

IN THE NAME OF THE RUSSIAN FEDERATION

Constitutional Court of the Russian Federation

Judgment

of 14 July 2011 No. 16-II

In the case concerning the review of constitutionality of the provisions of Paragraph 4 of Section 1 of Article 24 and Paragraph of Article 254 of the Criminal Procedure Code of the Russian Federation in connection with complaints of S.I.Alexandrin and Yu.F.Vashchenko

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, 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,

in the attendance of S.I.Alexandrin and his representatives lawyers L.K.Aivar, S.V.Obraztsov and I.L.Trunov, Yu.F.Vashchenko and his representative lawyer G.F.Gainitdinova, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation A.N.Kharitonov, Representative of the Council of Federation, PhD in Law Ye.V.Vinogradova, Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M.V.Krotov,

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, 74, 86, 96, 97 and 99 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation",

in an open hearing examined constitutionality of the provisions of Paragraph 4 of Section 1 of Article 24 and Paragraph of Article 254 of the Criminal Procedure Code of the Russian Federation.

The reason for the consideration of the case was the complaints of S.I.Alexandrin and Yu.F.Vashchenko. The ground for the consideration of the case was the discovered uncertainty of whether the legal provisions contested by the applicants are in conformity with the Constitution of the Russian Federation.

Since both complaints relate to one and the same subject, the Constitutional Court of the Russian Federation, guided by Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, merged cases on these complaints in one proceeding.

Having heard the report of Judge-Rapporteur N.V.Mel’nikov, statements by the parties and their representatives, interventions by the participants invited to the hearing: Ye.A.Borisenko for the Ministry of Justice of the Russian Federation, T.A.Vasilyeva for the Prosecutor General of the Russian Federation, the Constitutional Court of the Russian Federation

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

1. According to Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, establishing grounds for refusal to institute criminal proceedings or for discontinuance of criminal proceedings, criminal proceedings can not be instituted and the instituted proceedings are subject to discontinuance in connection with death of a suspect or an accused, with the exception of cases when criminal proceedings are necessary for rehabilitation of the dead. This rule is rendered concrete in Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation, envisaging discontinuance of a criminal case in court’s session in a case when the circumstance indicated in Paragraph 4 of Section 1 of its Article 24 is established during court examination.

1.1. By the resolution of investigator of 5-th Division of the Investigation Department of the Chief Investigation Directorate at the Chief Directorate of Internal Affairs on the City of Moscow of the Ministry of Internal Affairs of the Russian Federation of 27 August 2010, criminal proceedings instituted on the ground of Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation on the signs of a crime stipulated for by Article 264 of

the Criminal Code of the Russian Federation “Violation of the Rules of Road Movement and Exploitation of Means of Transport” were discontinued in respect of O.S.Alexandrina in connection with her death notwithstanding objections of her father – applicant in the present case. Having not agreed with the conclusions of the bodies of preliminary investigation about the guilt of his daughter of commission of the abovementioned crime and assuming that the fact itself of discontinuance of the case on non-rehabilitating ground as well as its possible juridical consequences may substantially affect the honour and good name of the late and lawful interests of close relatives, S.I.Alexandrin appealed the resolution on discontinuance of the criminal case to the Tverskoy District Court of Moscow, which recognized the discontinuance of the criminal case founded and rejected the appeal (Resolution of 7 October 2010, left unchanged by cassation ruling of Criminal Board of the Moscow City Court of 17 November 2010).

As the applicant claims, Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, admitting discontinuance of a criminal case in respect of suspect (accused) in case of his/her death, without agreement of persons having, pursuant to Paragraph 4 of Article 5 of the Criminal Procedure Code of the Russian Federation, status of close relatives, and not envisaging in such cases obligatory continuation of preliminary investigation and consequent consideration of a case by a court on substance with the aim of possible rehabilitation of the dead, violates the rights of these persons guaranteed by Articles 21 (Section 1), 45, 46 (Section 1), 48, 49 (Section 1) and 55 (Section 2) of the Constitution of the Russian Federation.

1.2. By the resolution of Karabashsky City Court of the Chelyabinsk Region of 21 January 2008 on the ground of Paragraph 4 of Section 1 of Article 24 and Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation the criminal proceedings were discontinued on accusation of Ye.Yu.Vashchenko of the crime stipulated for by Paragraphs “a” and “б” of Section 3 of Article 286 of the Criminal Code of the Russian Federation in connection with the death of the accused. The opinion of closed relatives of the

dead, including his father – applicant in the present case Yu.F.Vashchenko, on possible discontinuance of the criminal case have not been elucidated, and the lawyer having participated in the criminal proceedings on appointment of the court has not objected to the discontinuance of the case. This resolution was not appealed in cassation procedure because, as the applicant claims, neither he nor other close relatives were informed of discontinuance of the case and a copy of the decision was not given to them. His supervisory complaint was rejected.

