

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 2 February 1999 No. 3-II

in the case concerning the review of the constitutionality of certain provisions of Article 41 and Section 3, Article 42 of the Criminal Procedure Code of the RSFSR, Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR” of 16 July 1993 in connection with a request of the Moscow City Court and complaints of a number of individuals.

Moscow, 2 February 1999

The Constitutional Court of the Russian Federation composed of Presiding Judge O. S. Khokhryakova and Judges M. V. Baglay, Yu. M. Danilov, L. M. Zharkova, V. D. Zorkin, V. O. Luchin, V. I. Oleynik, V. G. Strekozov,

in the attendance of attorneys G. P. Padva, A. Ye. Bochko, S. G. Belokovylsky, N. L. Vysotskaya, representatives of the citizens who submitted the complaints to the Constitutional Court of the Russian Federation, Judge S. A. Pashin of the Moscow City Court, Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, representative of the Council of the Federation A. V. Kligman, and Plenipotentiary Representative of the President of the Russian Federation to the Constitutional Court of the Russian Federation M. A. Mityukov,

pursuant to Section 4, Article 125 of the Constitution of Russian Federation, Subsection 3, Section 1, Sections 2 and 3, Article 3, Subsection 3, Section 2, Article 22, Articles 36, 74, 96, 97, 99, 101, 102, 104 and 86 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”,

in an open hearing examined the constitutionality of certain provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR, Sections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR” of 16 July 1993.

The reason for the consideration of the case is requests of the Moscow City Court and complaints of V. Yu. Grizak, O. V. Filatov, N. A. Kovalev about a violation of their constitutional rights by the mentioned legal provisions. The ground for the consideration of the case is the discovered uncertainty of whether the mentioned provisions are in conformity with the Constitution of the Russian Federation.

Having heard the report of Judge-Rapporteur Yu. M. Danilov, statements by the representatives of the parties invited to the hearing: V. I. Radchenko, representative of the Supreme Court of the Russian Federation, Ye. N. Sidorenko, representative of the Ministry of Justice of the Russian Federation, A. A. Belkin, representative of the Office of the Prosecutor General of the Russian Federation, V. I. Zhulev, representative of the Ministry of Interior Affairs of the Russian Federation, the Constitutional Court of the Russian Federation

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

In connection with the establishment of the jury trial in the Russian Federation, the Law of the Russian Federation “On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR” was adopted on 16 July 1993. Subsection 1, Decree of the Supreme Soviet of the Russian Federation No. 5451/I-1 of 16 July 1993, brought the mentioned Law into force from the date of its publication, except for Subsection 7 of Part II which appended the Criminal Procedure Code of the RSFSR with a new Title X, “Jury Trial Proceedings”. At the same time Subsection 2 of the mentioned Decree prescribed to adopt the proposals of the Stavropol Territory, the Ivanovo Region, the Moscow Region, the Ryazan Region and the Saratov Region that Subsection 7 of Title II of the statute shall come into force for these territories on 1 November 1993, and proposals of the Altay Territory, the Krasnodar Territory, the Ulyanovsk Region and the Rostov Region, that the mentioned provision shall come into force for these territories on 1 January 1994.

Pursuant to Article 41 of the Criminal Procedure Code of the RSFSR, which regulates territorial jurisdiction in criminal cases, a criminal case shall be considered by the court at the place where the offence was committed; if it is impossible to establish the venue of the crime, such offence shall be considered by the court having jurisdiction over the territory where the preliminary investigation or inquiry was completed. According to Section 3, Article 42 of the Criminal Procedure Code of the RSFSR, the case which by any reasons is simultaneously within the jurisdiction of equal courts shall be considered by the court having jurisdiction over the place where the preliminary investigation or inquiry was completed.

The Moscow City Court requests the review of the constitutionality of the provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR. The applicants request the review of the constitutionality of the provisions of Sections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR””, since they believe that the mentioned provisions serve as a ground for denial, to an individual accused of committing a crime punishable under the law by a death penalty, of his right to be tried by a jury where such courts are not created in the mentioned territories. Thereby, in the applicants’ opinion the provisions of the Constitution of the Russian Federation, including Article 20 (Section 2), are violated.

