

IN THE NAME OF THE RUSSIAN FEDERATION

CONSTITUTIONAL COURT  
OF THE RUSSIAN FEDERATION

Judgment  
of 23 February 1999 No. 4-II

in the case concerning the review of the constitutionality of Section 2, Article 29 of the Federal Law of 3 February 1996 “On Banks and Banking” in connection with complaints of O. Ya. Veselyashkina, A. Ya. Veselyashkin, and N. P. Lazarenko.

Moscow, 23 February 1999

The Constitutional Court of the Russian Federation composed of Presiding Judge T. G. Morshchakova and Judges N. V. Vitruk, G. A. Gadzhiev, A. L. Kononov, Yu. D. Rudkin, N. V. Seleznev, A. Ya. Sliva, V. G. Yaroslavtsev,

in the attendance of O. Ya. Veselyashkina and N. P. Lazarenko, who submitted their constitutional complaints to the Constitutional Court of the Russian Federation; Permanent Representative of the State Duma to the Constitutional Court of the Russian Federation V. V. Lazarev, Representative of the Council of the Federation attorney Yu. A. Timokhov,

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

in an open hearing, examined the constitutionality of the provision of Section 2, Article 29 of the Federal Law of 3 February 1996 “On Banks and Banking”.

The reason for the consideration of the case is complaints of O. Y. Veselyashkina, A. Y. Veselyashkin and N. P. Lazarenko regarding violation of their constitutional rights by the provisions of Section 2, Article 29 of the Federal Law “On Banks and Banking” applied in their cases.

Having heard the report of Judge-Rapporteur G. A. Gadzhiev, statements by the parties, expert opinion of V. A. Mau, PhD in Economics; interventions by O. N. Doronina for the Commissioner for Human Rights, I. A. Dubov for the Central Bank of the Russian Federation, V. V. Sergeyev for the Association of Russian Banks, D. P. Aleksandrov for the Supreme Court of the Russian Federation, A. L. Makovsky for the Research Centre for Private Law under the President of the Russian Federation; and having considered written submissions and other materials, the Constitutional Court of the Russian Federation

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

1. In February 1996, O. Ya. Veselyashkina concluded a fixed-term deposit agreement with the Meshchanskoye Branch of Sbergatelny Bank of the Russian Federation (“Sberbank”), at 4.5 percent monthly interest. In March 1996, Sberbank unilaterally decreased the interest rate and O. Ya. Veselyashkina brought a lawsuit against the bank to the Istrinsky District Court of the Moscow Region, which suspended the proceedings. After O. Ya. Veselyashkina filed a complaint to the Constitutional Court of the Russian Federation.

In March 1997, O. Ya. Veselyashkina and A. Ya. Veselyashkin concluded a fixed-term deposit agreement, titled “Moscow – 850 years old”, with a subsidiary of Inkombank, a joint-stock bank, at 31.2 percent annual interest rate. During the following year the bank decreased the interest rate twice. O. Ya. Veselyashkina and A. Ya. Veselyashkin brought a lawsuit to the Krasnogorsky District Court to invalidate the contractual clause which entitled Inkombank to decrease the interest rate unilaterally, and to recover damages caused by the bank, but the court rejected the lawsuit with reference to Section 2, Article 29 of the Federal Law “On Banks and Banking”.

In February 1996, N. P. Lazarenko concluded two fixed-term deposit agreements with the Sokolnicheskoye Branch of the Sbergatelny Bank of the Russian Federation at 90 percent annual interest rate. During the term of the contracts, the bank reduced the above-mentioned rate unilaterally on repeated occasions. N. P. Lazarenko brought a lawsuit to the Preobrazhensky Intermunicipal Court of Moscow to recover damages calculated on the initial-interest-rate basis. The court rejected the lawsuit with reference to Section 2, Article 29 of the Federal Law “On Banks and Banking”. The Judicial Section of the Moscow City Court upheld this judgment.

In their complaints to the Constitutional Court of the Russian Federation, O. Ya. Veselyashkina, A. Ya. Veselyashkin and N. P. Lazarenko challenge the constitutionality of Section 2, Article 29 of the Federal Law “On Banks and Banking”. In the complainants’ opinion, the above-mentioned provision infringes on their constitutional rights protected by Articles 19 and 55 (Section 3) of the Constitution of the Russian Federation as it entitles banks to reduce interest rates for individuals’ fixed-term deposits unilaterally.

Insofar as all the complaints concern essentially the same subject matter and pursuant to Article 48 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation” the Constitutional Court of the Russian Federation is permitted to consider these applications together.

2. Pursuant to Section 2, Article 29 of the Federal Law “On Banks and Banking”, credit institutions shall not unilaterally alter interest rates for loans and deposits, commission fees, terms of validity of contracts, except as otherwise provided by federal law or agreement with the

client. This norm regulates the relationships between credit institutions (banks and other credit institutions) and their clients (individuals and legal persons) regarding alteration (increase or decrease) of the interest rates for the above-mentioned agreements and their terms of validity.