Yu.F.Vashchenko requests to recognize the inter-connected provisions of Paragraph 4 of Section 1 of Article 24 and Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation as not conforming to Articles 2, 18, 21 (Section 1), 45 and 46 (Section 1) of the Constitution of the Russian Federation to the extent to which they allow a court to pass a decision on discontinuance of a criminal case in connection with death of an accused at the stage of court examination of the case (given the fact that the case has not been heard in full and factual circumstances have not been examined) without calling out his/her close relatives in court session as participants in the proceedings and, consequently, not to consider their opinion on this issue, which violate the rights of these persons.

Besides, in Yu.F.Vashchenko's opinion, Section 7 of Article 49 of the Criminal Procedure Code of the Russian Federation, according to which a lawyer is not entitled to turn down the accepted defense of a suspect, accused does not conform to the same Articles of the Constitution of the Russian Federation. As the applicant claims, in case of death of an accused the lawyer appointed by a court, agreeing with discontinuance of a case without notification of close relatives, expresses by this his own opinion with regard to the issue, and as a result the rights of these persons may be violated. Meanwhile the abovementioned norm, neither in itself nor in the inter-connection with other normative provisions of the Criminal Procedure Code of the Russian Federation, contested by Yu.F.Vashchenko, does not affect constitutional rights in the indicated aspect, which is the ground to recognize his complaint in this part not answering the criterion of admissibility.

Accordingly, the proceedings on the complaint of Yu.F.Vashchenko in the part concerning the contesting of constitutionality of Section 7 of Article 49 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”.

1.3. As follows from 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 on complaints of citizens against violation of their constitutional rights and freedoms by a law reviews constitutionality of the contested legislative provisions solely in the part in which they have been applied in the applicants’ cases and passes the decision assessing both the literal meaning of the legislative provisions under consideration and the meaning attributed to it by an official and other interpretation or the prevailing law-applying practices, as well as proceeding from their place in the system of norms.

Thus, the subject-matter for consideration by the Constitutional Court of the Russian Federation in the present case are the inter-connected provisions of Paragraph 4 of Section 1 of Article 24 and Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation, according to which a criminal proceedings are to be discontinued (including in court session) in connection with the death of a suspect or an accused with the exception of cases when the criminal proceedings are necessary for his/her rehabilitation, - with application to cases when close relatives of the dead do not agree with discontinuance of the criminal proceedings.

2. According to the Constitution of the Russian Federation, the human being, his/her rights and freedoms shall be the supreme value and the recognition, observance and protection of human and civil rights and freedoms shall be an obligation of the State (Article 2); human dignity shall be protected by the State, nothing may serve as a basis for its derogation (Article 21, Section 1); everyone shall have the right to the inviolability of his (her) private life, personal and family privacy and protection of his (her) honour and good name (Article 23, Section 1).

Placing on the State the duty to protect human dignity, the Constitution of the Russian Federation guarantees to everyone protection in court of his (her) rights and freedoms and possibility to appeal in court against decisions and actions (or inaction) of bodies of State power and officials (Article 46, Sections 1 and 2) and fixes that every accused of commission of a crime is considered innocent until his/her guilt is proved by a court sentence having entered into legal force (Article 49, Section 1).

These rights, as follows from Articles 17 (Section 1) and 56 (Section 3) of the Constitution of the Russian Federation, are not subject to restriction, they shall be recognized and guaranteed according to the universally recognized principles and norms of international law, including those expressed in the Universal Declaration of Human Rights (Articles 7, 8, 10 and 11), International Covenant on Civil and Political Rights (Article 14) and the Convention for the Protection of Human Rights and Fundamental Freedoms (Article 6), in accordance with which in the determination of any criminal charge against him/her everyone is entitled to a fair and public hearing within a reasonable time by a competent, independent and impartial tribunal established by law; everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

2.1. Justice in the Russian Federation, according to Article 118 (Sections 1 and 2) of the Constitution of the Russian Federation, is administered solely by court, including through criminal procedure. The State must guarantee protection of rights both of participants of the criminal proceedings proper and all those whose rights and lawful interests are directly affected during criminal proceedings, including provide them appropriate possibilities for defending their rights and lawful interests at all stages of criminal judicial proceedings and by all means not prohibited by law.