The motion to consider the criminal case in a jury trial lodged by V. Yu. Grizak, who was accused of committing a crime punishable by a death penalty, was rejected on the basis of the fact that jury trials were not yet in operation in the Moscow City Court which had jurisdiction in this case. V. Yu. Grizak was convicted twice on the same criminal charges, and his conviction was quashed twice by the Supreme Court of the Russian Federation. As a result of a new consideration of the case, the Moscow City Court acquitted V. Yu. Grizak.

In his complaint submitted to the Constitutional Court of the Russian Federation, V. Yu. Grizak states that the trial of a criminal case on the charge of a crime punishable by a death penalty by a court without a jury violates his rights under Article 20 (Section 2) of the Constitution of the Russian Federation and contradicts Articles 6 and 19 of the Constitution of the Russian Federation, which guarantee equality of the rights and freedoms of man and citizen in the whole territory of the Russian Federation. Thereby, in the applicants’ opinion, the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 which allows examination of a case by a professional judge and two lay judges is discriminatory.

O. V. Filatov, who was sentenced to death by the Supreme Court of the Udmurtiya Republic, and N. A. Kovalev, who was sentenced to death by the Primorsky Territory Court, submitted similar complaints to the Constitutional Court of the Russian Federation. By a decision of the Judicial Section on Criminal Cases of the Supreme Court of the Russian Federation the death penalty in respect of N. A. Kovalev was replaced by life imprisonment.

As follows from the request of the Moscow City Court, during the preparatory part of the hearing the accused A. Yu. Gushchin and S. P. Grishin, due to the fact that the offence incriminated to them was punishable by a death penalty, repeatedly filed a motion for trial of the criminal case by a jury, previously filed by them and rejected at the end of the preliminary

investigation. The motion was granted by the Moscow City Court; however as such court was not established in Moscow yet, the court referred the criminal case to the Supreme Court of the Russian Federation under Article 44 of the Criminal Procedure Code of the RSFSR for referral of the criminal case to one of regional courts where judicial proceedings are conducted with a jury.

Under a request of a Deputy President of the Supreme Court of the Russian Federation, the Judicial Section on Criminal Cases of the Supreme Court of the Russian Federation annulled the decision delivered by the Moscow City Court with reference to the requirement of Subsection 6 (1) of Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation, pursuant to which until a federal law establishing rules for jury trials enters into force the existing rules of court trial of respective cases shall be preserved.

The Moscow City Court, which has jurisdiction in this criminal case, concluded that the provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR, regulating territorial jurisdiction over criminal cases preclude the person accused of committing a crime punishable by a death penalty, to have a jury trial, do not conform to the Constitution of the Russian Federation, in particular to Article 17 (Section 2), Article 18, Article 20 (Section 2), Article 46 (Section 1), Article 47 (Section 2), Article 55 (Section 3), Article 56 (Section 3) and Article 64. In this regard the Moscow City Court applied to the Constitutional Court of the Russian Federation requesting the review of the constitutionality of these provisions.

3. The normative provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR, and Subsections 1 and 2 of the Decree of the Supreme Soviet of the Russian Federation “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR”, being applied in specific cases, served as a ground for denial, to persons accused of committing a crime punishable under law by a death penalty, of the exercise of their right to be tried by a jury, guaranteed under Article 20 (Section 2) of the Constitution of the Russian Federation. Consequently, the request of the Moscow City Court and the complaints of V. Yu. Grizak, O. V. Filatov and N. A. Kovaleva seeking constitutionality review of the mentioned provisions essentially concern the same subject matter. That is why the Constitutional Court of the Russian Federation, pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, joined the proceedings on these applications.

In their submissions, the applicants also refer to certain norms of criminal law which provide for punishment in the form of death penalty. However, as follows from the complaints and submissions of the applicants and their representatives made during the hearing, they do not challenge the constitutionality of imposing this exceptional measure of punishment by the federal legislator. Consequently, this issue is not the subject matter of the present proceedings.

