure Code of the Russian Federation). Since the essence of these compulsory measures – immediate restriction of the

right to freedom and personal inviolability, being under the protection of Article 22 of the Constitution of the Russian Federation, the legislator admits application of such measures in respect of suspects and accused of commission only of crimes, for which criminal law envisages penalty in form of deprivation of freedom, as a rule for the term of more than 2 years, and with impossibility to apply other, more mild, measure of suppression (Section 1 of Article 108 of the Criminal Procedure Code of the Russian Federation).

According to Article 107 of the Criminal Procedure Code of the Russian Federation, home arrest as a measure of suppression is chosen in respect of a suspect or an accused on court decision in the presence of grounds and in the procedure which are set up by Article 108 of the present Code, with regard to his/her age, state of health, marital status and other circumstances (Section 2); in a resolution or ruling of a court on choosing of home arrest as a measure of suppression specific restrictions are indicated, to which a suspect or an accused is exposed and which are connected with freedom of movement or consist in prohibition to contact definite persons, receive and send correspondence, negotiate with the use of any means of connection (Sections 1 and 3).

It follows from Articles 97, 98, 107 and 108 of the Criminal Procedure Code of the Russian Federation in their normative unity that both home arrest and taking to custody in the operating system of legal regulation are connected with compulsory stay of a suspect, an accused in a limited space, with isolation from society, discontinuance of fulfillment of official or other labour duties, impossibility of free movement and contacts with indefinite circle of persons, i.e. with immediate restriction of the right itself to physical freedom and personal inviolability, and not only of the conditions of its realization. By virtue of this, application of such measures of suppression must be carried out with observance of guarantees of securing this right, envisaged by the Constitution of the Russian Federation, similar in their essential characteristics, including determining the terms of a person's stay in the conditions of isolation in accordance with the

principles of juridical equality and formal certainty of legal norms, justice and proportionality of restrictions established by the court.

4. The need of formal certainty, precision, clearness, unambiguousness of legal norms and their co-ordination in the system of the legal regulation in force is determined by the principle of juridical equality following from Articles 1 (Section 1), 6 (Section 2), 17 (Section 3) and 19 of the Constitution of the Russian Federation, because juridical equality can be secured only on the condition of a uniform understanding and interpretation of a legal norm. Legal provisions not answering these criteria engender contradictory law-applying practice, create possibility of their non-monosemantic interpretation and arbitrary application and by this violate, furthermore, constitutional guarantees of State, including court, protection of rights, freedoms and lawful interests of citizens, including those realized in the procedures of criminal persecution for committed crimes (Article 45; Article 46, Sections 1 and 2; Article 49, Section 1, of the Constitution of the Russian Federation).

The term of home arrest, procedure of its establishment, extension, as well as its time-limit are not indicated in the Criminal Procedure Code of the Russian Federation, including its Article 107, as are equally not envisaged extension of restrictions, fixed by law for keeping in custody, on home arrest. Home arrest, which by virtue of the law is applied only in the presence of grounds and in the procedure set up for taking in custody is in no way regulated by Article 109 of the Criminal Procedure Code of the Russian Federation on calculation and extension of the terms of keeping in custody. It is indicated in Section 10 of this Article that the term of home arrest is reckoned in the term of keeping in custody (and Section 3 of Article 72 of the Criminal Code of the Russian Federation envisages that the term of keeping in custody is reckoned, in its turn, in the term of criminal penalty – deprivation of freedom, keeping in disciplinary military unit or arrest – at a rate of one day for one day).

Within the meaning attributed to Article 107 of the Criminal Procedure Code of the Russian Federation by the prevailing law-applying practices, the term of

application of home arrest is not limited: in accordance with the resolution of the Plenum of the Supreme Court of the Russian Federation of 29 October 2009 No. 22 “On the Practice of Application by Courts of the Measures of Suppression in the Forms of Taking in Custody, Deposit and Home Arrest” a measure of suppression in the form of home arrest chosen at a stage of preliminary investigation continues to function in the whole course of preliminary investigation and staying of the criminal case at the prosecutor’s office with the bill of indictment, as well as in court during consideration of the case (Indention 4 of Paragraph 26).