Conducting respective regulation, the federal legislator – within the meaning of Articles 19 (Sections 1 and 2), 45, 46, 49 and 55 (Section 3) of the Constitution of the Russian Federation, - is entitled both to establish responsibility for offences and to eliminate it, as well as to determine what measures of State compulsion are

subject to be used as a means of reaction on these and other unlawful actions and under what conditions refusal to use them is possible, providing by this both differentiation of criminal responsibility and restoration of rights and freedoms of a person, unlawfully or unfoundedly exposed to criminal persecution, and compensation of the caused damage.

Bearing in mind that unlawful or unfounded criminal persecution is at the same time rude infringement of human dignity, the right to rehabilitation, i.e. restoration of honour and good name discredited by unlawful accusation of a person, as well as provision of check of lawfulness and foundness of criminal persecution and procedural decision adopted, in case of need – in the court procedure, is direct expression of the constitutional principles of respect of human dignity, humanism, justice, legality, presumption of innocence, right of everyone to protection, including in court, of his/her rights and freedoms as applied to the personality of a suspect (an accused).

It follows from Article 54 (Section 2) of the Constitution of the Russian Federation, rendering concrete universally recognized legal principle *nullum crimen, nulla poena sine lege* (there is no crime, there is no punishment without indication in a law), in the inter-connection with its Article 49 fixing the principle of the presumption of innocence, that suspicion or accusation of commission of a crime may be based only on the provisions of a criminal law determining criminality of an action, its punishability and other criminal law consequences, fixing all signs of *corpus delicti* whose presence in the action as the sole ground of criminal responsibility must be established only in an appropriate procedural order, binding for court, prosecutor, investigator and other participants in criminal judicial proceedings. But if unlawfulness of this or other action or its commission by a particular person are not established and not proved in respective criminal procedures, all doubts must be interpreted in favour of this person who – with application to the question of criminal responsibility – is considered innocent.

By virtue of the abovementioned principles, such action can not entail criminal responsibility and application of other measures of criminal law character,

but it also can not be qualified in a procedural decision as an action containing all signs of *corpus delicti*, the fact of the commission of which is established, although it would have been connected with criminal persecution in respect of this person, having taken place earlier. Especially as the conclusion can not be made about guilt of a person of commission of a crime at the stage of institution of criminal proceedings, when particularly preliminarily, with the aim of determining of the possibility itself to begin investigation the question is resolved about presence of signs of crime in the action, when it is yet impossible to carry out the whole complex of investigatory actions aimed at collection, check and assessment of the evidences of a person's guilt of having committed a crime.

Observance of fundamental procedural guarantees of human rights, including presumption of innocence, must be secured also when the question of discontinuance of criminal proceedings on non-rehabilitating ground is resolved. Passing a decision on rejection of institution or on discontinuance of a criminal proceedings at the pre-trial stages of criminal procedure, authorized State bodies must proceed from the fact that persons, in respect of whom criminal persecution has been discontinued, have not been recognized guilty of commission of a crime or (which is equal) of an action containing all signs of a *corpus delicti*, which means that they can not be called as such – in constitutional law sense they may only be regarded as having been called out to participate in the criminal proceedings at a respective stage in view of bringing suspicion or accusation against them.

Consequently, the federal legislator, proceeding from the provision that constitutional human and civil rights and freedoms may be restricted by a federal law in the name of public interests of criminal judicial proceedings only to the extent to which it is necessary for the protection of the basis of constitutional order, morality, health, rights and lawful interests of other people, and for ensuring the defence of the country and security of the State (Article 55, Section 3 of the Constitution of the Russian Federation), when resolving the question of distribution of the burden of proof, is not entitled to free bodies of criminal

persecution from the duty to secure for persons, in respect of whom it is carried out, a possibility to strive for restoration of their rights and confirmation of their innocence in respective judicial procedures, correction of possible mistakes made during criminal persecution at all stages of criminal procedure (including the most early), and therefore protection of their honour and dignity, as well as guarded lawful interests.