4. Pursuant to Article 20 (Section 2) of the Constitution of the Russian Federation, until its abolition the death penalty can be prescribed by federal law as the exceptional measure of punishment for especially grave crimes against life provided that the accused are granted the right to be tried by a jury.

As follows from the mentioned constitutional norm taken in conjunction with Article 18 and Article 46 (Section 1) of the Constitution of the Russian Federation, in such cases the right of the accused to a jury trial is a special criminal procedural guarantee of judicial protection of the right to life (as a basic, inalienable right belonging to each person from birth), directly provided by the Constitution of the Russian Federation. The right to a jury trial is directly applicable and shall determine the meaning, essence and application of the corresponding provisions of the criminal and criminal procedure legislation, and actions of the legislative authorities concerning the adoption of and amendments to this legislation, and shall be ensured by administration of justice.

Pursuant to Article 19 of the Constitution of the Russian Federation, everyone is equal before the law and the court (Section 1); the state guarantees equality of the rights and freedoms of man and citizen regardless of the sex, race, ethnicity, language, origin, property and official status, place of residence, religion, convictions, membership in public associations, and other circumstances (Section 2). Consequently, the right to a jury trial in cases stipulated by Article 20 (Section 2) shall be provided on an equal basis and to an equal degree to all the accused regardless of the place where the crime was committed, territorial or other jurisdiction prescribed by federal law for such cases, etc.

5. Pursuant to the provisions of Title X, "Jury Trial Proceedings", of the Criminal Procedure Code of the RSFSR, and, above all, Article 421 taken in conjunction with Article 36 of the Criminal Procedure Code of the RSFSR, cases on charges of crimes punishable by death shall be considered by a jury at the territorial, regional or city court upon a motion of the accused. Pursuant to Article 420 of the Criminal Procedure Code of the RSFSR, territories where courts consider cases in jury trials are determined by the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 (Sections 1 and 2). It follows from the mentioned provisions that jury trial of cases punishable by death enters into force not in the whole territory, but only in nine regions of the Russian Federation.

By reaching such decision, the legislator, guided by the Constitution (Basic Law) of the Russian Federation in force at the material time and taking into consideration the circumstances of organizational, material and technical nature, relied on gradual institution of jury trials in the course of the judicial reform. However, this approach did not deny the necessity to provide each person accused of committing a crime punishable by death with the right to be tried by a jury, and moreover it could not preclude the legislator from adopting a federal law meeting the requirements of the Constitution of the Russian Federation after it comes into force.

According to Subsection 6 (1) of Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation, until a federal law establishing rules for jury trials is adopted and comes into force, the existing rules of court consideration of respective cases shall be preserved.

It follows from the mentioned constitutional provision and Article 20 (Section 2) of the Constitution of the Russian Federation that during a certain transitional period, specific time limits of which are not indicated in the Constitution of the Russian Federation, the legislator shall amend the legislation in force in order to ensure in all cases the right of persons accused of committing a crime punishable by death to be tried by a jury in the whole territory of the Russian Federation. During the mentioned period, in territories where jury trial courts are not yet established the existing rules of considering corresponding cases shall be preserved.

Thus, Subsection 2 of the Decree of the Supreme Soviet of the Russian Federation “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR’” of 16 July 1993, pursuant to which Section 7, Title II of the mentioned Law appending the Criminal Procedure Code of the RSFSR with Title X, “Jury Trial Proceedings”, entered into force in the territory of nine subjects of the Russian Federation, conforms to the Constitution of the Russian Federation. Subsection 1 of the Decree of the Supreme Soviet of the Russian Federation, bringing the mentioned Law into force from the date of its publication except for Subsection 7 of Title II, conforms to the Constitution of the Russian Federation since it does not preclude the legislator from adopting a federal law establishing an order of jury trial proceedings in criminal cases against persons accused of committing a crime punishable by death in the whole territory of the Russian Federation in line with the provisions of Article 20 (Section 2) and Subsection 6 (1) Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation.