Some courts of general jurisdiction apply the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation by establishing and extending the term of home arrest according to the rules of Article 109 of the present Code. Meanwhile, such practice, although aimed at the protection of constitutional right of the citizens to freedom and personal inviolability and concordant with the legal position of the Constitutional Court of the Russian Federation, expounded in the Ruling of 27 January 2011 No. 9-O-O, adopted upon complaint of A.I.Anopriev against violation of his constitutional rights by Article 107 of the Criminal Procedure Code of the Russian Federation, in itself does not testify that contested legal provisions meet the requirements of certainty, precision, clearness, unambiguousness of legal norms and their co-ordination in the system of legal regulation in force.

In the absence of the grounds for altering of measure of suppression chosen for a person home arrest may be applied with exceeding of time-limits established for keeping in custody (Sections 2 and 3 of Article 109 of the Criminal Procedure Code of the Russian Federation) – up to passing of a sentence by court, and in respect of persons having escaped from the bodies of investigation or having broken the conditions of home arrest in other form, altering of measure of suppression in such cases from home arrest to more strict (taking in custody) is impossible, because in accordance with Paragraph 2 of Section 10 of this Article the time of home arrest is included in the combined term of keeping in custody as

its integral part, and upon attainment of the time-limits of keeping in custody further extension of such terms is not admitted. Thus, persons observing the conditions of home arrest, in violation of constitutional principle of justice are put in a worse position as compared with persons, having escaped from bodies of investigation or not fulfilling these conditions in another way.

More, staying of a person under home arrest with exceeding not only of time-limits of keeping in custody, established by Article 109 of the Criminal Procedure Code of the Russian Federation, but also of the terms of penalty prescribed by a court for respective crime according to norms of General and Particular parts of the Criminal Code of the Russian Federation is not excluded, which contradicts the principle of presumption of innocence fixed in Article 49 of the Constitution of the Russian Federation, within the meaning of which until entering into force of accusative sentence no restrictions, in their totality comparable in the extent of heaviness, including terms, with criminal penalty, and especially as exceeding it, may not be placed on a suspect, an accused.

Consequently, the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation – both in themselves and in the inter-connection with other provisions of the present Code – engender uncertainty in the question of the duration of home arrest, of the procedure of its extension, of the term on expiry of which further extension is impossible, and thus allow to establish time-limits of restrictions of the constitutional right to freedom and personal inviolability in arbitrary way and exclusively on law-applying decision.

5. As the Constitutional Court of the Russian Federation has repeatedly indicated, when adopting decisions connected with restriction of freedom and personal inviolability, court as a body of justice – proceeding from Articles 22, 46 (Section 1), 48, 118, 120 and 123 (Sections 1-3) of the Constitution of the Russian Federation in their inter-connection – is called upon to secure judicial guarantees of the protection of rights and lawful interests of a person similar in their nature. This legal position expressed in the Judgments of 10 December 1998 No. 27-II, of 14 February 2000 No. 2-II and 22 March 2005 No. 4-II is extended on the measure

of suppression in the form of home arrest which, as well as taking in custody, directly restricts constitutional right to freedom and personal inviolability. Unified nature of this constitutional right contemplates unified guarantees of its protection, which by virtue of Article 46 (Section 1) of the Constitution of the Russian Federation and provisions of international law acts corresponding to it, in particular Articles 8 and 29 of the Universal Declaration of Human Rights, Paragraph 2 and Sub-Paragraph “a” of Paragraph 3 of Article 2 and Paragraph 1 of Article 14 of the International Covenant on Civil and Political Rights, must be just, competent, full and effective.

The Constitutional Court of the Russian Federation, turning to the question of court protection of human and civil rights and freedoms in the course of application of the measures of suppression, has indicated that in situations connected with restriction of the right to freedom and personal inviolability guarantees of the right to court protection acquire particular importance; guarantees of this right can not be compensated only by fixing time-limits of restriction or deprivation of freedom and personal inviolability, as well as the possibility of appeal by a citizen in court of continuing arrest (because in this case in violation of Articles 22 and 46 of the Constitution of the Russian Federation restriction of this constitutional right is admitted without judicial control for a considerable time, including from the moment of consideration of respective complaint by a court). (Judgments of 14 March 2002 No. 6-II and of 22 March 2005 No. 4-II).