Meanwhile, when a criminal proceedings are discontinued in connection with the death of a suspect (accused), the proof of his/her guilt is also discontinued, but the suspicion or accusation of commission of a crime is not lifted from him/her, - on the contrary, substantially, commission of an act containing all signs of *corpus delicti* by a particular person is ascertained, criminal persecution of whom the State turns down because of his/her death (which is confirmed, in particular, by the materials of the case in connection with which S.I.Alexandrin has applied to the Constitutional Court of the Russian Federation). Thus, such a person, without passing and entering in legal force of a sentence, is in fact recognized guilty of commission of a crime, which may be regarded as non-observance by the State of the obligation to secure court protection of his/her honour, dignity and good name, guaranteed by Articles 21 (Section 1), 23 (Section 1), 45, 46 (Sections 1 and 2) and 49 of the Constitution of the Russian Federation, and for persons whose interests may be directly affected by consequences of adoption of the decision to discontinue criminal proceedings – access to court (Article 118, Section 1, of the Constitution of the Russian Federation).

2.2. Turning to the question of legal nature of discontinuance of criminal persecution on non-rehabilitating grounds, guarantees of rights and lawful interests of persons in respect of whom such decision is adopted, the Constitutional Court of the Russian Federation came to the following conclusions: the decision to discontinue criminal proceedings does not substitute court's sentence and, consequently, is not an act which is establishing guilt of the accused in the sense in which it is envisaged by Article 49 of the Constitution of the Russian Federation (Judgment of 28 October 1996 No. 18-II); when grounds of this kind for

discontinuance of criminal proceedings are revealed, the person in respect of whom criminal proceedings are to be discontinued, is entitled to insist on the continuation of investigation and consideration of the case in court session, and in the case of adoption of a decision to discontinue criminal proceedings – to appeal it in court in a procedure established by a procedural law; thus persons interested in the outcome are provided with court protection of their rights and lawful interests in the framework of criminal judicial proceedings (Judgment of 24 April 2003 No. 7-II).

Discontinuance of criminal proceedings on non-rehabilitating ground is possible only in a case if the rights of the participants in criminal judicial proceedings are secured, which contemplates, in particular, the need to acquire agreement of a suspect (accused) with discontinuance of criminal proceedings: by virtue of the principle of adversarial proceedings, on the basis of which the criminal judicial proceedings are conducted (Article 123, Section 3, of the Constitution of the Russian Federation), it is presupposed that the parties independently and at their own discretion determine their position on the case, including in connection with the question of criminal responsibility, and, consequently, if a suspect (accused) has no objections against discontinuance of criminal persecution, there are no grounds to consider his/her rights and lawful interests violated by the decision to discontinue criminal proceedings (on the condition of its sufficient foundedness).

But if a person, in respect of whom criminal persecution is carried out, objects against discontinuance of criminal judicial proceedings on non-rehabilitating ground, he/she must be granted possibility (in the framework of guarantees envisaged by Articles 49 and 123 of the Constitution of the Russian Federation) of continuation of criminal proceedings and sending the case to court for consideration on substance and by this of court protection of his/her rights, including the right to possible rehabilitation. Such an approach is in accordance with the obligation of the State to protect human dignity (Article 21, Section 1, of the Constitution of the Russian Federation) which, as the Constitutional Court of

the Russian Federation has repeatedly noted, appears to be the basis of all human rights and freedoms and the necessary condition of their existence and observance (Judgments of 3 May 1995 No. 4-II, of 15 January 1999 No. 1-II and of 20 December 2010 No. 21-II, Ruling of 15 February 2005 No. 17-O).

3. In accordance with Section 2 of Article 27 of the Criminal Procedure Code of the Russian Federation, discontinuance of criminal persecution on the grounds indicated in Paragraphs 3 and 6 of Section 1 of its article 24, in Article 25, Paragraph 3 of Section 1 of Article 27 and Article 28, which in themselves do not entail rise of the right of a suspect (accused) to rehabilitation in the procedure of Chapter 18 of this Code, is not admitted, if he/she objects against it, - in such cases criminal proceedings are continued in a usual procedure.

Death of a suspect (accused), as it follows from Section 2 of Article 133 of the Criminal Procedure Code of the Russian Federation, establishing a circle of persons having the right to rehabilitation, does not either enter in the number of rehabilitating grounds, granting the right of compensation of damage caused by criminal persecution. A person, in respect of whom criminal proceedings are discontinued on this ground, by virtue of natural reasons is deprived of the possibility to defend from disparagement such personal goods as honour and good name by way of expressing disagreement with discontinuance of criminal persecution and demanding continuation of criminal proceedings in a usual way. As far as close relatives of a dead suspect (accused) or any other interested persons are concerned, the criminal procedure law does not envisage that absence of agreement from their side with discontinuance of criminal persecution may serve as an obstacle for adoption of respective decision.