6. After adopting the Constitution of the Russian Federation, the legislator, implementing the judicial reform, in the course of adjusting the criminal procedure legislation in line with the

norms of the Constitution of the Russian Federation and within the meaning of Article 20 (Section 2) and Subsection 6 (1) of Section II, “Concluding and Transitional Provisions”, of the Constitution, had to provide a proper procedural mechanism for the exercise of the right guaranteed by the mentioned Article with the aim to overcome the temporary inequality of the legal possibilities of persons prosecuted for committing especially grave crimes against life punishable by death. It had to be done in the most expeditious manner, because in these cases the right of the accused to be tried by a jury is directly provided by the Constitution of the Russian Federation (Article 20, Section 2) as opposed to cases where the mentioned right, pursuant to Article 47 (Section 2) and Article 123 (Section 4) of the Constitution of the Russian Federation, is granted by the legislator, which, consequently, may determine varying periods for establishing respective procedural mechanisms.

More than five years has passed after the adoption of the Constitution of the Russian Federation, a sufficient period for the legislator to comply with the requirements of Subsection 6 (1), Section II, “Concluding and Transitional Provisions”, concerning the adoption of a federal law ensuring exercise of the right of persons accused of committing a crime punishable by death to be tried by a jury, the right guaranteed by Article 20 (Section 2) of the Constitution of the Russian Federation.

During this time, within the scope of the judicial reform, the Federal Constitutional Law “On the Judicial System of the Russian Federation”, the Federal Law “On Justices of the Peace of the Russian Federation”, the Criminal Code of the Russian Federation, numerous amendments to the Criminal Procedure Code of the RSFSR have been adopted. A draft of a new Criminal Procedure Code of the Russian Federation has prepared and adopted in the first reading, but the respective amendments ensuring the right of persons accused of committing a crime punishable by death are not introduced in the legislation yet. So the legislator still permits the right provided by Article 20 (Section 2) of the Constitution of the Russian Federation to be exercised only in the territories determined by the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993. As a result, the constitutional meaning of the provisions of Subsection 6 (1), Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation is distorted. The temporary norm of Subsection 1 of the mentioned Decree taken in conjunction with its Subsection 2, in fact, becomes a permanent restriction and thus does not conform to Article 19, Article 20 (Section 2) and Article 46 (Section 1) of the Constitution of the Russian Federation.

Consequently, the provision of Subsection 1 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 shall not serve as a ground for refusal to grant a motion for a

jury trial of the criminal case lodged by a person accused of committing a crime punishable under law by death penalty.

7. Pursuant to Articles 19 and 46 (Section 1) of the Constitution of the Russian Federation, everyone shall be guaranteed judicial protection of his rights and freedoms. The right to judicial protection presumes the existence of certain guarantees which allow to exercise it in full and to provide effective restoration of rights through administration of justice which meets the requirements of fairness.

Within the meaning of Article 46 (Section 1) of the Constitution of the Russian Federation, corresponding provisions of Article 14 of the International Covenant on Civil and Political Rights of 1966 and Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, in determining any criminal charge everyone is entitled to have a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Article 47 (Section 1) of the Constitution of the Russian Federation guarantees that no one may be deprived of the right to have his case considered by the court and by the judge having jurisdiction over the case under law. In particular it implies that cases shall be tried only by a lawfully established composition of the court.

Due to the requirements of the mentioned Articles of the Constitution of the Russian Federation, jurisdiction over cases shall be determined by law providing criteria which in the normative form (as general rules) predetermine certain courts which shall consider a specific criminal case. This would allow the court and participants of the proceedings to avoid uncertainty in this issue which otherwise should be remedied by law-enforcement decision relying on the discretionary powers of a law-enforcement authority or official, i.e. jurisdiction over a case would not be determined under the law. The cited legal opinion expressed by the Constitutional Court of the Russian Federation in the Judgment of 16 March 1998 in the proceedings on the constitutional review of Article 44 of the Criminal Procedure Code of the RSFSR and Article 123 of the Civil Procedure Code of the RSFSR.

In accordance with the cited opinion the referral of cases by the Supreme Court of the Russian Federation from one court to another under Article 44 of the Criminal Procedure Code of the RSFSR may be exercised only within the framework of a judicial procedure and on the basis of certain grounds (circumstances) prescribed by the procedural law which preclude consideration of the case by a court not having a jurisdiction over it. Such law should also contain rules for determining another competent court.

