

By the Judgement of 23 September 2021 No. 41-II the Constitutional Court of the Russian Federation assessed constitutionality of Article 135, part one, item 4 and Article 401⁶ of the Criminal Procedural Code of the Russian Federation.

These provisions were subject to consideration insofar as they served as normative basis to decide on the amount of compensation for legal assistance (lawyer) expenses with regard to compensating rehabilitated person the pecuniary damage inflicted due to his or her criminal prosecution, including with regard to lowering the amount of compensation already paid to him or her upon review and conversion of the judicial decision awarding the relevant sum.

The challenged provisions of Article 135, part one, item 4 of the Criminal Procedural Code of the Russian Federation (CCP RF) were recognised as not contradicting the Constitution of the Russian Federation. In foreseeing relevant compensation and including therein the expenses paid by rehabilitated person for legal assistance, these provisions do not provide for refusal to a person who suffered from unlawful or unjustified criminal prosecution to fully compensate legal assistance expenses paid to a lawyer for services provided; unless it was proven that part of claimed expenses was clearly caused by other circumstances than seeking assistance in direct connection to defence of rehabilitated person from criminal prosecution, and where good faith of rehabilitated person was not discredited.

The challenged provisions of Article 401⁶ of the CCR RF were recognised as not being in conformity with the Constitution of the Russian Federation insofar as within current system of legal regulation they do not limit the period from judicial act awarding the rehabilitated person the compensation of expenses for legal assistance becoming final, during which the cassation court can decide to review this act leading to conversion of its execution and levying sums previously awarded to rehabilitated person.

The Constitutional Court specially noted that pending necessary legislative amendments flowing from the present Judgement lack of indication in the Article 401⁶ of the CCP RF on impossibility for cassation court to review judicial act compensating to rehabilitated person the damages caused by unlawful or unjustified criminal prosecution thus leading to conversion of execution of such judicial act, does not give grounds to carry out such a review when a year has passed from the relevant judicial act becoming final.