Having not granted to the abovementioned persons appropriate means of legal protection in such exclusive cases, the legislator in essence created a possibility of poly-semantic interpretation and consequently of arbitrary application of Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation. Meanwhile, since constitutional right to the protection of human dignity is extended not only on the period of human life, it

obliges the State to create legal guarantees for the protection of honour and good name of a dead person, preservation of worthy attitude to him/her, which in its turn contemplates an obligation of authorized bodies to proceed from the need to provide to close relatives of the dead access to the judiciary and court protection in full volume, as it follows from Article 46 of the Constitution of the Russian Federation in the inter-connection with Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

When legislatively fixing guarantees of protection of memory of the dead and worthy attitude to them, which can not be excluded from the sphere of general (public) interest in a State where a human being, his/her rights and freedoms are the supreme value (Article 2 of the Constitution of the Russian Federation), it is impossible not to take into consideration that interested persons, first of all close relatives of the dead suspect (accused), insisting on continuation of criminal proceedings, have lawful interest justifying further consideration of the case. Which may in any case consist in the wish to protect both honour and dignity of the dead and good memory of him/her and their own honour and dignity, suffering in view of remaining uncertainty of legal status of the dead in the case of discontinuance of criminal proceedings in respect of him/her on non-rehabilitating ground. Besides, lawful interest of these persons in case of rehabilitation of a dead suspect (accused) may have property character too, connected with the possibility of compensation of expenses incurred by him/her, including procedural costs, sums spent on juridical assistance, expenses for medical treatment, as well as losses in the form of missed benefit (non-received salary and other monetary means; the rehabilitated has been deprived of lawful possibility to get them as a result of actions of inquirer, investigator, prosecutor and court).

The European Court of Human Right adheres to analogous position, assuming that when the question is resolved whether interested persons can participate in the proceedings in a case instead of a dead applicant, particular attention must be paid to the nature of their intentions (Decision of 15 November

2007 on the question of admissibility of the complaint of A.A.Gorodnichev against Russia).

Provision of the right to court protection of violated rights and lawful interests both of a dead suspect (accused) him-/herself and his/her close relatives and other interested persons, guaranteed by the Constitution of the Russian Federation is determined, as follows from the legal positions of the Constitutional Court of the Russian Federation (Judgments of 23 March 1999 No. 5-II and of 27 June 2000 No. 11-II), not only by formal recognition of a person as this or other participant in the criminal proceedings, but also by the presence of certain essential signs characterizing his/her factual status. So, the fact of criminal persecution of a particular person and, accordingly, carrying out of accusatory activity in respect of him/her may be confirmed by an act of institution of criminal proceedings, exercise of investigatory actions (search, identification, interrogation etc.) and by other measures, taken with the aim to unmask him/her or testifying the presence of suspicions against him/her. In the case when such person had passed away before the institution of criminal proceedings (in this connection he/she can not be drawn in to participate in the proceedings as a suspect on general grounds indicated in Section 1 of Article 46 of the Criminal Procedure Code of the Russian Federation), it is not excluded that the question of his/her guilt has been substantially put in a preliminary way in the course of criminal proceedings (until the moment of discontinuance or refusal to institute criminal proceedings in connection with the death of this person) in order to fix signs of a crime in the action – to the extent to which it is possible at a respective procedural stage.

4. As the Constitutional Court of the Russian Federation has repeatedly indicated, a requirement follows from the principle of juridical equality as applied to the realization of constitutional right to court protection, by virtue of which relations, similar by their juridical nature, must be regulated in the same way; observance of the constitutional principle of equality, guaranteeing protection from all forms of discrimination in the course of exercise of rights and freedoms, means, *inter alia*, prohibition to introduce restrictions of the rights of persons belonging to

one category, which do not have objective and reasonable justification (prohibition of different treatment of persons being in identical or similar situations); any differentiation, leading to differences in the rights of citizens in this or that sphere of legal regulation must meet the requirements of the Constitution of the Russian Federation, in accordance with which such differences are admissible if they are objectively justified, founded and pursue constitutionally significant ends, and for achievement of these ends proportionate legal means are used (Judgments of 24 May 2001 No. 8-II, of 3 June 2004 No. 11-II, of 15 June 2006 No. 6-II, of 16 June 2006 No. 7-II, of 5 April 2007 No. 5-II, of 25 March 2008 No. 6-II and of 26 February 2010 No. 4-II).