The legislation in force does not provide for grounds or a procedure for referral of cases to another court if the court having territorial jurisdiction over the case concerning a crime punishable by death has no panel of jurors. Consequently, as the Moscow City Court presumes,

the application of Article 44 of the Criminal Procedure Code of the RSFSR in such cases would be in breach of Article 47 (Section 1) of the Constitution of the Russian Federation.

The provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR, which are challenged in the request of the Moscow City Court, determine territorial jurisdiction over criminal cases on the basis of the venue of the crime or place of completion of preliminary investigation, without regard to the issue of lawful composition of the court for considering certain categories of cases.

Within the meaning of Articles 36 and 421 of the Criminal Procedure Code of the RSFSR, cases punishable under federal law by death if the accused person files an appropriate motion are considered by a jury trial at a territorial, regional or city court at the venue of the crime, and if it is impossible to establish the venue of the crime the case is considered by a competent court at the place where preliminary investigation was completed. Consequently, the legislator determines a level of jurisdiction (regional court) and a composition of the court – a judge and twelve jurors, and thus the provisions of Article 20 (Section 2) and Article 47 (Section 1) of the Constitution of the Russian Federation are implemented.

Therefore, the provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR shall not be considered as precluding implementation of the guarantee provided by Article 20 (Section 2) of the Constitution of the Russian Federation, and consequently do not contradict the Constitution of the Russian Federation.

8. Since sufficient time has passed for the legislator's performance of the obligation under Article 20 (Section 2) and Subsection 3 (1) of Section II, "Concluding and Transitional Provisions", of the Constitution of the Russian Federation, the Federal Assembly must immediately amend the federal legislation in order to provide persons accused of committing a crime punishable by death with the right to be tried by a jury in the whole territory of the Russian Federation. Due to direct prescriptions in the mentioned provisions of the Constitution of the Russian Federation, the adoption of respective law shall not be conditioned by the enactment of a new criminal procedure code and may precede it.

The legislator has the right to choose various forms of providing citizens with a possibility to exercise the right guaranteed by Article 20 (Section 2) of the Constitution of the Russian Federation. Only the legislator may establish a way by which the right of the accused to be tried by a jury shall be guaranteed in the territory of all subjects of the Russian Federation in order to reach the abovementioned aims (be it necessary to determine "base" courts, establish circuit courts etc.).

9. On the basis of Article 20 (Section 2) in conjunction with the provisions of Article 15 (Section 1) concerning the supreme legal force and direct application of the Constitution of the

Russian Federation and Article 120 of the Constitution of the Russian Federation, and taking into account Subsection 6 of the reasoning of the present Judgment, punishment in the form of a death penalty may be imposed only if the right to be tried by a jury is guaranteed to the accused in the whole territory of the Russian Federation. The absence of a possibility to guarantee each person, accused of committing a crime punishable under federal law by the death penalty, the exercise of this right directly stipulated by the Constitution of the Russian Federation entails absence of possibility to impose this kind of punishment by any other composition of a court.

The current lack of a law ensuring the exercise of the constitutional rights of the accused to be tried by a jury in the whole territory of the Russian Federation as provided by Article 20 (Section 2) of the Constitution of the Russian Federation shall not preclude considering this category of cases by another composition of the court. However, in the territory of nine subjects of the Russian Federation where jury trials are in operation persons accused of committing crimes punishable by death shall not, in terms of imposing a sentence, be put in an unequal position compared to persons accused of committing similar crimes in the territories where such courts are not in operation. In this situation, the application of exceptional measure of punishment by a jury would distort the purpose and essence of the right guaranteed by Article 20 (Section 2) of the Constitution of the Russian Federation and, moreover, it would be a substantial violation of the principle of equality provided in Article 19 of the Constitution of the Russian Federation.

Thus, within the meaning of Article 20 (Section 2) taken in conjunction with Articles 19, 46 and 120 of the Constitution of the Russian Federation from the moment the present Judgment of the Constitutional Court of the Russian Federation comes into force and before the enactment of a federal law actually providing each person accused of committing a crime punishable under the federal law by death with the right to a jury trial in the whole territory of the Russian Federation and in every possible organizational form of judicial proceedings, this exceptional measure of punishment shall not be imposed regardless of the composition of the court considering the case (jury trial, a panel of three professional judges, or a judge and two lay judges).