In the complainants' cases the only applied provision of Section 2, Article 29 of the Federal Law "On Banks and Banking" was the one permitting unilateral decrease of interest rates for individual's deposits if such possibility is provided for by the fixed-term deposit contract itself, without being subject to any conditions triggering it and set in a federal law. Consequently, only this provision is subjected to scrutiny by the Constitutional Court of the Russian Federation, since under Article 97 of the Federal Constitutional Law "On the Constitutional Court of the Russian Federation" the Constitutional Court of the Russian Federation reviews only norms applied or are to be applied in the complainants' case.

3. By the time the provision in question came into force, Title 1 of the Civil Code of the Russian Federation was already operative. Pursuant to Article 310 of the Civil Code, no unilateral renunciation or alteration of an obligation is permitted (excluding obligations which are part of entrepreneurial activities) except as otherwise provided by law. Moreover, when Title 2 of the Civil Code of the Russian Federation came into force it contained Article 838 which expressly prohibited unilateral alteration by banks of interest rates for fixed-term deposit agreements concluded with individuals, except as otherwise provided by law.

Thus, the Civil Code of the Russian Federation, unlike Section 2, Article 29 of the Federal Law "On Banks and Banking", does not provide for a possibility to include, in a fixed-term deposit agreement with an individual, a clause permitting unilateral alteration of the interest rate by the bank, if this possibility is provided nowhere but in the contract. Nevertheless in practice, as the conflict of norms was in place, the provision of Article 29 (Section 2) of the Federal Law "On Banks and Banking" was still applied and was interpreted by banks as requiring no supplementary legislative regulation foreseen by Articles 310 and 838 of the Civil Code of Russian Federation. Therefore, banks unilaterally reduced the interest rates for individuals' fixed-term deposits, and this was accepted by courts as well for a long time. When the Supreme Court of the Russian Federation resolved a civil case on this subject matter in 1998 and highlighted that the Civil Code of the Russian Federation shall be applied in disputes of this kind, the judicial practice started to change, however the challenged provision of Article 29 (Section 2) of the Federal Law "On Banks and Banking" was still part of the system of valid legal norms.

According to the legal opinion of the Constitutional Court of the Russian Federation, as expressed in the Judgment of 16 June 1998 on interpreting certain provisions of Articles 125, 126 and 127 of the Constitution of the Russian Federation, courts of general jurisdiction and

arbitration courts, in accordance with Article 120 (Section 2) together with Article 76 (Sections 3, 5 and 6) of the Constitution of the Russian Federation, should decide on their own which norms are to be applied in a specific case if there is a regulatory gap and when formally valid but actually void norm, or conflict of norms is discovered.

However, at the same time judicial practice should follow the constitutional interpretation of normative provisions to be applied. Thus, when the conflict of legal norms results in a conflict of constitutional rights based on them, the question of eliminating such conflicts acquires a constitutional aspect and, consequently, falls within the jurisdiction of the Constitutional Court of the Russian Federation. The Constitutional Court of the Russian Federation, through analysis of both the literal meaning of the normative act under review and the meaning attributed to it by the existing law-enforcement practice (Section 2, Article 74 of the Federal Constitutional Law “On the Constitutional Court of the Russian Federation”) establishes the constitutional meaning of the law in force. This legal opinion was formulated by the Constitutional Court of the Russian Federation in the Judgment of 23 December 1997 in the case concerning the review of the constitutionality of Section 2, Article 855 of the Civil Code of the Russian Federation and Section 6, Article 15 of the Law of the Russian Federation “On Fundamentals of the Taxation System in the Russian Federation”.

4. The Constitution of the Russian Federation guarantees freedom of economic activity as one of the fundamentals of the constitutional order (Article 8). Providing a more detailed regulation in Articles 34 and 35, the Constitution of the Russian Federation stipulates that everyone shall have the right to freely use his abilities and property for entrepreneurial and other economic activities not prohibited by law.

These constitutional norms on economic freedom imply that the freedom of contracts is constitutionally recognized as one of the freedoms of man and citizen guaranteed by the State and is proclaimed as one of the fundamentals of the civil legislation in the Civil Code of the Russian Federation (Section 1, Article 1). However, the constitutional freedom of contracts is not absolute and should not result in denial or derogation of other universally recognized human rights and freedoms (Section 1, Article 55 of the Constitution of the Russian Federation). It may be restricted by federal law, but only to the extent necessary for the protection of the fundamentals of the constitutional order, the rights and lawful interests of others (Section 3, Article 55 of the Constitution of Russian Federation).

Among the restrictions on the constitutional freedom of contracts prescribed by federal law there are so-called “public contracts”, where a commercial organization cannot refuse to conclude such contract, except as otherwise provided by law (Article 426 of the Civil Code of the Russian Federation), and adhesion contract, which requires all the clients-individuals to

adhere to the terms of contract as a whole in order to conclude it (Article 428 of the Civil Code of the Russian Federation).