According to Article 244 of the Criminal Procedure Code of the Russian Federation, in court session the parties of the prosecution and the defence enjoy equal rights to submit rejections and motions, to submit evidences, to participate in their examination, to intervene in court pleadings, to submit to the court written wordings on questions indicated in Paragraphs 1-6 of Section 1 of Article 299 of the present Code, to consider all other questions arising in the course of the trial. In accordance with Section 2 of Article 246 and Article 249 of the Criminal Procedure Code of the Russian Federation, in court examination of cases of public and private-public, as well as private prosecution, if criminal proceedings have been instituted by an investigator or an inquirer with the prosecutor's consent, participation of a State prosecutor is obligatory; court examination takes place with participation of a victim who also appears on the prosecution's side.

In order to secure functioning of the principles of equality and controversy of parties in criminal judicial proceedings, the criminal procedure law stipulates for participation in court session both of the party of prosecution in the person of State prosecutor and the victim and the party of defence – an accused, his counsel for the defence and lawful representative. And the court, according to Section 2 of Article 49 of the Criminal Procedure Code of the Russian Federation, may, on a motion of an accused, admit as defenders apart from the counsel other persons, including close relatives of an accused, who in such cases are vested with respective

procedural rights. This means that participation in the case of close relatives of an accused as his defenders is admitted only on a motion of an accused him-/herself, only together with the counsel for the defence (with the exception of the proceedings at the Justice of the Peace) and only at the judicial stage of the proceedings in the case, i.e. in the case of death of a suspect (accused) participation of these persons is envisaged neither at the stage of preliminary investigation, nor at the stage of court examination as well as is not envisaged, as a general rule, their participation as lawful representatives of a suspect (accused). Thus, the Criminal Procedure Code of the Russian Federation does not grant to any persons powers to defend the rights of a dead suspect (accused). Since interested persons, first of all close relatives of the dead, are not admitted to participation in the case in such cases, procedural decisions affecting constitutional rights of a suspect (accused), as well as rights and lawful interests of his/her close relatives are adopted respectively by the inquirer, investigator or the court without the participation of the party of the defence.

Consequently, close relatives of a dead suspect (accused) have no opportunity to strive for his/her rehabilitation, which does not conform to constitutional requirement to provide for the protection of honour, dignity and good name as well as the rights following from the presumption of innocence, as also other rights and lawful interests, which predetermine the need to grant to these persons – in view of peculiarities of their factual status – appropriate procedural rights. Such restrictions have no objective and reasonable justification and lead to violation of guarantees envisaged by the Constitution of the Russian Federation, by its Articles 19 (Section 1), 21 (Section 1), 23 (Section 1), 46 (Sections 1 and 2), 49 and 123 (Section 3).

5. As follows from the inter-connected provisions of Articles 1, 2, 18, 45 and 118 of the Constitution of the Russian Federation, obliging the Russian Federation as the law-governed State to create effective system of court protection of human and civil rights and freedoms, the possibility to turn to court for the protection of their rights and freedoms, violated by an unlawful court decision, granted to

interested persons, including those not brought to participation in the case, is inalienable element of normative content of the right to court protection having universal character; resolution by court of a question about rights and duties of persons not brought to participation in the case does not allow to regard court examination as just, providing to everyone in the case of dispute about his/her rights and duties the right to fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, fixed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms; a person not brought to participation in the case, in respect of whom court decision is adopted violating his/her rights and freedoms or placing on him/her supplementary encumbrance, in any case must have effective means of restoration of his/her violated rights as it is required by Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Judgment of the Constitutional Court of the Russian Federation of 20 February 2006 No. 1-II).

Proceeding from this, the federal legislator – with consideration of the requirements of the Constitution of the Russian Federation – establishes ways and procedures of court protection as applied to individual kinds of judicial proceedings and categories of cases, taking into account peculiarities of respective material legal relations, the character of cases considered and other circumstances (Judgments of the Constitutional Court of the Russian Federation of 28 May 1999 No. 9-II, of 21 March 2007 No. 3-II, of 17 January 2008 No. 1-II and of 31 January 2011 No. 1-II).

Protection of honour and good name of the dead, criminal proceedings in respect of whom have been discontinued on the ground envisaged by Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, as well as the rights and lawful interests of his/her close relatives is in the first place connected with his/her possible rehabilitation, under which, in accordance with Paragraph 34 of Article 5 of the present Code, is understood the procedure of restoration of rights and freedoms of a person, having been unlawfully or unfoundedly exposed to criminal persecution, and compensation of

the damage caused to him/her. At the same time, as follows from Section 2 of Article 6 of the Criminal Procedure Code of the Russian Federation, determining the destination itself of criminal judicial proceedings, in broader and fundamental sense rehabilitation is public recognition of absence of the grounds for criminal responsibility and criminal persecution of a person to which he/she had earlier been exposed. Since the law recognizes as ground of criminal responsibility commission of an action containing all signs of *corpus delicti*, including guilt of a person of commission of this action (Section 1 of Article 5 and Article 8 of the Criminal Code of the Russian Federation, Section 2 of Article 6 and Section 4 of Article 302 of the Criminal Procedure Code of the Russian Federation), rehabilitation is a consequence of establishment of innocence of a person of commission of an action prohibited by criminal law.