Concluding from the above and pursuant to Sections 1 and 2, Article 71, Articles 72, 74, 75, 100 and 104 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 provisions of Article 41 and Section 3, Article 42, of the Criminal Procedure Code of the RSFSR as conforming to the Constitution of the Russian Federation as

they do not preclude implementation of the guarantee provided in Article 20 (Section 2) of the Constitution of the Russian Federation.

2. To recognize Subsection 2 of Decree of the Supreme Soviet of the Russian Federation No. 5451/I-1, “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR’” of 16 July 1993 prescribing the entry into force of Subsection 7, Title II of the mentioned Law, in the territory of the Stavropol Territory, the Ivanovo Region, the Moscow Region, the Ryazan Region and the Saratov Region from 1 November 1993 and in the territory of the Altay Territory, the Krasnodar Territory, the Ulyanovsk Region and the Rostov Region from January 1994 as conforming to the Constitution of the Russian Federation.

3. To recognize Subsection 1 of Decree of the Supreme Soviet of the Russian Federation No. 5451/I-1, “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the Administrative Offences Code of the RSFSR’” of 16 July 1993 prescribing the entry into force of the mentioned Law except for Subsection 7 of Title II as conforming to the Constitution of the Russian Federation to the extent that it did not preclude the legislator to adopt, in line with the requirements of Article 20 (Section 2) and Subsection 6 of Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation, a federal law establishing, in the whole territory of the Russian Federation, a procedure for jury trial of cases on charges of a crime punishable by death under the federal law as an exceptional measure of punishment.

Owing to the fact that after adopting the Constitution of the Russian Federation the Federal Assembly has had sufficient time to perform the obligation under Article 20 (Section 2) and Subsection 3 (1) of Section II, “Concluding and Transitional Provisions”, of the Constitution of the Russian Federation, to recognize Subsection 1 of the Decree of the Supreme Soviet of the Russian Federation of 16 July 1993 to the extent that it continues to not provide a person accused of committing a crime punishable by death under federal law with the right to be tried by a jury in the whole territory of the Russian Federation as non-conforming to the Constitution of the Russian Federation and its Articles 19, 20 and 46.

4. With the adoption of this Judgment, the provisions of Decree of the Supreme Soviet of the Russian Federation No. 5451/I-1, “On the Procedure of Entry into Force of the Law of the Russian Federation ‘On Amendments to the Law of the RSFSR ‘On the Judicial System of the RSFSR’, the Criminal Procedure Code of the RSFSR, the Criminal Code of the RSFSR, and the

Administrative Offences Code of the RSFSR” of 16 July 1993 shall not continue to be a ground for refusal to grant a motion for jury trial of the case to a person accused of committing a crime punishable by death under federal law.

Consequently, the Federal Assembly must immediately amend the federal legislation in order to provide persons accused of committing a crime punishable by death with the right to be tried by a jury in the whole territory of the Russian Federation.

5. From the moment of entry into force of the present Judgment until the entry into force of the respective federal law guaranteeing each person accused of committing a crime punishable by death with the right to be tried by a jury in the whole territory of the Russian Federation, punishment in the form of a death penalty shall not be imposed regardless of whether the case was considered by a jury, a panel of three professional judges, or a judge and two lay judges.

6. Pursuant to Section 2, Article 100 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, the court judgments delivered in the case of A. V. Filatov are to be reconsidered by courts according to the established procedure with consideration of Subsection 5 of the holding of the present Judgment.

7. Pursuant to Sections 1 and 2, Article 79 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Decision shall be final and shall not be subject to appeal, it shall come into force immediately upon its pronouncement, shall and be directly applicable.

8. Pursuant to Article 78 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”, this Decision shall be published immediately in the Collection of Laws of the Russian Federation and *Rossiyskaya Gazeta*. The Decision shall also be published in the Bulletin of the Constitutional Court of the Russian Federation.

Constitutional Court  
of the Russian Federation

No. 3-II