Restriction of the right to freedom and personal inviolability may take place only in the presence both of factors, answering the goals indicated in Article 55 (Section 3) of the Constitution of the Russian Federation and reasonable terms controlled by a court, with the aim to avoid arbitrary or based on formal conditions resolution of this question, and the court based itself on independent assessment of circumstances essential for such decisions (Ruling of the Constitutional Court of the Russian Federation of 4 April 2006 No. 101-O).

Meanwhile, since a court, when considering petitions (complaints, motions) of a suspect, accused connected with application of home arrest as measure of suppression, is guided by Article 107 of the Criminal Procedure Code of the Russian Federation, not meeting the requirements of formal certainty and coordination with other provisions of this Code, not limiting the term of home arrest, its time-limit and not determining grounds and procedure of its extension, the right to freedom and personal inviolability of the abovementioned participants in the procedure remains without effective guarantees of court protection, which contradicts the requirements of Articles 22 (Section 1) and 46 (Sections 1 and 2) of the Constitution of the Russian Federation.

6. Thus, Article 107 of the Criminal Procedure Code of the Russian Federation, as not rendering concrete the term on which a measure of suppression in the form of home arrest is chosen, not determining grounds and procedure of its extension and not limiting the time-limit of staying of a person under home arrest, - by virtue of uncertainty both this article in itself and its provisions in the inter-connection with other provisions of the Criminal Procedure Code of the Russian Federation, - engenders contradictory law-applying practices, allows to impose restrictions comparable in extent of heaviness with criminal penalties and even exceeding them, diminishes guarantees of court protection and thus does not correspond to Articles 19 (Sections 1 and 2), 22 (Section 1), 46 (Sections 1 and 2), 49 and 55 (Section 3) of the Constitution of the Russian Federation.

In the course of inserting necessary amendments to the Criminal Procedure Code of the Russian Federation, the federal legislator must be guided by the requirements of the Constitution of the Russian Federation and the legal positions of the Constitutional Court of the Russian Federation based on them and expounded in the present Judgment, with regard to establishment and extension of the term of home arrest, its time-limit, including with consideration of the term of keeping in custody, and securing while applying home arrest of effective judicial control of restrictions of the right to freedom and personal inviolability.

7. According to Sections 1 and 3 of Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, juridical consequence of a judgment of the Constitutional Court of the Russian Federation passed in the procedure of its Article 47.1, by which a normative legal act or its individual provisions are recognized as not conforming to the Constitution of the Russian Federation, is loss by them of juridical force for future time from the day of publication of the judgment in accordance with Article 78 of this Federal Constitutional Law. This means that from the moment of entry into force of a judgment of the Constitutional Court of the Russian Federation such acts or their individual provisions can not be applied. At the same time, proceeding from the goal to secure balance of constitutionally significant interests and inadmissibility of violation of rights and freedoms of other persons while realizing human and civil rights and freedoms (Article 17, Section 3, of the Constitution of the Russian Federation), the Constitutional Court of the Russian Federation may determine the order of execution of the judgments of the Constitutional Court of the Russian Federation, stipulated for by the need to secure stability of legal relations in the interests of the subjects of law.

Since the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation, envisaging measure of suppression in the form of home arrest, in the part of the grounds and order of its application function in normative unity with Article 108 of the present Code, regulating the issues of choosing taking in custody as a measure of suppression, procedural guarantees of the right to freedom and personal inviolability set up by law in order to resolve the question of application of a measure of suppression fixed by Article 108 of the Criminal Procedure Code of the Russian Federation, within the meaning of legal positions of the Constitutional Court of the Russian Federation, expounded in the Judgment of 29 June 2004 No. 13-II, must be provided also when deciding on application of home arrest.

