

By the Judgement of 4 March 2021 No. 5-II the Constitutional Court of the Russian Federation appraised constitutionality of Article 159, Section 1 of the Criminal Code of the Russian Federation.

The specified provision was the subject of consideration to the extent that on its basis the issue of criminalising acts (fraud) related to the filing of a tax return on personal income tax by a taxpayer to the tax authorities in order to receive a property tax deduction in connection with the acquisition of a dwelling is decided, when it is confirmed by the tax authority, but subsequently denied, that the taxpayer has the right to such a deduction.

The Constitutional Court reiterated its legal positions, including those expressed in the Judgement of 22 July 2020, No. 38-II regarding review of constitutionality of Article 159, Section 3 of the Criminal Code of the Russian Federation and noted that the conclusion contained in this Judgement is fully applicable to cases of accusation in the commission of a crime prohibited under Article 159, Section 1 of the Criminal Code of the Russian Federation, since it also establishes criminal liability for fraud, but without its qualifying features contained in other sections of this Article.

The challenged provision was recognised as not contradicting the Constitution of the Russian Federation, since it does not imply the imposition of criminal liability for the unjustified appeal of a taxpayer to the tax authority in order to exercise the right to receive a property tax deduction by the tax authority in connection with the acquisition of a dwelling, whether the tax authority later denied the right to such a deduction if the taxpayer has submitted to the tax authority the documents stipulated by the legislation that do not contain signs of forgery, sufficient with the usual care and discretion of the tax authorities to refuse to provide the appropriate tax deduction, and did not take any other actions (inaction), specifically aimed at creating conditions for the tax authority to make the wrong decision in favour of the taxpayer.