Fixed-term deposit agreements with individuals (Section 2, Article 834 of the Civil Code of the Russian Federation), the terms of which, according to Section 1, Article 428 of the Civil Code of the Russian Federation, are laid out by banks in standard forms, are adhesion contracts of public nature. As a result, individual-depositor as a party to the agreement is deprived of the possibility to negotiate over its terms, which results in restriction on the freedom of contracts and as such necessitates the principle of proportionality to be applied. Proportionality analysis in this context leads to the conclusion that an individual, being an economically weaker party to the contract, needs special protection of his rights, which in its turn necessitates appropriate legal restriction on the freedom of contracts for the other party as well, i.e. banks.

While the possibility for an individual to refrain from concluding a contract might on its face prove recognition of contractual freedom, it cannot be considered as sufficient protection for individuals. This is even more evident when there are no proper guarantees for individuals against banking activities aimed at monopolization and unfair competition, and no market control mechanisms over credit institutions are provided, including those of the consumer's access to information about their economical situation, and individual has no choice but to agree to the terms of the contract which are in fact dictated by banks, among which there is a possibility for unilateral decrease of the deposit interest rate.

5. In regulating relationships between banks and individuals-depositors, the legislator should follow Articles 2 and 18 of the Constitution of the Russian Federation, pursuant to which recognition, observance and protection of the rights and freedoms of man and citizen shall be a duty of the State. The constitutional freedom of contracts precludes the legislator from confining itself to formal recognition of *de jure* equality of the parties and requires providing preferences for the weaker party. The aim of such approach is to prevent unfair competition in banking and introduce substantive guarantees provided by Articles 19 and 34 of the Constitution of the Russian Federation in order to ensure effectiveness of the principle of equality in entrepreneurial and other economic activities not prohibited by law. The conclusion of a fixed-term deposit agreement by an individual is part of this very entrepreneurial activity.

For an individual concluding such agreement, the absence of legal norms imposing reasonable limitations on the economically stronger party to a fixed-term deposit agreement results in excessive limitation (denial) of the constitutional freedom of contracts, and consequently of the freedom to engage in economic activities not prohibited by law. The provisions of Section 2, Article 29 of the Federal Law "On Banks and Banking" to the extent that they allow banks to unilaterally decrease interest rates solely on the basis of a contractual

clause, imposes restrictions on the above-mentioned constitutional rights and freedoms of an individual in the absence of statutory regulation laying out specific grounds for such possibility. Thereby the requirements of Articles 34, 35 and 55 (Section 3) of the Constitution of the Russian Federation are violated causing inequality which is impermissible from the standpoint of the principle of fairness proclaimed in the Preamble to the Constitution of the Russian Federation.

6. Under Section 3, Article 55 of the Constitution of the Russian Federation, it is for the legislator to determine the grounds and scope of necessary restrictions of the constitutional freedom of contracts, which should be proportionate to the aims listed in this constitutional norm. Thus, it is for federal law, not the contract, to determine if it is possible (and if possible, under what circumstances) for banks to unilaterally decrease interest rates, in order to preclude arbitrary aggravation of the contractual terms for individual-depositors without any objective reasons.

Therefore, without any further legal regulation specifying the grounds and scope of the necessary restrictions, the provision of Section 2, Article 29 of the Federal Law “On Banks and Banking”, which is the subject-matter of the review in the present case, being essentially a reference provision, shall not be applied. Any other interpretation of this provision which enables banks to stipulate, in deposit agreements with individuals, the possibility to unilaterally decrease interest rates in the absence of appropriate statutory regulation, does not conform to the Constitution of the Russian Federation.

Such understanding of the challenged provision does not conform to the Constitution of the Russian Federation and, therefore, in fact results in denial of judicial protection (Section 1, Article 46 of the Constitution of the Russian Federation) and violation of the principle of equality before the law and court (Section 1, Article 19 of the Constitution of the Russian Federation), as the content of this norm itself does not require courts to scrutinize the existence or absence of any objective grounds for banks’ unilateral decrease of interest rates and allows courts to confine themselves to formal affirmation of contractual terms. Thus it does not guarantee proper protection of individuals’ rights in courts. This legal opinion was formulated by the Constitutional Court of the Russian Federation in the Judgment of 6 June 1995 in the case concerning the review of the constitutionality of Subsection 2, Section 7, Article 19 of the Law of the RSFSR “On Police”.

Concluding from the above and pursuant to Sections 1 and 2 of Article 71, Articles 72, 74, 75, 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 the provision of Section 2, Article 29 of the Federal Law “On Banks and Banking” regarding banks’ unilateral decrease of interest rates for individuals’ fixed-terms deposits as non-conforming to the Constitution of the Russian Federation, its Articles 34 and 55 (Sections 2 and 3) as it allows banks to decrease the interest rate arbitrarily and solely on the basis of the agreement in the absence of a statutory basis providing for such possibility.

In the absence of a statutory basis providing for a decrease of interest rates for individuals’ fixed-term deposits, banks shall not stipulate agreements with clauses allowing them to unilaterally decrease the interest rates for such deposits.

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

3. 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 cases of O. Ya. Veselyashkina, A. Ya. Veselyashkin and N. P. Lazarenko on the basis of the provisions of Section 2, Article 29 of the Federal Law “On Banks and Banking”, which are recognized as unconstitutional by this Judgment, are to be reconsidered by courts according to the established procedure.

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

Constitutional Court  
of the Russian Federation

No. 4-II