And here, as the Constitutional Court of the Russian Federation has pointed out in the Ruling of 27 January 2011 No. 9-O-O, the criminal procedure law

envisaging the measure of suppression in the form of home arrest as an alternative to taking in custody contemplates establishment in a resolution or a ruling of a court on choosing of this measure of suppression of the term of home arrest which, within the meaning of the inter-connected provisions of Articles 6.1 and 128 of the Criminal Procedure Code of the Russian Federation, must be concrete and reasonable; this conclusion conforms to Paragraph 11.1 of the Minimum Standard Rules of the United Nations Organization in Respect of Measures, not Connected with Imprisonment (Tokyo Rules), adopted on 14 December 1990 by the Resolution 45/110 of the UN General Assembly, where it is indicated that the term of functioning of a measure not connected with imprisonment does not exceed the term, established by an authorized body in accordance with the law.

The Constitutional Court of the Russian Federation comes to the conclusion that, in order to avoid creation of legal obstacles for application of home arrest as a measure of suppression which is more humane in comparison with taking in custody, in a period until entry into force of a federal law respectively amending the Criminal Procedure Code of the Russian Federation, and also taking into account that criminal procedure regulation is based on constitutional guarantees of securing the right to freedom and personal inviolability while applying measures of suppression directly restricting this right, fixes community of grounds and conditions of choosing measures of suppression in the forms of taking in custody and home arrest and similar in their essential characteristics (unified) guarantees of judicial protection of this constitutional right, as well as establishes unified procedure of reckoning the time of their application when calculating the size of penalty, the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation – until amending respectively the criminal procedure legislation – must be applied so that during preliminary investigation time-limit of staying of suspects, accused under home arrest, as well as combined term of their keeping in custody and under home arrest as measures of suppression (irrespective of the sequence in which they were applied) did not exceed the time-limit of keeping in custody, determined in Article 109 of the Criminal Procedure Code of

the Russian Federation, and prescription of home arrest as a measure of suppression and its extension were carried out according to the rules of this Article.

Concluding from the above and pursuant to Article 47.1, Section 2 of Article 71, Articles 72, 74, 75, 79, 87 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 as not conforming to the Constitution of the Russian Federation, its Articles 19 (Sections 1 and 2), 22 (Section 1), 46 (Sections 1 and 2), 49 and 55 (Section 3) the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation to the extent to which they do not render concrete the term, on which the measure of suppression in the form of home arrest is chosen, do not determine grounds and procedure of its extension and do not limit the time-limit of staying of a person under home arrest, including with regard to the term of keeping in custody as a measure of suppression.

2. The law-applying decisions passed in respect of the citizen of Estonian Republic A.T.Fedin, based on the provisions of Article 107 of the Criminal Procedure Code of the Russian Federation, recognized by the present Judgment as not conforming to the Constitution of the Russian Federation, are to be reconsidered according to the established procedure, provided there are no other obstacles to it.

3. When inserting necessary amendments to the criminal procedure legislation, the federal legislator must be guided by the requirements of the Constitution of the Russian Federation and legal positions of the Constitutional Court of the Russian Federation based on them and expounded in the present Judgment, with respect to establishment and extension of the term of home arrest, its time-limit, including with consideration of the term of keeping in custody, and securing while applying home arrest of effective judicial control over restriction of the right to freedom and personal inviolability.

Until entry into force of the federal law, respectively amending the Criminal Procedure Code of the Russian Federation, for establishment of the term of home arrest, its extension and limitation of its time-limit, including with regard to the term of keeping in custody, the provisions of its Article 109 must be applied.

4. To discontinue proceedings on the complaint of A.T.Fedin in the part concerning the review of constitutionality of Article 109 of the Criminal Procedure Code of the Russian Federation.

5. The present Judgment shall be final, not subject to any appeal, it shall come into force immediately upon pronouncement, it shall be directly applicable and shall not require confirmation by other bodies and officials.

6. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the present Judgment shall be subject to immediate publication in Rossiyskaya Gazeta and the Collection of Laws of the Russian Federation. The Judgment shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

The Constitutional Court
of the Russian Federation

No. 27-II