By virtue of the principle of the presumption of innocence, as it is defined in Article 49 (Section 1) of the Constitution of the Russian Federation, the guilt of a person of commission of a crime as well as his/her innocence must be proved not in an arbitrary order, but only in a procedure envisaged by federal law, i.e. is subject to establishment exclusively in the framework of criminal procedural relations. Accordingly, protection of rights and lawful interests of close relatives of a dead suspect (accused), having the aim of his/her rehabilitation, must also be carried out in criminal procedural forms by granting them the necessary legal status and rights following from it.

Recognition of a person as rehabilitated entails, within the meaning of Paragraph 35 of Article 5 of the Criminal Procedure Code of the Russian Federation, the need of compensation of damage caused to him/her in connection with unlawful or unfounded criminal persecution. For instance, the rehabilitated has the right to compensation of property damage, including compensation of salary, pension, allowance, other means which he/she was deprived of as a result of criminal persecution, of his/her property, confiscated or converted into State revenue on the ground of a sentence or court decision, of procedural costs and sums paid by him/her for juridical assistance as well as the right to restoration of

labour, pension, housing and other rights (Articles 133 and 135 of the Criminal Procedure Code of the Russian Federation). At the same time restoration of labour, pension and housing rights, return of property or its cost, compensation of losses caused to a citizen by unlawful conviction, unlawful institution of criminal proceedings, unlawful application of taking into custody as a measure of suppression, written undertaking not to leave may be carried out also in the procedure of civil judicial proceedings, as it is envisaged by Sections 5 and 6 of Article 29 of the Civil Procedure Code of the Russian Federation. However, within the meaning of Section 1 of Article 138 of the Criminal Procedure Code of the Russian Federation, the rehabilitated is entitled to appeal to court in the procedure of civil judicial proceedings, if the demand of compensation of damage to the rehabilitated person has been rejected by a court or he/she disagrees with the court decision adopted. As far as elimination of the consequences of moral damage is concerned, according to Section 2 of Article 136 of the Criminal Procedure Code of the Russian Federation suits on compensation to the rehabilitated person of moral damage caused in the course of criminal proceedings in monetary form are filed in the procedure of civil judicial proceedings, as it is envisaged for suits on protection of honour, dignity and business reputation (Article 152 of the Civil Code of the Russian Federation).

Stipulating for special mechanisms of restoration of violated rights for realization of a public law purpose – rehabilitation of everyone who has been unlawfully and (or) unfoundedly exposed to criminal persecution, federal legislator must not place on a citizen as a weaker party in this legal relation excessive encumbrances connected with arbitrary decisions and actions of bodies of executive power, but on the contrary, is obliged to create procedural conditions for the soonest elucidation of amount of the damage caused and its compensation (Judgment of the Constitutional Court of the Russian Federation of 2 March 2010 No. 5-II). And here exactly the criminal law establishes more strict requirements for proof of a person's guilt, and since presumption of innocence dictates recognition by a court of all facts testifying in favour of an accused (if they are not

refuted by the prosecution party in a proper procedural form), granting to close relatives of a dead suspect (accused) the right to dispute in criminal procedure their position in the question of innocence of the dead, of the possibility or impossibility of discontinuance of criminal proceedings as well as to bring demands on compensation of property and elimination of consequences of moral damage (which is engendered by juridical fact of rehabilitation of the dead) in the procedure envisaged by Chapter 18 of the Criminal Procedure Code of the Russian Federation, in the best way answers constitutionally significant purposes of provision of effective protection of subjective civil rights and unimpeded access to justice.

Rights and lawful interests of a dead suspect (accused) and of his close relatives, affected by the decision to discontinue criminal proceedings on the ground stipulated for by Paragraph 4 of Section 1 of Article 24 of the Criminal Procedure Code of the Russian Federation, can not be fully protected also with the help of appeal of this decision in court in the procedure of its Article 125. According to the legal position of the Constitutional Court of the Russian Federation expressed in the Judgment of 23 March 1999 No. 5-II, a court, when checking during preliminary investigation some or other procedural acts, must not resolve beforehand questions which later may become a subject-matter of court examination in the criminal case, in the first place – the question of guilt or innocence of a suspect (accused), which would contradict the constitutional principle of court's independence. Since a complaint is lodged in this case, in essence, against the refusal of the body of criminal persecution to rehabilitate a dead suspect (accused), and the court during preliminary investigation is bound by prohibition to examine and resolve beforehand the question of his/her guilt or innocence, checking of the appealed decision would have formal character and could not guarantee to a proper extent the protection of rights and lawful interests of close relatives of the dead.

Consequently, with application to discontinuance of criminal proceedings in connection with death of a suspect (accused) the protection of constitutional rights

of a person can not be secured without granting close relatives of the dead the right to insist on continuation of criminal proceedings with the aim of his/her possible rehabilitation and corresponding obligation of a public body conducting criminal procedure to secure realization of this right.

6. Thus, proceeding from constitutional provisions fixing the principle of State guarding of human dignity, the right of everyone to protect his/her honour and good name, controversy and equality of parties of judicial proceedings, guarantees of State, including court, protection of human and civil rights and freedoms, principle of the presumption of innocence, when close relatives of a suspect (accused) declare objections against discontinuance of criminal proceedings in connection with his/her death, the body of preliminary investigation or a court must continue preliminary investigation or court examination. In this case the indicated persons must be provided with rights which a suspect, accused (defendant) would have possessed, analogous to the way it is established by Section 8 of Article 42 of the Criminal Procedure Code of the Russian Federation as applied to dead victims, since non-granting of the opportunity to dispute in the criminal procedure their rights and lawful interests by any means not prohibited by law would mean disparagement of human honour and dignity by the State itself (Judgment of the Constitutional Court of the Russian Federation of 24 April 2003 No. 7-II).

If in the course of continuation of conduction of preliminary investigation grounds for adoption of a decision on rehabilitation of the dead are established, criminal proceedings are subject to discontinuance on rehabilitating grounds, and if not – the case is handed over to court for consideration in general procedure. In this case close relatives, insisting on continuation of criminal proceedings with the aim of possible rehabilitation of the dead or their representative are subject to compulsory calling out to court session in order to realize their right to court protection of honour and good name of the dead as well as their rights and lawful interests. In this case, within the framework of court examination, the circumstances of the event must be established, its legal assessment must be given

as well as the real extent of guilt (or innocence) of a person in the commission of an action he/she is charged with must be elucidated. Having considered the criminal case in general procedure (taking into account peculiarities determined by physical absence of such a participant of court examination as the defendant), the court must either, having come to the conclusion of innocence of the dead person, pass a “not guilty” verdict or, having not found grounds for his/her rehabilitation, discontinue criminal proceedings on the ground of Paragraph 4 of Section 1 of Article 24 and Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation.

At the same time, the federal legislator must insert into legal regulation in force - guided by the requirements of the Constitution of the Russian Federation and with regard to the present Judgment – amendments aimed at securing of the State, including court, protection of honour, dignity and good name of a dead suspect (accused) and the rights following from the principle of the presumption of innocence and render concrete the list of persons to whom, apart from close relatives, the right may be granted to insist on the continuation of criminal proceedings with the aim of possible rehabilitation of the dead, procedural forms of their admission to participation in the case and corresponding legal status, to envisage peculiarities of conduction of preliminary investigation and of court examination in the case of death of a suspect (accused) as well as peculiarities of a decision on discontinuance of criminal proceedings on this non-rehabilitating ground.

Concluding from the above and pursuant to Section 2 of Article 71, Articles 72, 75, 79, Paragraph 2 of Section 1 and Section 2 of Article 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 the inter-connected provisions of Paragraph 4 of Section 1 of Article 24 and of Paragraph 1 of Article 254 of the Criminal Procedure Code of the Russian Federation, fixing as a ground for discontinuance of criminal proceedings

death of a suspect (accused) with the exception of cases when criminal proceedings are necessary for rehabilitation of the dead, as not conforming to the Constitution of the Russian Federation, its Articles 21 (Section 1) 23 (Section 1), 46 (Sections 1 and 2) and 49 to the extent to which these provisions in the system of legal regulation allow to discontinue criminal proceedings in connection with the death of a suspect (accused) without consent of his/her close relatives

2. The law-applying decisions passed in respect of O.S.Alexandrina and Ye.Yu.Vashchenko, as well as in respect of the applicants in the present case – S.I.Alexandrin and Yu.F.Vashchenko, are to be reconsidered according to the established procedure with regard to the present Judgment.

3. 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.

4. 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

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